

# Public Service and Other Legislation Amendment Bill 2012

## Explanatory Notes for Amendments to be moved during consideration in detail by the Attorney-General and Minister for Industrial Relations

### Title of the Bill

Public Service and Other Legislation Amendment Bill 2012

### Objectives of the Amendments

The objectives of the amendments to be moved during Consideration in Detail are to effect changes of a drafting nature and to provide for further changes consistent with the focus of the Bill to restore public sector accountability while at the same time streamlining processes to ensure that the Acts are administered as effectively and efficiently as possible.

Specifically, included in the Bill (as tabled), were amendments to the *Industrial Relations Act 1999* to transfer the administrative functions of the Queensland Industrial Relations Commission (QIRC) from the president to the vice president. Further minor amendments to the *Industrial Relations Act 1999* and the *Industrial Relations (Tribunal) Rules 2011* are to be made consistent with this transfer.

Additional amendments will provide legislative certainty to the Government's intentions regarding employment security, contracting out, and the disclosure of personal information provisions as described in the Public Service Commission Chief Executive Directives: *Protection of Personal Employee Information* (07/12) and *Industrial Instruments: Employment Security and Contracting Out* (08/12). In addition, the application of these provisions is extended to cover organisational change provisions in industrial instruments. The amendments will also clarify notification and consultation arrangements where termination, change and redundancy provisions apply in awards and in the Act.

Amendments to the *Public Service Act 2008* will extend the Public Service Commission Chief Executive's rule making power to include remuneration and conditions of employment (identical to that afforded to the Minister). The amendments will also delete section 23(3) of the *Public Service Act 2008*.

### **Alternative Ways of Achieving Policy Objectives**

Amendment of the Bill is required to properly give effect to the relevant policy objectives.

### **Consistency with Fundamental Legislative Principles**

*Whether legislation has sufficient regard to individual rights and liberties—LSA, s 4(3)*

The amendments when enacted will limit the operation of employment security, contracting and organisational change provisions contained in industrial instruments covering employees of a government entity.

The amendments will also omit s 23(3) of the *Public Service Act 2008*, which currently prevents a regulation from reducing employees' overall employment conditions if the employing entity is declared to be a public service office.

The amendments are designed to provide the Government with appropriate flexibility to effectively manage employment arrangements and the right-sizing of the public service. The omission of s 23(3) of the *Public Service Act 2008* will ensure consistency is possible with other employees engaged under the Act.

*Whether legislation has sufficient regard to the institution of Parliament—LSA, s 4(4)*

The amendments expand the Public Service Commission Chief Executive's power to issue rulings about the overall conditions of employment so that the ruling may apply to all persons employed under the Act. A directive is not subordinate legislation and is not subject to disallowance by Parliament.

The amendment is made in the interest of effective public administration by the Chief Executive of the Public Service Commission and makes clear the ambit of the administrative capacity to make rulings for the effective management of the Queensland public service.

*Whether legislation is unambiguous and drafted in a sufficiently clear and precise way—LSA, s 4(3)(k)*

The provisions of the amendments reflect the ordinary usage of terms as found in industrial instruments covering employees of a government entity. Examples of relevant terms have been included to assist clarification.

### **Estimated Cost for Government Implementation**

There are no direct financial considerations of the amendments to be moved during Consideration in Detail.

### **Consultation**

The Public Service Commission, the Department of the Premier and Cabinet and the Department of Justice and Attorney-General have been consulted and are in agreement with this action.

## **Notes on Provisions**

Amendment 1 amends section 23 of the *Public Service Act 2008* to omit subsection 23(3). The removal of this subsection allows for parts of the Act (including Rulings) to be applied to public service offices declared under the Regulation without limitation. Specifically, when a part of the Act (including Rulings) is applied under the new section 23, there is no requirement to consider whether there is a reduction in the employee's overall employment conditions.

Amendment 1 also amends section 53 of the *Public Service Act 2008* to insert a new subsection baa. This new subsection gives the Commission Chief Executive the ability to make a Ruling about the remuneration and conditions of employment of public service employees. This is consistent with the power the Industrial Relations Minister has to make a ruling at section 54(1)(a).

Amendment 2 amends section 89 of *Industrial Relations Act 1999* to insert a new subsection 2 in section 89. This amendment ensures that this division (chapter 3, part 4, division 2 – ss89–90B) does not apply in relation to an employee of a government entity to whom a relevant industrial instrument

under chapter 15, part 2 (particular provisions of industrial instruments) applies.

Amendment 3 amends the *Industrial Relations Act 1999* to insert a new Chapter 15 Part 1 Heading—General.

Clause 2 also amends the *Industrial Relations Act 1999* to insert a new Chapter 15 Part 2—Particular provisions of industrial instruments.

New section 691A provides definitions for this part. Specifically, industrial instrument has the same meaning as the definition in the *Public Service Act 2008*, schedule 4. This ensures that a determination of the Commission is included in the definition of industrial instrument. Section 691A also provides that the termination, change and redundancy (TCR) provision definition is found in section 691D(3).

