Public Service & Other Legislation Amendment Bill 2020

Explanatory Notes

Short title

The short title of the Bill is the *Public Service & Other Legislation Amendment Bill 2020*.

Policy objectives and the reasons for them

The policy objective of the *Public Service & Other Legislation Amendment Bill 2020* (the Bill) is to give effect to the stage one public sector management reforms. The reforms arise from the recommendations of the independent review of public sector employment laws by Mr Peter Bridgman (the Bridgman Review) which was commissioned to ensure Queenslanders have the most responsive, consistent and reliable public service possible. The Bridgman Review also complements the review into the Queensland Public Sector Workforce Reporting undertaken by Emeritus Professor Peter Coaldrake (the Coaldrake Review) and builds on the measures to restore fairness in public sector employment undertaken by the Palaszczuk Government since 2015.

The Bridgman Review, completed in May 2019, concluded that there are significant problems and issues in Queensland public sector employment laws and practices that require resolution to ensure a fair, responsive and inclusive public sector. The Bridgman Review made recommendations aimed at introducing new ways to understand how and why the government employs people, starting from the employee and the work they are needed for and noted that this represents a major shift from the current public sector laws that start with institutions and their managers.

The Bill seeks to progress the priority stage one reforms in two main areas:

1. giving full effect to the Government's commitment to maximise employment security in public sector employment; and
2. providing for positive performance management of public sector employees

Achievement of policy objectives

To achieve the policy objectives, the Bill implements the stage one public sector management reforms by amending the *Public Service Act 2008* (PS Act) and the *Industrial Relations Act 2016* (IR Act) to:

- drive more effective and consistent application of the existing commitment to maximise employment security by providing clear language that states that permanent employment is the default basis for public sector employment and that other non-permanent forms of employment should only be used when ongoing employment is not viable or appropriate.

- providing for public service appeals which are currently heard under the PS Act by the Queensland Industrial Relations Commission (QIRC) to instead be heard under the IR Act to ensure transparency and increase consistency in appeal decisions.
- establish positive performance management principles in the PS Act that will support managers and employees to work together to support optimal performance
- clarify the threshold for taking disciplinary action, and
- providing for new directives to guide disciplinary action and procedures, investigations and positive performance management.

The Queensland public sector has a crucial role in ensuring the *Our Future State: Advancing Queensland's Priorities* are achieved. The legislative amendments set out in the Bill are considered reasonable and appropriate as they contribute to the Advancing Queensland Priority of being a responsive government by implementing reforms to increase the effective delivery of services and programs which benefit the community, economy and environment. For example, the introduction of positive performance principles will promote regular and constructive communication between managers and employees and encourage them to work together to ensure the Government's productivity and quality of service delivery.

The legislative amendments to the PS Act are necessary to provide an effective and proportionate legislative foundation that will foster a responsive, consistent and reliable public service.

Alternative ways of achieving policy objectives

Introduction and passage of the Bill is the best and only method for implementing the priority Bridgman recommendations and achieving the Government's policy intent.

An alternative option to the Bill would be to retain the PS Act in its current form and review policy and guidance material to implement the stage one reforms within the existing legislation framework. However, this is not considered appropriate as primary legislation is necessary to ensure successful implementation of the stage one public sector reforms, as the overarching basis of the reform is to improve Queensland's public sector employment laws and practices. Legislative amendments will also provide a sufficient basis to strengthen the public sector and to deliver more consistency in the employment experience and high-quality governance of Queensland public services.

Legislative amendments to implement the reforms are supported by most stakeholders.

Estimated cost for government implementation

Overall, the estimated costs of implementing the Bill are not anticipated to be significant to Government and can be absorbed within existing budget allocations.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Sufficient regard to rights and liberties of individuals - *Legislative Standards Act 1992*, section 4(3)(a)

Clause 47 (decisions which appeals cannot be made)

Clause 47 of the Bill potentially breaches the principle of giving sufficient regard to rights and liberties of individual as it removes appeal rights for decisions made in relation to section 149 and 149C of the Bill. These provisions establish the right to request conversion to tenured employment for casual and fixed term temporary employees and to request appointment to a higher classification level for employees on higher duties or secondment to a higher level within a department, who have completed 12 months of continuous service.

The Bill addresses this potential issue by ensuring appeal rights are available at the mandatory two-year conversion review and giving full effect to the Government's commitment to maximise employment security in public sector employment to promote best practice workforce management. This is intended to help drive good practice in workforce and resource planning so that employees are provided with regular reviews and communication about their employment status and conversion where appropriate.

Additionally, the Bill attempts to minimise the impact of this FLP by introducing a requirement for reasons for decision to be issued when a conversion decision is made. Further the reasons for decision is required to provide information about the number of extensions and length of engagement. This provides an important accountability mechanism and ensures transparency in decision making.

