

PUBLIC SERVICE AMENDMENT BILL 1996

EXPLANATORY NOTES

Objectives of the legislation

The objectives of the Bill are to amend the *Public Service Act 1996* by including a provision relating to excluded matter and the contexts whereby such matter is to be excluded.

Reasons for the Bill

The Public Service Bill 1996 was passed by the Queensland Legislative Assembly on 11 October 1996, except that clause 116 was deleted.

The *Public Service Act 1996* is deficient without the inclusion of the provisions of the amended clause 116.

Ways in which the objectives are to be achieved

By the inclusion of the amended clause 116 into the *Public Service Act 1996*.

Alternatives to the Bill

There are no alternatives to legislative amendment.

Administrative cost to Government

Nil.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles.

The only deviation is that it could be argued that statutory office holders removed from office under the *Public Service Act 1996* are being denied natural justice, in that such a decision can not be challenged, appealed, reviewed etc. under the *Judicial Review Act 1991*. It is acknowledged that the Government has a right to remove members of statutory offices other than those operating in a quasi-judicial nature or offices that are crucial to the body politic of the State. In fact, various Acts already provide a legislative basis for either the Governor in Council or the relevant Minister to remove members of those offices at any time and for any reason or none.

It is not unreasonable to exclude the removal of such members from the provisions of the *Judicial Review Act 1991* to ensure that boards and committees are able to operate efficiently and effectively without delay and frustration.

Consultation

The amendments to the original clause 116 of the Public Service Bill 1996, as introduced, were discussed with the Australian Council of Trade Unions (ACTU), the State Public Services Federation of Queensland (SPSFQ) and the Queensland Teachers Union (QTU).

Notes on clauses

Clause 1 provides the short title of the Bill.

Clause 2 provides that the Act amends the *Public Service Act 1996* (PS Act).

Clause 3 renumbers section 116 of the PS Act to section 116A.

Clause 4 inserts a new section 116 into the PS Act.

Section 116(1) provides a definition of the term “excluded matter”. Excluded matter refers to, in part, a decision to appoint or not to appoint specified persons. The term “appoint” is defined in the dictionary in Schedule 3 of the PS Act. Excluded matter also means the contract of employment of, or the application of the PS Act (or a provision thereof) to:

- the Public Service Commissioner;
- a Chief Executive or other Senior Executive;
- a Senior Officer;

- another officer employed on a fixed term contract; or
- the removal of a statutory office holder.

Section 116(2) provides, with one exception, that an excluded matter, or a matter effecting or relating to an excluded matter, is not an industrial matter for the purposes of the *Industrial Relations Act 1990*. The exception relates to the dismissal of an officer who is employed on a tenured basis. The *Public Service Management and Employment Act 1988* excludes any contracted public servant and any Senior Executive Service (SES) Officers from industrial awards and industrial agreements. Furthermore, any contracted public servant is not subject to any determination or rule of an industrial tribunal. The exception contained in section 116(2) extends to Senior Officers and tenured SES Officers a right to seek a remedy before the Industrial Relations Commission in the case of unfair dismissal.

Section 116(3) provides that section 116 has no effect on section 40 of the *Industrial Relations Act*. This subsection prescribes that an officer on a contract has a right to seek a remedy before the Industrial Relations Commission, pursuant to section 40 of the *Industrial Relations Act*, in a case where the contract is considered to be:

- unfair;
- harsh or unconscionable;
- against the public interest; or
- providing total remuneration less than that which a tenured public servant in an equivalent position would receive.

Section 70 of the PS Act contains provisions that persons who hold appointment on tenure, immediately before it is to be on contract for a fixed term, are not required to enter into a contract of employment, and that if they do, their remuneration must not be less than if they continued on tenure. The cumulative effect of sections 70 and 116(3) ensures that not only is the remuneration of public servants protected, but also that people entering into a contract, or performing duties under a contract are not subjected to unfair and/or unconscionable contract requirements.

Section 116(4) provides that awards and industrial agreements do not apply to excluded persons. This provision has effect without limiting the effect of section 116(2). The *Public Service Management and Employment Act 1988* excludes any contracted public servant and any SES Officers from industrial awards and industrial agreements. Furthermore, any contracted

public servant is not subject to any determination or rule of an industrial tribunal.

Section 116(5) provides that a decision made about an excluded matter is not subject to challenge, appeal or review under the provisions of the *Judicial Review Act 1991*. The current legal situation is that decisions made under a contract of employment (eg. dismissal) are not subject to the application of the *Judicial Review Act*. The same principle is applied to the removal of statutory officer holders under section 110 of the PS Act.

Section 116(6) ensures that the exclusion of the application of the *Judicial Review Act* provided for in section 116(5) is only restricted to those officers employed on contract or statutory office holders removed under section 110 of the PS Act. Tenured officers, such as Senior Officers and tenured SES Officers retain their current rights of review to the Courts under Judicial Review.