

# Public Service and Other Legislation Amendment Bill 2012

## Explanatory Notes

### Short Title

The short title of the Bill is the *Public Service and Other Legislation Amendment Bill 2012*.

### Policy Objectives

The Bill:

- improves the operation of existing key public service legislation and facilitates the Government's reform agenda through greater alignment and efficiencies in discharging its public sector integrity functions;
- makes changes to the administration of the Queensland Industrial Relations Commission (QIRC) to support the orderly and expeditious exercise of the QIRC's jurisdiction and powers; and
- expands parties' rights to access legal representation in matters heard in the QIRC.

### Reasons for the Bill

With regards to the public service aspects of the Bill, the Government is refocusing the Public Service Commission away from a regulatory function towards a public sector efficiency agenda.

The Bill amends the *Public Service Act 2008* to complete the second and final stage of the transfer of the Public Service Commission Chief Executive's public service appeals function to the QIRC. The first stage, in place since 1 July 2012, provides for QIRC members to be appointed as appeals officers under the *Public Service Act 2008* for the purpose of hearing and deciding appeals against certain decisions which affect public service employees.

The Bill amends the *Public Sector Ethics Act 1994* to require public service employees to receive ethics training as part of induction programs and at regular intervals.

The Bill amends the *Public Interest Disclosure Act 2012* by transferring the Public Service Commission's public interest disclosure oversight agency function to the Queensland Ombudsman, which is the existing oversight body for public sector maladministration and which broadly covers the same jurisdiction as public interest disclosures.

The Bill amends the *Industrial Relations Act 1999* to transfer responsibility for the administration of the QIRC from the president to the vice president. In addition, the Bill amends the *Industrial Relations Act 1999* to allow parties greater access to legal representation in proceedings before the QIRC.

### **Achievement of the Objectives**

In addition to being a key part of the Government's public sector reform agenda, the Bill builds upon the statutory objectives contained in the *Public Service Act 2008*, the *Public Sector Ethics Act 1994* and the *Public Interest Disclosure Act 2012*.

The Bill:

- transfers the administrative arrangements for public service appeals under the *Public Service Act 2008* to the QIRC so it can have responsibility for the administrative aspects attached to its members carrying out the public service appeals function;
- amends the *Public Sector Ethics Act 1994* to replace annual ethics training with an emphasis on employees having education and training in ethical standards at induction and regularly throughout their employment;
- transfers the public interest disclosure oversight agency function from the Public Service Commission to the Queensland Ombudsman; and
- transfers the administrative functions from the president to the vice president of the QIRC and expands the ability for parties to access legal representation in matters before the QIRC.

## **Alternative Ways of Achieving Objectives**

As the matters being addressed result in changes to the *Public Service Act 2008*, the *Public Sector Ethics Act 1994*, the *Public Interest Disclosure Act 2010* and the *Industrial Relations Act 1999*, it is not possible to achieve the required outcomes except by direct amendment of that legislation.

## **Estimated Cost for Government Implementation**

There are no direct financial considerations aside from indirect benefits of a more efficient alignment and better streamlining of the Government's public sector integrity functions.

## **Consistency with Fundamental Legislative Principles**

At this stage the Office of Queensland Parliamentary Counsel has not advised the Bill is inconsistent with any Fundamental Legislative Principles.

## **Consultation**

There has been no community consultation on the Bill. All government departments were consulted prior to the preparation of the public service aspects of the Bill. Following this, Queensland Treasury and Trade, the Department of Justice and the Attorney-General and the Department of the Premier and Cabinet were again consulted.

The Department of the Premier and Cabinet and the Public Service Commission were consulted about the proposed amendments to the *Industrial Relations Act 1999*.

## **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, legislation of other jurisdictions was taken into consideration in the development of relevant parts of the Bill.

## Notes on Provisions

### Part 1 Preliminary

#### Short Title

Clause 1 provides the Act's short title.

#### Commencement

Clause 2 provides for the commencement of Parts 2, 3 and 4 of the Bill on 1 January 2013.

### Part 2 Amendment of the Public Service Act 2008

#### Act Amended

Clause 3 provides that this Part amends the *Public Service Act 2008* (PSA).