The institution of Parliament - *Legislative Standards Act 1992*, section 4(4)(a)

Clauses 21, 36, 37, and 44 – making of directives

Clauses 21, 36, 37, and 44 provide that the Commission Chief Executive can, or is required, to make a directive to provide guidance and instruction on the following matters:

- positive performance management;
- suspension;
- employment of fixed term temporary employees;
- employment of casual employees;
- review of employment status for fixed term temporary employees and casual employees after 1 year of continuous employment;
- review of employment status for fixed term temporary employees and casual employees after 2 years of continuous employment;
- appointing a public service employee actin in a position to that higher classification level; and
- disciplinary action and investigating grounds for discipline and grievances.

These clauses of the Bill potentially breach the principle of allowing the delegation of legislative power in appropriate cases and to appropriate persons only. The delegation of legislative power to directives under the Bill is considered appropriate on the basis that:

- it is consistent with existing arrangements under the *Public Service Act 2008*.
- the provision of directives relating to the operational administration of the public service has been a long-standing practice in Queensland's public sector employment laws and Australia more broadly;
- the Bill provides guidance and direction on the specific matters that should be included in directives;
- consultation on new, or amended directives, will occur with all affected stakeholders, including unions representing employees in the public service; and
- a balance between administrative flexibility and ensuring sufficient transparency and accountability is achieved by requiring that a directive may only be made by gazette notice and publication on the relevant agency website.

Consultation

Regular and ongoing consultation on the Bill and stage one public sector reforms was conducted with public sector union representatives through meetings of the Joint Advisory Committee (JAC) which has met fortnightly since 14 January 2020. JAC members included:

- Together Queensland Union of Employees
- Queensland Council of Unions
- Queensland Teachers Union
- United Firefighters Union Queensland
- Queensland Nurses & Midwives Union
- United Workers' Union
- Australian Workers Union

In addition, targeted stakeholder consultation and workshops with union representatives occurred in April and May 2020 to obtain specific feedback on the substance of the legislative proposals. The issues raised by JAC members and by representatives during the workshops have helped inform the drafting of the Bill.

All government departments were consulted on the Bill and senior executives were provided with regular updated.

The Bill reflects and balances feedback from stakeholders, while also giving full giving full effect to the Government's commitment to maximise employment security in public sector employment and provide for positive performance management of public sector employees.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and the extent to which it is uniform with or complementary to the Commonwealth or another state is not relevant in this context. However, approaches in other jurisdictions were taken into consideration in the development of the Bill.

Notes on provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Bill.

Part 2 Amendment of Industrial Relations Act 2016

Clause 2 provides that this part amends the *Industrial Relations Act 2016*. The amendments in this part will enable public service appeals to be heard under the *Industrial Relations Act 2016* by the QIRC to ensure consistency and increase transparency in appeal decisions. Appeals were previously heard by members of the QIRC but performing functions under the *Public Service Act 2008* rather than the *Industrial Relations Act 2016.* The nature of the review decision and the decision on an appeal will be unchanged as a result of moving the jurisdiction into the *Industrial Relations Act 2016.*

Clause 3 replaces section 9(2) to provide that a matter is not an industrial matter if it is the subject of a proceeding for a public service appeal. The provision that a matter is not an industrial matter if it is the subject of a proceeding for an indictable offence is retained.

Clause 4 replaces section 425 to remove the existing limitation on the Industrial Court of Queensland's jurisdiction to hear and decide appeals under the *Public Service Act 2008*.

Clause 5 provides that the QIRC's functions dealing with applications brought under another Act in section 447(l)(n)(i) include public service appeals.

Clause 6 replaces section 449 to remove the current limitation on the QIRC's jurisdiction in relation to public service appeals. The amendment will allow the QIRC jurisdiction to hear and decide public service appeals under the *Industrial Relations Act 2016*, not the *Public Service Act 2008*.

Clause 7 amends section 529 to provide that general provisions for representation of parties in proceedings is subject to section 530A(4) which provides that representation by an agent in a proceeding for a public service appeal against a promotion decision is only with leave of the commission.

Clause 8 amends section 530 to make clear that the legal representation provisions under the IR Act do not apply to public service appeal proceedings. This clause is a minor and consequential amendment following from the introduction of Clause 10 below.

Clause 9 inserts a new section 530A to provide that a person or party to a proceeding for a public service appeal conducted by the QIRC may appear personally or be represented by an agent but is not entitled to legal representation. Further, a party to an appeal about a promotion decision may only be represented by an agent with leave of the QIRC. This reflects the existing arrangements for public service appeals in the *Public Service Act 2008*, section 204.

Clause 10 amends section 551(3)(a)(iv) to enable rules to be made for the exercise of jurisdiction for public service appeals conferred on the QIRC under the *Public Service Act 2008*.

Clause 11 inserts a new sections 562A, 562B and 562C.

New section 562A provides that the QIRC may decide not to hear particular public service appeals. This replicates *Public Service Act 2008,* section 200. The terminology has been updated from 'employee complaints' to 'individual employee grievances', to reflect a later amendment in clause 56 to section 218A(1) of the Act.