New section 691B deals with the application of Part 2. New subsection 1 provides that the part applies to industrial instruments (including awards, certified and determinations) which regulate the employment of employees of government entities. New subsection 2 provides that government entity has the same meaning as *Public Service Act 2008* section 24. In accordance with this section, a government entity includes a department or part of a department. In addition, a government entity includes a public service office or part of a public service office. Section 21(1) of the Act defines a public service office as either an entity in Schedule 1 of the Act or an entity declared under the Regulation. Examples of public service offices declared under the Regulation include: the Queensland Ambulance Service; the Queensland Fire and Rescue Service and Queensland Health (comprising the Hospital and Health Services and the Department of Health—see Regulation, section 5A). Section 24 of the Act provides a list of other government entities and, at subsection 2, a list of entities that are not government entities. Entities that are not government entities include: Local Government, the police service to the extent that it does not include staff members mentioned in the *Police Service Administration Act 1990*, section 2.5(1)(a) and government owned corporations. Subsection 2(b) clarifies that the definition of government entity does not change despite subsection 23(4).

New section 691C provides that particular provisions of industrial instruments are of no effect. These provisions of industrial instruments are:

- (a) a contracting provision;
- (b) an employment security provision;

(c) an organisational change provision.

Subsection 2 defines a contracting provision and an employment security provision. Examples of contracting, employment security and organisational change provisions are provided. Subsection 2 also clarifies that contracting, employment security and organisational change provisions do not include a TCR provision contained in an award (note: see the principles that apply to TCR in section 691D).

New section 691D addresses termination, change and redundancy (TCR) provisions. Subsection 1 says section 691D applies to an award that contains a TCR provision which requires an employer to notify employees (and where relevant a union/s) of a decision, or to consult about a decision, where the decision will lead to changes that are likely to have a significant effect on employees. Subsection 2 sets out three principles that will apply in these circumstances:

*Principle 1*—the employer is not required to notify employees (and where relevant a union/s) of a decision until the time the employer considers appropriate;

*Principle 2*—the employer is not required to consult about the decision until after the employer has notified the employees (and where relevant a union/s). This does not mean that an employer does not have to consult about changes – the employer must consult with employees (and where relevant a union/s) after notification and at the commencement of implementation;

*Principle 3*—consultation is required in relation to the implementation of the decision, but not in relation to the making of the decision.

Subsection 3 clarifies that a TCR provision in an award does not apply if it is inconsistent with the three principles. Subsection 4 provides the definition of TCR and examples of TCR provisions contained in awards.

New section 691E protects employees' personal information from being released to non-government entities because an industrial instrument states it must be released. The effect of this section is that the employee must first give express written consent to their employer before their personal information will be released to a non-government entity. Subsection 3 defines the giving of information and what is personal information.

Amendment 4 inserts after clause 25 of the PSOLA Bill, a new clause 26 and clause 27 to amend the *Industrial Relations (Tribunals) Rules 2011* by

deleting at section 79 (Application to refer matter to full bench) the reference to ‘president’ and replacing it with ‘vice president.’ This is consistent with the amendment to section 279 of the *Industrial Relations Act 1999*.

Amendment 5 amends clause 25 of the PSOLA Bill to insert a Part 2A and Part 2B into the schedule of minor amendments.

Part 2A deletes section 246A of the *Industrial Relations Act 1999*. The removal of this section is consistent with the transfer of the administrative functions of the QIRC from the president to the vice president.

The Part 2B of the schedule of minor amendments creates a subsection (1B) at section 252 of the *Industrial Relations Act 1999*. Having regard to the administrative responsibilities of the position, section 252(1B) will require the vice-president to provide to the president of the QIRC a report for inclusion in the annual report of the Industrial Court of Queensland, the QIRC and the Queensland Industrial Registry.

Amendment 6 amends clause 25 of the PSOLA Bill at Part 15 of the *Industrial Relations Act 1999* to omit the amendment to section 299(3) of the *Industrial Relations Act 1999* proposed in the schedule of minor amendments and replacing it with a differently worded amendment. The amendment makes it clear that the registrar must comply with a direction given by the president as it relates to the court and the vice president at it relates to the QIRC.

Amendment 7 amends clause 25 of the PSOLA Bill to omit the proposed amendment to section 318(1)(a) and (2), as this erroneously deletes the reference to president and replaces it with vice president.

Amendment 8 amends clause 25 of the PSOLA Bill to omit the proposed amendment to 708(1) as this erroneously deletes the reference to president and replaces it with vice president and to insert a further amendment into the schedule of minor amendments at Part 27A that will insert a new subsection (1A) at section 708 of the of the *Industrial Relations Act 1999*. Section 708(1A) will require the president to consult with the vice president in relation to the creation of forms for use by or in the commission or registry.

Amendment 9 amends clause 25 of the PSOLA Bill to insert a further amendment into the schedule of minor amendments at Part 30 and Part 31 to insert ‘the vice president’ and to omit ‘president’ and replace it with

‘vice president’ at section 4A(1) and section 4A(2) of the *Industrial Relations Act 1999* respectively.

Amendment 10 amends the long title of the *Public Service and Other Legislation Amendment Bill 2012* (PSOLA Bill) to include a reference to the *Industrial Relations (Tribunals) Rules 2011*.

© State of Queensland 2012