

PUBLIC SECTOR BILL 2022

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Ms Jillian Langford
Committee Secretary
Economics and Governance Committee
Parliament House
George Street
BRISBANE QLD 4000

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

Dear Ms Langford

Thank you for the opportunity to make a submission regarding the Public Sector Bill 2022 (the Bill).

I note that the Bill implements stage two reforms that seek to give effect to the Bridgman Review's primary recommendation to provide all public sector employees with a modern, simplified and employee-focused legislative framework. In this regard, I welcome the reforms proposed by the Bill and support the principles underpinning the Bill. However, implementing the Bill within the proposed legislative timeframes will have significant operational impacts for the Office of the Public Guardian (OPG). More than 100 casual Community Visitors are appointed under the *Public Guardian Act 2014* (Public Guardian Act), constituting approximately 30 percent of the total headcount workforce of the OPG.

Based on the proposed 1 March 2023 commencement date of the Bill, almost all casual Community Visitors will be eligible for a review of their casual employment and the potential conversion to permanent employment. To enable the fair and effective implementation of these reforms for all Community Visitors at OPG, I respectfully request the Bill be amended to include a transitional provision temporarily extending the period for making a decision about non-permanent employment status under clauses 114 and 115 from 28 to 90 days immediately following the commencement of the Bill. Section 113 of the Public Guardian Act may also require a consequential amendment, as outlined in further detail below.

Background

OPG is an independent statutory office which promotes and protects the rights and interests of adults with impaired decision-making capacity and children and young people in out-of-home care or staying at visitable sites. OPG is comprised of:

- the Public Guardian, who is appointed by the Governor-in-Council and employed under the Public Guardian Act;
- OPG staff, who support the Public Guardian's functions and powers and are employed under the *Public Service Act 2008* (PSA); and

- Community Visitors, who are appointed by the Public Guardian and employed under the Public Guardian Act.

Community Visitors perform a critical, independent role in overseeing services provided by government and government-funded agencies. In accordance with the Public Guardian Act, Community Visitors provide statewide oversight and advocacy services to:

- adults with impaired decision-making capacity residing in Authorised Mental Health Services, the Forensic Disability Service, places where specified NDIS participants reside, residential services with level 3 accreditation (boarding houses/hostels), and other places prescribed by regulation; and
- relevant children and young people staying at visitable locations (youth detention centres, police watch houses, Authorised Mental Health Services, and some disability facilities) and in out-of-home care (foster care, kinship care and residential care services).

Section 109 of the Public Guardian Act states that the Public Guardian may appoint a Community Visitor on a full-time, part-time or casual basis. As at October 2022, the Public Guardian employs 105 Community Visitors on a casual basis across 60.3 FTE at the equivalent of the AO4 classification level (plus casual leave loading). Community Visitors constitute approximately 30 percent of OPG's total headcount workforce.

Community Visitors are a decentralised, remote workforce, distributed across 13 zones in Queensland and covering a geographic area of 1.7 million kilometres to meet client needs across the state, including in rural and regional areas. Community Visitors work from home and travel to the location of the sites and homes that they visit. Visits are often undertaken on different days and at different times of the day, for example, to accommodate school attendance or after school commitments. To support the independence of their oversight functions, Community Visitors are not classified as public servants as they are appointed by the independent Public Guardian under the Public Guardian Act and not the PSA; however, they are managed and administratively supported by public service employees within the OPG.

Implementation impacts

The Bill gives effect to a commitment to maximise security in public sector employment and will establish employment conditions and arrangements, including those in relation to employment security, with universal application to all public sector employees within the scope of the Bill. I fully support this policy objective. The Public Sector Reform Office (PSRO) has advised that while OPG has integrity functions, it would not be considered a 'core' integrity body as described in the final report of the *Review of Culture and Accountability in the Queensland public sector* (Coaldrake report). Consequently, Community Visitors would become public sector employees falling within the scope of the Bill. The PSRO considers the important characteristic of independence would be sufficiently maintained as Community Visitors will still be appointed by the Public Guardian under the *Public Guardian Act 2014*.

OPG will need to implement the reforms from the proposed commencement date of the Bill. The timeframe provided in the Bill for the chief executive to make a decision to convert the employee's employment from casual to permanent is 28 days. The practical workability of this raises significant concern for my Office.

Clause 113 of the Bill allows a public service employee who has been continuously employed on a non-permanent basis in the same public sector entity for at least one year to ask their chief executive to decide whether their non-permanent employment should be continued, or whether that employment should be offered to be converted to a permanent basis. Clause 115 of the Bill requires a chief executive to make the same decision where the public sector employee has been continuously employed in the same public sector entity for at least two years.

Implementing these conversion review rights is anticipated to have substantial operational impacts for OPG, namely through the need to process a very large volume of conversion reviews and potentially convert large numbers of Community Visitors from casual to permanent employment quickly. It is anticipated that when the Bill commences, 104 of OPG's 105 casual Community Visitors will be either eligible to make a request that this decision be made (those who will have completed one year of continuous non-permanent employment), or to have this decision made (those who will have completed at least two years of continuous non-permanent employment).

Clauses 114 and 115 of the Bill provide those decisions about employment status must be made within 28 days of receiving the request and 28 days after the end of two years of continuous employment respectively, such that up to 104 reviews will need to be individually conducted within the 28-day period following the proposed commencement date of the Bill. While 28 days is a reasonable timeframe for these decisions to be made where systems and processes are in place that support the ongoing operation of these provisions, it does not take account of initial implementation requirements immediately following the commencement date of the Bill. This is particularly the case for public sector entities with large numbers of casually employed staff who will either require a decision to be made or be eligible to request that a decision be made.

Consequently, a 28-day timeframe for decision will significantly impact OPG's ability to ensure decision making is exercised properly in accordance with administrative law principles. More time is required so that each individual case of casual employment can be reviewed rigorously and to the most fulsome extent possible. Community Visitors are a valued part of the OPG workforce, and each employment status decision needs to be assessed on its own merits in accordance with the legislation.

To enable fair and effective processing of decisions when the Bill commences, OPG seeks a transitional provision be included in the Bill to allow for an extended implementation period. OPG would then be in a considerably stronger position to implement the Bill in a manner which supports our workforce and the principles underpinning the Bill.

Consequently, I recommend the Bill be amended to include a transitional provision temporarily extending the period for decisions about conversion under clauses 114 and 115 from 28 to 90 days immediately following the commencement of the Bill. Such a transitional provision could be modelled on section 294A of the *Public Service and Other Legislation Amendment Act 2020*, which temporarily extended the period within which conversion decisions were required to be made under section 149B of the *Public Service Act 2008*.

I also recommend that a consequential amendment be inserted into the Bill to amend section 113 of the Public Guardian Act, which provides for the duration of appointments for Community Visitors. Under section 113, a Community Visitor holds office for a term of no longer than 3 years stated in the Community Visitor's instrument of appointment. As some Community Visitors may be employed on a permanent basis following the commencement of the Bill, this provision will require amendment to indicate that only Community Visitors employed on a non-permanent basis hold office for a term of not longer than 3 years.

I trust this information is of assistance. Should you require further information, please contact Ms Danielle Armstrong, Principal Executive Officer, OPG, by email at [REDACTED] or on [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to read 'Smith' with a stylized flourish at the end.

Shayna Smith
Public Guardian