New section 562B provides for the way in which a public service appeal is to be decided by the QIRC under the *Industrial Relations Act 2016*. This section replicates the *Public Service Act 2008,* section 201, and ensures that the purpose of a public service appeal is to decide whether the decision appealed against was fair and reasonable.

New section 562C carries over to the *Industrial Relations Act 2016* the decisions the QIRC may make in deciding a public service appeal under the *Public Service Act 2008*, section 208(1) – (2) and section 209. The remaining procedural provisions in section 208(3) and (4) are relocated to the *Industrial Relations Act 2016.*

Clause 12 amends the definition of appeal period in the *Industrial Relations Act 2016* to provide specifically that the time limit for appeals of promotion decisions means the period within 21 days after the decision is publicly notified under the *Public Service Act 2008*. This reflects the existing time limit applying to these decisions under the *Public Service Act 2008.*

Clause 13 amends section 567(1) to ensure that public service appeals to the industrial tribunal under the *Industrial Relations Act 2016* are by way of review, with the purpose of the appeal to decide whether the decision appealed against was fair and reasonable (distinguished from other appeals to the industrial tribunal which are by way of re-hearing on the record). This reflects the current approach for public service appeals.

Clause 14 inserts a definition of public service appeal in schedule 5 as an appeal against a decision made under the *Public Service Act 2008*. It also introduces the definition of a promotion decision into the *Industrial Relations Act 2016* and links the definition of promotion decision to the reciprocal provisions in the *Public Service Act 2008*.

Part 3 Amendment of Public Interest Disclosure Act 2010

Clause 15 sets out that this part amends the *Public Interest Disclosure Act 2010*.

Clause 16 makes consequential amendments to the *Public Interest Disclosure Act 2010* to provide that an application for relocation of a public service employee who considers it likely a reprisal will be taken against them if they continue in their existing work location will now be heard by the QIRC under the *Industrial Relations Act 2016*.

Part 3 Amendment of Public Service Act 2008

Clause 17 sets out that this part amends the *Public Service Act 2008*.

Clause 18 amends the definition of public service employee to change the terminology 'temporary employee' to 'fixed-term temporary employee'. The amendment also separates casual employees from the definition of fixed term temporary employee. As casual employees

were previously recognised in the Act as a subcategory of temporary employees, this amendment is necessary to make will clear that casual employment is no longer a subset of fixed term employment It also ensures that casual employment is continued to be recognised as a category of employment in the *Public Service Act 2008*. The amendment is a change of terminology that does not affect the basis of a person's employment.

Clause 19 replaces the terminology 'temporary' to 'fixed-term temporary or casual' consistent with later amendments to section 148.

Clause 20 amends section 25 to provide for two key reforms: the positive performance management of public sector employees and that the default basis for public service employment is employment on tenure.

Subsection (1) amends the management and employment principles in section 25 to provide that public service employment is to be directed towards promoting best practice human resource management, including through positive performance management of public service employees set out in new section 25A.

Subsection (2) provides that employment on tenure is the default basis of employment in the public service, excluding non-industrial instrument employees. This insertion is to give full effect to the Government's employment security policy.

Clause 21 inserts a new section 25A to introduce the positive performance management principles. The positive performance management principles are to support managers and employees to work together to support optimal performance. The principles are intended to ensure the use of positive performance management for Queensland public service employees.

The clause also requires that the Commission Chief Executive make a directive about how the positive performance management principles are to be applied.

Clause 22 amends the work performance and personal conduct principles in section 26. New section 26(1)(f) will align with the positive performance principles in section 25A by providing that work performance and personal conduct must be directed towards continuous improvement in relation to an employee's work performance, including through training and development.

Clause 23 omits sections 40 and 41 as management reviews authorised by the Minister are now provided in section 43 in new Chapter 3, Part 1A which enables the Minister to ask a Special Commissioner or the Commission Chief Executive or another appropriately qualified person to conduct and administrative inquiry.

Clause 24 inserts a new Chapter 3, Part 1A to establish a Special Commissioner.

New section 42A provides that the main functions of the Special Commissioner are to provide advice to the Minister about areas of public administration relating to the main purposes of the *Public Service Act 2008,* promote the effectiveness and efficiency of government entities by facilitating the development and implementation of whole of government policies and conduct administrative inquires as requested by the Minister. An example of an area of public administration that a Special Commissioner may provide advice on is gender pay equity and promoting a diverse workforce.

New Section 42B provides for the appointment of an appropriately qualified person as a Special Commissioner and sets out that the remuneration, allowances, terms and conditions are to be determined by Governor in Council. The term of appointment is capped at no longer than five years.

New section 42C provides for the preservation of rights if the person appointed as a Special Commissioner is a public service officer. Similar preservation rights apply to Commission Chief Executive in section 61 of the Act.

New section 42D makes clear that the Special Commissioner is subject to the direction of the Commission Chief Executive, except when conducting an administrative inquiry as set out in new Chapter 3 Part 7. This provision is necessary for administrative ease and resourcing where a Special Commissioner is engaging in their functions long term.