#### Amendment of s 78

Clause 4 amends section 78 to remove subsection 78(2) which provides an exception for Public Service Commission (PSC) staff members performing functions under section 88E to assist appeals officers perform their functions. Upon commencement of the Act, section 88E will be repealed because PSC staff members will no longer be required to perform functions under section 88E. These functions will instead be performed by Queensland Industrial Relations Commission (QIRC) Registry staff. The repeal of section 88E will make subsection 78(2) redundant.

#### Omission of s 88E

Clause 5 omits section 88E. Upon commencement of the Act, the commission chief executive will not be required to make PSC staff

members available to help appeals officers perform their functions under the PSA. Registry staff of the QIRC will assist appeals officers instead.

### **Amendment of s 197 (Starting an appeal)**

Clause 6 replaces the references to ‘commission chief executive’ in subsections 197(1) and (2) with ‘industrial registrar’ to provide for an appeal notice to be lodged with the industrial registrar.

Clause 6 replaces the references to ‘commission chief executive’ with ‘appeals officer’ to ensure that any decision relating to the extension of time for lodging an appeal notice is to be made by an appeals officer.

### **Amendment of s 198 (Notice by commission chief executive of appeal)**

Clause 7 amends section 198 by replacing the reference to the ‘commission chief executive’ in the section heading with the ‘industrial registrar.’

Clause 7 amends subsection 198(1) to replace the reference to the ‘commission chief executive’ with the ‘industrial registrar’ and to provide for the industrial registrar to give acknowledgement to an appellant that their appeal notice has been received. Subsection 198(1) is amended to remove the requirement for the industrial registrar (or the commission chief executive) to allocate appeals. An administrative process will be established within the QIRC to facilitate practical allocation of an appeal to a particular appeals officer.

Clause 7 amends subsection 198(2) by replacing the reference to ‘commission chief executive’ with ‘industrial registrar’.

### **Amendment of s 206 (Withdrawing an appeal)**

Clause 8 amends section 206 by replacing the reference to ‘commission chief executive’ in subsection 206(1) with ‘industrial registrar.’

Clause 8 amends section 206 by replacing the reference to ‘commission chief executive’ in subsection 206(2) with ‘appeals officer’.

Clause 8 amends section 206 by replacing the reference to ‘commission chief executive’ in subsection 206(3) with ‘industrial registrar’.

### **Amendment of s 208 (Decision on appeal)**

Clause 9 amends subsection 208(4) to require an appeals officer who makes a decision under section 208 (in addition to providing a copy of the decision to the parties to the appeal and the commission chief executive) to also provide a copy of the decision to the industrial registrar.

### **Amendment of s 218C (Report on appeals)**

Clause 10 amends subsection 218C(1) to ensure that the commission chief executive reports on appeals to the minister, in addition to providing information on appeals started, withdrawn and decided, also includes information on lapsed appeals.

### **Amendment of sch 4 (Dictionary)**

Clause 11 inserts into Schedule 4 a definition of ‘industrial registrar,’ being the same as that which applies under the *Industrial Relations Act 1999*.

## **Part 3                      Amendment of the Public Interest Disclosure Act 2010**

### **Act Amended**

Clause 12 provides that this Part amends the *Public Interest Disclosure Act 2010* (PIDA)

### **Amendment of s 47 (Relocation of public service employee)**

Clause 13 amends subsection 47(3) by replacing the reference to ‘the appeals officer of the Public Service Commission (the *appeals officer*)’ with ‘an appeals officer appointed under the *Public Service Act 2008*, section 88A (the *appeals officer*)’.

### **Amendment of s 58 (Who is the oversight agency)**

Clause 14 amends section 58 by replacing the reference to ‘Public Service Commission’ with ‘Office of the Ombudsman’, thereby transferring the

oversight agency function under the PIDA to the Queensland Ombudsman.

### **Amendment of s 60 (Standards)**

Clause 15 amends the editor's note attached to subsection 60(11) by inserting a reference to the new oversight agency's website.

### **Amendment of s 61 (Annual Report)**

Clause 16 amends section 61 by inserting a new subsection 61(4) to clarify the requirement for an annual report on the operation of the PIDA may be met if that report is included as part of the annual report already required under section 87 of the *Ombudsman Act 2001*.

### **Amendment of s 62 (Review of Act)**

Clause 17 amends subsection 62(4) to ensure that a report about the outcome of a review of the operation of the PIDA, in addition to being given to the Minister, which is the case at present, is also given to the Speaker.