Clause 25 amends section 55 and the heading by replacing reference to 'temporary employees' with 'fixed-term temporary and casual' or 'fixed term temporary or casual' consistent with amendments to section 148.

Clause 26 provides that the Commission Chief Executive may delegate the functions under section 88I and 88IA, other than the giving of a report under section 88IA(4)(b) that includes a direction. The effect of the provision is that where a report is given that includes a direction, under 88IA, the functions can only be delegated to an appropriately qualified staff member of the Public Service Commission.

Clause 27 removes chapter 3, part 5 relating to the functions of QIRC members in hearing and deciding appeals under the *Public Service Act 2008.* Public service appeals will now be heard and decided under the *Industrial Relations Act 2016*.

Clause 28 inserts new section 88IA which relates to the Public Service Commission's functions relating to a department's handling of a work performance matter. The new section will apply where a procedure under a directive relating to suspension or discipline is being undertaken in relation to a public service employee for a work performance matter. Before the procedure is concluded, an employee, having first complied to the extent possible with any relevant procedures under a discipline or suspension directive, can ask the Public Service Commission to review a procedural aspect of the department's handling of the matter.

The new section 88IA provides that an employee may request the Public Service Commission conduct a review of a procedural aspect of a work performance matter at the request of an employee and provide a report to the chief executive of the relevant department. An employee may make such a request having first complied to the extent possible to the extent possible, with procedures applying under directives. A procedural aspect of a work performance matter means an aspect of a matter relating to compliance with a procedure under a directive applying to the matter or with principles of natural justice. However, for the purposes of the section, a work performance matter does not include personal conduct that is the subject of the matter that if proved would constitute corrupt conduct under the *Crime and Corruption Act 2001*.

On receiving the request, the commission may conduct a review of a procedural aspect of the current work performance matter and give the chief executive of the department a report about the review that includes recommendations about how any defects in the procedural aspects are to be rectified. The report may also include a direction about how any procedural defects are

to be remedied. The clause also makes clear that the relevant chief executive must comply with a direction given in a report to the extent possible, unless before the report is given to the chief executive, a decision is made in relation to the matter and an employee can appeal the decision.

A function of the commission under this section must be conducted by the commission chief executive, or by a staff member of the commission to whom the function is delegated under section 62(1), or, if the function only involves the giving of a report (and does not include a direction), any other appropriately qualified entity to whom the function of giving the report is delegated under section 62(2).

Clause 29 inserts a new part to provide that the Minister administering the *Public Service Act 2008* may ask a Special Commissioner, the Commission Chief Executive or another appropriately qualified person to conduct an administrative inquiry.

New section 88O provides that the Minister may, by signed notice, ask the Special Commissioner, the Commission Chief Executive or an appropriately qualified person to conduct an administrative inquiry into the functions or activities of one or more public service offices (including in relation to the administration of a particular scheme or program, the effectiveness and efficiency of public service office interactions), an area of existing or proposed government policy or another area of public administration relation to a main purpose of this Act. It excludes inquiries about an individual employee.

New Section 88P provides for the powers of an administrative inquiry and makes clear that in conducting the inquiry, the powers of the Special Commissioner, the Commission Chief Executive or an appropriately qualified person will include to enter official premises of the public service office at a reasonable time, to require the production of, examine, copy, or take and extract from, any official document in possession of the public service office, interview employees of the public service office, or interview anyone else who can provide information relevant to the review. These powers are based on those previously provided in section 41 *Public Service Act 2008* for authorised persons conducting management reviews.

The chief executive or head of the public service office and other persons employed in the office must provide the assistance reasonably required to conduct the review.

A person is not required to answer the questions if it incriminates the person of a criminal offence or the employee would have a claim of privilege against self-incrimination in relation to the criminal offence if the employee were asked the question in a Supreme Court action.

New section 88Q provides that the Special Commissioner or Commission Chief Executive or appropriately qualified person must give the Minister a report on the inquiry, including any findings or recommendations. The Minister may provide the report to the departmental minister, the chief executive or head or anyone else the Minister considers appropriate. The report may also be published as determined appropriate by the Minister however confidential or personal information from the report must first be removed.

Clause 30 inserts a new subclause (ca) to provide that a chief executive is responsible for human resource planning, including ensuring employment in the department of persons on a fixed term temporary or casual basis occur only if there is a reason for the vacancy or basis of employment under the PS Act. Human resource planning is also to inform a decision of a chief

executive under section 148 about whether it is viable or appropriate to appoint a person on tenure rather than as a fixed term employee.

Clause 31 replaces the existing section 100 with the effect of limiting a chief executive's autonomy in making decisions about particular individuals in cases where the chief executive is subject to a direction by the Commission Chief Executive in a report about the handling of a work performance matter under section 88IA.

Clause 32 replaces section 127(1)(b) to allow persons with permission under a Commonwealth law to work in Australia eligibility to be a public service officer. This amendment means that all people who have a lawful right to work in Australia (including permanent residents, refugees and asylum seekers) will be eligible for appointment as a public service officer. However, if a person's permission to work in Australia ends, the person's employment is taken to have been terminated by the chief executive on the same day.

Clause 33 amends section 130(2) to (4) and the section heading to provide for a new right to reappointment for a person who held a permanent office of service with the State and resigned to be a candidate at either a federal or state election. Formerly, section 130 only permitted a request for reappointment. Subsection (3) will provide that reappointment must only be made under two conditions; if the person resigned within 6 months before the day the period for nomination of candidates in the election ends and that reappointment must be made within 3 months of the return of the writ for the election. Subsection (4) provides that re-appointment may be made regardless of the person's age and subsection (5) provides that merit does not apply to the reappointment. These are carried over from former section 131(2) and (4) respectively.

Clause 34 omits section 131 as detail on how a request for reappointment should be dealt with have been incorporated into amended section 130 (see clause 33 above).

Clause 35 makes minor amends to the references in section 132 following the omission of section 131.

Clause 36 replaces the existing section 137 and introduces a new section 137A.

New section 137 co-locates the suspension provisions in the Act to sit outside the discipline framework and for ease of reference. The provision provides for suspension of a public service officer if the chief executive of a department reasonably believes the proper and efficient management of the department might be prejudiced if the officer is not suspended. It also provides for suspension where the chief executive reasonably believes that an employee is liable to discipline under a disciplinary law (previous section 189). The distinction between the application of the suspension provisions to public service officers and public service employees is carried over through these amendments.

Subsection (2) provides for notice requirements, including for whether a person is entitled to normal remuneration for the period of the suspension and for the effect that alternative or secondary employment may have on the suspension. Subsection (3) maintains the existing requirement in section 137 and 189 to consider alternative duties prior to suspension however the chief executive must now also consider all reasonable alternatives, including a temporary transfer or another alternative working arrangement that may be available to the person.

Subsection (4) provides that a public service employee is entitled to normal remuneration during a suspension. However, if a public service employee is suspended on the basis that a chief executive reasonably believes the employee is liable to discipline under a disciplinary law and, having regard to the nature of the discipline to which the chief executive believes the person is liable, the chief executive considers it is not appropriate for the employee to be entitled to normal remuneration during the suspension, an employee can be suspended other than on normal remuneration. A directive issued by the Commission Chief Executive will provide for the circumstances in which a chief executive may make a decision that an employee is not entitled to normal remuneration (section 137A(2)(c)). This decision will be subject to a specific ground of appeal (see Clause 47 – a suspension without pay decision).

If a public service officer is suspended on the basis of a reasonable belief the proper and efficient management of the department might be prejudiced, the suspension can only be on normal remuneration.

Existing provisions in sections 137(5) and (6) and 191(2) and (3) regarding deducting pay earned in alternative employment during suspension have been reflected in subsection (5) and (6).

Subsection (7) replicates current arrangements by providing that the continuity of a person's service is not broken because of the suspension. A chief executive can cancel a suspension at any time (subsection 8).

Subsection (9) provides that a suspension must comply with natural justice, other provisions of the Act and a directive made under section 137A. However, natural justice is not required where suspension is on normal remuneration (subsection 10).

New section 137A provides that the Commission Chief Executive must make a directive about the procedure for suspending a person under section 137 and sets out that the directive must provide for the internal and external reviews of decision to suspend (and the timeframes for review to ensure timely resolution), how natural justice requirements may be met for these decisions including the requirements for providing reasons for decisions about suspensions, and the circumstances in which a chief executive may decide a public service employee is not entitled to normal remuneration during a suspension of the employee. The directive may also provide for the way in which a person may be reimbursed if the chief executive decided the person was not entitled to normal remuneration under section 137(5).

Clause 37 replaces chapter 5, part 5 with a new chapter 5, Part 5 Other public service employees.

New section 147 provides that a chief executive may employ a person as a general employee, mirroring section 147 of the Act. General employees can be employed on tenure or on a temporary basis (full-time or part-time) or on a casual basis.

New section 148 provides for the employment of fixed term temporary employees. The name given to these employees has changed from 'temporary employees' to 'fixed-term temporary'. The amendment is a change of terminology that does not affect the basis of a person's employment but is considered to better reflect the fixed term nature of these engagements.

Section 148(1) provides for the employment of fixed term temporary employees to perform work of a type ordinarily performed by a public service officer (other than a chief or senior executive) on a full-time or part-time basis and sets out that fixed term employment may occur where employment of a person on tenure is not viable or appropriate having regard to workforce planning carried out by the chief executive, as required by section 98(1)(d).

Subsection (2) provides that employment may not be viable or appropriate if:

- the employment is for filling a temporary vacancy arising because the person is absent for a known period (e.g. approved leave such as parental leave or a secondment)
- to perform work for a particular project or purpose that has a known end date (e.g. employment for a set period as part of a training program or placement program),
- to fill a short-term vacancy before a person is appointed on tenure or to perform work necessary to meet an unexpected short-term increase in workload
- to fill a position for which funding is uncertain or unknown (e.g. employment relating to a short-term project or to perform work relating to an unplanned priority).