### **Amendment of s 63 (Application of chapter to Crime and Misconduct Commission and ombudsman)**

Clause 18 amends section 63 by omitting 'and ombudsman' from the section heading.

Clause 18 replaces subsections 63(1)(a) and 63(2) with new subsections and omits subsection 63(1)(c) to remove paragraphs relating to the ombudsman. As the ombudsman will be the oversight agency, the references contained in subsections 63(1)(a), 63(1)(c) and 63(2) relating to the ombudsman can no longer apply.

### **Insertion of new ch 9 (Transitional provisions for Public Service and Other Legislation Amendment Act 2012) and new section 78 (Continuation of standards made by oversight agency)**

Clause 19 inserts a new Chapter 9 and new section 78 to provide that any standards made by the Public Service Commission as the oversight agency under the PIDA that were current or in force immediately before the

commencement of the Act, are taken to have been standards made by the ombudsman as the oversight agency.

## **Part 4                      Amendment of the Public Sector Ethics Act 1994**

### **Act Amended**

Clause 20 provides that this Part amends the *Public Sector Ethics Act 1994* (PSEA).

### **Amendment of s 12K (Education and training)**

Clause 21 replaces section 12K with a new section 12K. The new section 12K removes the requirement for annual ethics education training and replaces this with a requirement for public service agency chief executives to ensure their employees are given access to appropriate education and training as part of an induction program and at regular intervals.

In order to provide clarity to chief executives of public service agencies about the ethics education and training to be provided, clause 22 inserts into section 12K(2) a paragraph that sets out the requirements of this education and training. This paragraph is similar to that contained in section 21(2). Section 21(2) applies to the broader public sector but does not capture public service agencies: ‘public service’ agencies being only a subset of ‘public sector’ agencies.

## **Part 5                      Amendment of the Industrial Relations Act 1999**

### **Act Amended**

Clause 22 provides that this Part amends the *Industrial Relations Act 1999*.



## **Amendment of s 319**

Clause 23 amends section 319 of the *Industrial Relations Act 1999* to remove subsection 319(2)(b), which provides for legal representation in matters before the commission.

Amended subsection 319(2)(b) will retain the right of a party or person to be represented by a lawyer in proceedings brought before the commission under Chapter 4 (other than section 110); and will extend the right to legal representation to any party in proceedings relating to section 149, section 230, section 274A and section 277. The rationale for this amendment is that such proceedings are generally more complex and legalistic in nature and a party should have the right to choose to be represented by a lawyer.

In any other proceedings before the commission, inserted subsection 319(2)(ba)(i) will allow a party or person the ability to be represented by a lawyer where all parties give their consent.

Alternatively, where consent is withheld, a party or person may make an application to the commission for leave to be legally represented. Where the commission is satisfied, having regard to the matter the proceedings relate to, that there are special circumstances that make it desirable for the party or person to be legally represented, or where the commission is satisfied the party or person can be adequately represented only by a lawyer, leave may be granted.

The new arrangements essentially create three instances where legal representation will be allowed in the commission.

Firstly, any party has the right to choose to be represented by a lawyer in proceedings before the commission brought under Chapter 4 (other than section 110), section 149, section 230, section 274A and section 277.

Secondly, for proceedings other than those listed above, a party may be represented by a lawyer if all other parties consent.

Finally, where consent is not given, a party may apply to the commission to be represented by a lawyer, and the commission may allow legal representation, if the commission is satisfied the relevant grounds have been met.

## **Transitional provisions for Public Service and Other Legislation Amendment Act 2012**

Clause 24 inserts transitional provisions for the amendments to the *Industrial Relations Act 1999*. These transitional arrangements provide that the new section 319 applies to all proceedings before the commission started on or after the commencement of the amending Act.

For the avoidance of doubt, the transitional arrangements clarify, that for section 149 matters, proceedings are taken to have commenced when the requirements of section 149(a), (b) or (c) are met i.e. the commission has referred the matter to arbitration or all of the parties have asked the commission to proceed to arbitration.

## **Schedule - Minor and consequential amendments**

Clause 25 provides a schedule making minor and consequential amendments to the *Industrial Relations Act 1999*.

These chiefly relate to deleting references to the president of the commission and replacing it with the vice-president, to reflect new administrative arrangements for the commission.