The example provided for uncertain or unknown funding (new section 148(2)(c)), is intended to reflect that while specific instances of uncertain funding is an appropriate reason employ someone on a fixed term temporary engagement, general funding uncertainty may not be. This reflects of the purpose of the Bill which is to give full effect to the Government's commitment to maximise employment security in public sector employment.

Subsection (3) provides that employment may viable or appropriate if a person is required to be employed for a purpose mentioned in subsection (2) on a frequent or regular basis (e.g. an ongoing requirement to backfill multiple absences because of approved leave (including parental leave) or a secondments).

Subsections (4)-(6) provide that fixed term temporary employment may be full-time or part-time, that a person employed under section 148 does not only because of the employment become a public service officer and that the commission chief executive may make a directive about employing fixed term temporary employees.

New section 148A provides for the employment of persons on a casual basis to perform work of a type ordinarily performed by a public service officer (other than a chief executive or senior executive). This is a new provision that provides a separate basis of employment for these casual employees (see also section 147 for the employment of general employees on a casual basis). A person employed under section 148A does not, only because of the employment become a public service officer.

Subsection (3) provides that the Commission Chief Executive must make a directive about the employment of casual employees under this section and section 147. The directive is to include the circumstances in which employment of a person on tenure or as a fixed term temporary employee is not viable or appropriate.

Section 149 provides a new right for fixed term temporary and casual employees to ask for a review of status after 1 year of continuous employment in a department. The provision does not apply to non-industrial employees. Non-industrial employees are defined as a person who works, or has worked, as a public service employee other than under an industrial instrument.

Subsection (3) provides that a person may ask the department's chief executive to decide to convert their employment to tenure.

Section 149A provides that the chief executive must decide the request within 28 days of receiving it or the decision will be taken to be a decision to refuse to offer to convert the person's employment to tenure.

In making a decision, the chief executive must consider whether there is a continuing need for a person to be employed in the employee's role (or one which is substantially the same) and whether or not the employee if the employee is eligible for appointment having regard to the merit principle. If an industrial agreement provides for how a decision must be made, the decision must comply with the industrial instrument. The requirement to have regard to whether the employee is eligible for appointment having regard to the merit principle does not require that there be an advertised merit process prior to conversion. Rather, it requires that the appointment be based on merit having regard to the merit criteria listed in section 28 of the *Public Service Act 2008*. These criteria include: ability, aptitude and any necessary skill qualifications. If relevant, they also include the way in which the person carried out any previous employment or occupational duties and the extent to which they have potential for development.

If satisfied of the factors set out in subsection (2), the department's chief executive must decide to offer to convert the employee's basis of employment to tenure unless it is not viable or appropriate to do so having regard to:

- for a fixed term temporary employee – the matters mentioned in section 148(1) to (3) (which provide for when engagement of a person on tenure may not be viable or appropriate)
- for a casual employee—the matters stated in a directive under section 148A, and
- the genuine operational requirements of the department.

If the chief executive decides to decline to offer to convert the employee's basis of employment to tenure, the chief executive must provide a notice that includes reasons for the decision, the total continuous period for which the person has been acting at the higher classification level in the department and, for a fixed term temporary employee, how many times their engagement has been extended.

A person is entitled to make one request under section 149 in a 12-month period (subsection 4).

Section 149B provides for a review of the basis of employment for fixed term temporary and casual employees (other than non-industrial instrument employees) by the chief executive if they have been continuously employed in the department for two years or more. The chief executive must decide whether to offer to convert the person's basis of employment to employment as a general employee on tenure or a public service officer within the period required by the section.

Section 149B(4) then provides that section 149A(2) and (3) apply to the chief executive in making the decision. These subsections provide the criteria for conversion for a 12 month review and also apply to the review after 2 years and annually thereafter.

If the chief executive decides to decline to offer to convert the employee's basis of employment to tenure, the chief executive must provide a notice that includes reasons for the decision, the total continuous period for which the person has been acting at the higher classification level in the department and, for a fixed term temporary employee, how many times their engagement has been extended.

If the chief executive does not make a decision within the required period, the chief executive is taken to have decided not to offer to convert the employee's basis of employment to tenure (subsection (6)).

Section 149C provides a new entitlement to allow an employee acting at a higher classification to an annual request for appointment on tenure if they have been seconded to or are acting at the higher classification level.

Section 149C(1) provides that the entitlement applies to an employee seconded to a higher level in the department to which the employee is appointed or to an employee acting at a higher classification. The employee must have been at the higher classification level for a continuous period of at least one year. The employee must also have been assessed as appropriately qualified through a selection process carried out under a relevant directive. A directive will also define 'continuous period'.

Section 149C does not apply to:

- casual employees (who are not entitled to higher duties under the relevant directive and are not able to be seconded under the Act)
- non-industrial instrument employees, or
- employees seconded to or acting in a position that is ordinarily held by a non-industrial employee.

The chief executive must decide the request within the required period and if the chief executive does not make a decision within the required period (generally 28 days or as provided by an industrial instrument), the decision is taken to have been refused.

If the chief executive refuses the request, subsection (5) provides that the chief executive must provide a notice that includes reasons for the decision, the total continuous period for which the person has been acting at the higher classification level in the department and how many times the person's engagement has been extended. Subsection (7) provides that the Commission Chief Executive must make a directive about appointing an employee under this provision.

Clause 38 introduces a new section 186C, which introduces a new requirement for the positive performance management principles to be applied before disciplinary action is taken for a performance matter. This clause is intended to have the practical effect of promoting employee-initiated improvements, alternative dispute resolution processes or informal management intervention before taking to performance based disciplinary action being taken.

Clause 39 amends the grounds for discipline under section 187(1)(a) to make clear that performance based disciplinary should occur when an employee has engaged in repeated unsatisfactory performance or serious under-performance of their duties. The example of where

the duties have been performed carelessly, incompetently or inefficiently applies to both unsatisfactory performance and serious-underperformance. This amendment clarifies the grounds for discipline and makes clear when performance based disciplinary action should be considered.

Clause 39 also amends section 187(1)(f) and introduces a new section 187(1)(g). The amendments provide guidance that disciplinary action should not be taken for minor infringements of a relevant standard of conduct and introduces a new threshold that the conduct of an employee should be sufficiently serious to warrant disciplinary action for a breach of a relevant standard of conduct. A relevant standard of conduct is further defined as a standard of conduct a applying to the employee under an approved code of conduct under the *Public Sector Ethics Act 1994* or a standard of conduct, if any, applying to the employee under an approved standard of practice under the *Public Sector Ethics Act 1994*. The Commission Chief Executive must make a directive that provides circumstances and examples of conduct that are likely to be considered sufficiently serious to warrant disciplinary action.

Clause 40 omits section 189. Both grounds of suspension under the Act are now provided for in section 137.

Clause 41 amends section 190(1) to remove references to suspending a public service employee as this is now dealt with in section 137(10).

Clause 42 omits section 191 as these matters are now provided in section 137.

Clause 43 amends section 192 to omit the requirement to provide a notice and the requirements for a suspension notice. This requirement is now provided in section 137.

Clause 44 inserts a new section 192A to provide that the Commission Chief Executive must make directives about managing disciplinary action and procedures for investigating the substance of a grievance or allegation relating to a public service employee's work performance or personal conduct. A directive under this section must make provision for the circumstances in which a contravention of a relevant standard of conduct under section 187(1)(g) is likely to be considered sufficiently serious to warrant disciplinary action, how natural justice requirements may be met and the periodic review by departmental officers or the commission chief executive of disciplinary action being considered or undertaken by a department's chief executive, including the period within which reviews must be conducted to ensure the timely resolution of disciplinary matters.

Clause 45 omits the note to section 193 as public service appeals will now be heard under the *Industrial Relations Act 2016*.

Clause 46 amends section 194 which relates to decisions that can be appealed. It inserts new appeal rights in relation to:

- a decision of the Commission Chief Executive under section 88IA to give a direction about the handling of a work performance matter, to the extent the direction affects the employee the subject of the work performance matter;
- a decision to suspend a public service employee without entitlement to normal remuneration under s 137 (5) (i.e. a suspension without pay decision); and

- a decision under section 149A not to convert the basis of employment for a fixed term temporary or casual employee after 2 years of continuous employment.

Clause 47 amends section 195 to make clear which decisions made under the *Public Service Act 2008* cannot be appealed. The Bill excludes the following decisions from appeal:

- decisions of the Commission Chief Executive that relate to reviewing a department's handling of a work performance matter as the request of an employee under section 88IA, other than to the extent allowed under section 194
- a decision not to convert the employment of a fixed term temporary employee or casual employee under section 149 (following a request for conversion after 12 months continuous service)
- a decision by a chief executive not to appoint an employee acting in a position at a higher classification level under section 149B.

This clause also omits section 195(3A)(b) which is a minor and consequential amendment flowing from the introduction of a specific right to appeal a suspension without pay under clause 46. Previously, this section allowed an employee to appeal a decision to suspend without pay as a fair treatment appeal.

Clause 47 also omits sections 195(4) and (4A). Section 195(4) provided that a person can not appeal a decision if the parties to the appeal would include the commission, a commissioner or a staff member of the commission or it was a matter that had been heard by the IRC. Subsection (4A) operated to ensure that, notwithstanding that decisions referred to in section 195(4) could not be appealed, they could still be appealed if they related to bullying in the workplace. The amendments to section 195(4) and (5) are consequential amendments flowing from the transfer of jurisdiction regarding the hearing of public service appeals from the *Public Service Act 2008* to the *Industrial Relations Act 2016*.

Clause 48 amends section 196 to clarify who may appeal decisions under the Act. These amendments are necessary due to the new appeal rights introduced in clause 45. Specifically, this clause clarifies that:

- for a decision mentioned in section 194(1)(ba) (under section 88IA) the person who can appeal is the employee the subject of the work performance matter;
- for a suspension without pay decision, the person who can appeal the matter is the public service employee the subject of the decision; and
- for a conversion decision, the employee subject of the decision.

Clause 49 replaces chapter 7, part, division 1A to division 3 of the *Public Sector Act 2008*. The omission of these provisions ensures successful transfer of the hearing of public service appeals under the *Public Service Act 2008* by the QIRC to the *Industrial Relations Act 2016.* This change is proposed to ensure transparency and increase consistency in public service appeal decisions.

Clause 50 omits the heading for Chapter 7 part 1, division 4. This is a minor and consequential amendment flowing from the renumbering of provisions in chapter 7 due to the transfer of provisions related to the hearing of public service appeals to the *Industrial Relations Act 2016*.

Clause 51 amends section 211 to substitute the term 'an IRC member' for the IRC. This is a minor and consequential amendment to reflect the terminology of the *Industrial Relations Act 2016* following the transfer of provisions related to the hearing of public service appeals from the *Public Service Act 2008* to the *Industrial Relations Act 2016.*

Clause 52 amends section 213 to substitute the term 'an IRC member' for the IRC. This is a minor and consequential amendment to reflect the terminology of the *Industrial Relations Act 2016* following the transfer of provisions related to the hearing of public service appeals from the *Public Service Act 2008* to the *Industrial Relations Act 2016.*

Clause 53 amends section 214 to substitute the term 'an IRC member' for the IRC. This is a minor and consequential amendment to reflect the terminology of the *Industrial Relations Act 2016* following the transfer of provisions related to the hearing of public service appeals from the *Public Service Act 2008* to the *Industrial Relations Act 2016.*

Clause 54 amends section 214B to make to substitute the term 'an IRC member' for the IRC. This is a minor and consequential amendment to reflect the terminology of the *Industrial Relations Act 2016* following the transfer of provisions related to the hearing of public service appeals from the *Public Service Act 2008* to the *Industrial Relations Act 2016.*

Clause 55 omits chapter 7 part 2. The is reflects that the hearing of public service appeals under the *Public Service Act 2008* by the QIRC has been transferred to the *Industrial Relations Act 2016.*

Clause 56 amends section 218A to rename employee complaints as individual employee grievances. This amendment is proposed to differentiate the right of an employee to raise concerns in the workplace from client and customer complaints under the Act.

Clause 57 omits section 218B and 218C. These sections have been omitted due to the transfer of the hearing of public service appeals under the *Public Service Act 2008* by the QIRC to the *Industrial Relations Act 2016.*

Clause 58 introduces a new chapter to provide for transitional provisions for the Bill. These transitional provisions provide for:

- references to temporary employees in a document to be a reference to a fixed term temporary employee;
- a right to request a conversion for fixed term or casual employees applies at commencement to any fixed term or casual employee, who, from the date of commencement reaches 12 months continuous service or has continuous service over 12-months but less than 2 years;
- a right to request a conversion for employee's on higher duties will apply at commencement to any employee who, from the date of commencement reaches 12 months continuous higher duties (or secondment to a higher level within a department) or with continuous higher duties over 12-months;
- an initial transition period of 3 months to apply to all conversion rights, with applications received to be finalised within that period and employees notified of the decisions within 28 calendar days of the expiry of the transition period';

- provision for the CCE to approve a longer period for an agency or a particular group of employees (where agreement has been reached between the relevant department chief executive and employee organisation;
- the application of new section 187 to existing disciplinary processes at commencement;
- that if a person could have commenced an appeal prior to commencement, the same timeframes apply;
- that if an appeal commenced before commencement, the appeal must be heard and decided under chapter 7 of the Public Service Act 2008 as if this Bill has not commenced;
- continuation of QIRC members for hearing and deciding appeals; and
- references to an QIRC member to be taken to include a reference to the QIRC for directives made under s214B.

The transitional provisions relating to the conversion of employees have been included to ease the introduction of new provisions which have been identified as having potential resourcing and administrative implications for government agencies.

Clause 59 amends schedule 4 of the *Public Service Act 2008* and provides a dictionary of definitions as referred to in this Bill. It also omits definitions which are no longer necessary due to the omission of provisions related to the transfer of the hearing of public service appeals from the *Public Service Act 2008* to the *Industrial Relations Act 2016*.

New definitions will be incorporated into the *Public Service Act 2008* as follows:

- administrative inquiry – is given meaning by section 88O(1);
- casual employee – has been changed to reflect a person employed under s147 on a casual basis, or a person employed under section 148A;
- continuously employed – in relation to s149 or 149A is to have the meaning given by the directive made under each of those sections;
- conversion decision – is give the meaning provided by s194(1)(e);
- fixed term temporary employee – is given the meaning provided by section 148(1);
- individual employee grievances directive – is given the meaning provided by section 218A(1);
- non-industrial employee - a person who works as a public service officer other than under an industrial instrument;
- positive performance management principles – as listed in section 25A; and
- suspension without pay decision – see section 194(1)(bb).