

Parliamentary Service Rule 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Annastacia Palaszczuk, Premier and Minister for Trade provide this human rights certificate with respect to the *Parliamentary Service Rule 2021* made under the *Parliamentary Service Act 1988*.

In my opinion, the *Parliamentary Service Rule 2021*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The *Parliamentary Service Rule 2021* is made by the Speaker of the Legislative Assembly of Queensland under the *Parliamentary Service Act 1988* (the Act).

The Act provides for the Speaker to make rules about:

- (a) the entitlements, responsibilities, authorities, obligations and liabilities of parliamentary service officers and employees; and
- (b) appeals about promotional appointments and disciplinary action within the parliamentary service.

The *Parliamentary Service Rule 2021* (the Rule) is remaking the *Parliamentary Service Rule 2010* in accordance with the requirements of the *Statutory Instruments Act 1992*.

The *Parliamentary Service Rule 2021* makes provision for a variety of human resources related activities within the Parliamentary Service including:

- Provisions for the conduct of appeals against promotional appointments and disciplinary action;
- Identifying appealable and non-appealable positions;
- Identifying positions exempted from the vacancy advertising requirements of the *Parliamentary Service Act 1988*;
- Providing for a number of public sector Ministerial Directives to have application within the Parliamentary Service; and
- Making provision for the direct appointment of staff, without advertising, in certain circumstances.

The Rule is important for the efficient and effective operation of the Parliamentary Service.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

In my opinion, the rights under the *Human Rights Act 2019* (the HR Act) which are relevant to the Rule include:

- Fair hearing (section 31 of the HR Act); and
- Taking part in public life (section 23 of the HR Act).

Schedule 1 of the Rule limits the right to a fair hearing (section 31) by exempting certain classes of office from appeals against appointments.

Schedule 2 of the Rule limits the ability to take part in public life (section 23) by exempting certain classes of office from the requirement to advertise vacancies.

Clause 16 of the Rule limits the ability to take part in public life (section 23) by making provision for the direct appointment of officers to positions without the position being publicly advertised as a vacancy.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Fair hearing (section 31)

(a) the nature of the right

Section 31 of the HR Act states that a person party to a civil proceeding has the right to have the proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

The subordinate legislation at clauses 1 through 14 reinforces this right by establishing procedures for the conduct of appeals against promotional appointments and disciplinary action.

The subordinate legislation at Schedule 1 limits this right by exempting certain categories of offices from appeals against appointments.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of limiting the right at Schedule 1, which currently exists under the *Parliamentary Service Rule 2010*, is to generally ensure that the Clerk of the Parliament can manage some appointments without them being subject to appeal processes.

An efficient and timely appointments process is required by the Clerk of the Parliament, as Chief Executive of the Parliamentary Service, to ensure the smooth operation of the Parliamentary Service. This is essential to enabling the Parliamentary Service to meet its responsibility under the Act to provide administrative and support services to the Legislative Assembly and its members and committees.

This purpose meets a public good, in providing the democratically elected members of the Legislative Assembly of Queensland with the administrative and support services necessary to enable them to enact laws for the peace, welfare and good governance of Queensland and to scrutinise the actions of the Government of Queensland.

The exemptions support the progression of certain classes of officers from one classification level to another, in accordance with award provisions, based on assessment of their individual merit rather than through a competitive merit process.

The limitation of the right also supports recruitment to base grade positions without those appointments being subject to appeal processes.

The limitation also provides the Clerk of the Parliament with some flexibility in managing promotions and appointments and flexible recruitment options available to use to meet prevailing operational requirements.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation of the human right is necessary as the Clerk of the Parliament has a statutory responsibility to ensure the efficient and economical management of the Parliamentary Service.

To meet this obligation the Clerk of the Parliament must have some flexibility in managing promotions and appointments and flexible recruitment options available to use to meet prevailing operational requirements. The exemptions in the subordinate legislation support the Clerk of the Parliament in meeting these obligations.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The exemptions provided for in Schedule 1 are reasonably consistent with the types of exemptions that generally exist within the broader Queensland public sector. These exemptions have also been in place in the Parliamentary Service since 2010. Achieving the flexibility required could not readily be achieved through other means.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The benefits of allowing the Clerk of the Parliament flexibility in the management of promotions and appointments and some recruitment practices to meet the statutory obligations of the position outweigh the minor limitations on human rights as a result of the subordinate legislation.

Taking part in public life (section 23)

(a) the nature of the right

Section 23 of the HR Act provides that every eligible person has the right, and is to have the opportunity without discrimination, to have access, on general terms of equality, to the public service.

This right has been interpreted by the UN Human Rights Committee as providing a right of access, on general terms of equality, to positions in the public service and in public office.

The UN Human Rights Committee has said:

‘... affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens. Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures.’ This nature of this right includes that the criteria and processes for appointment, promotion, suspension, discipline and dismissal within the public service must be objective and reasonable, and non-discriminatory.

The subordinate legislation at clause 16 and at Schedule 2 limits this right by permitting direct appointments of existing staff to other positions in limited circumstances and exempting certain categories of vacancies from being publicly advertised which thereby limits the access of eligible persons to, in this case, the Parliamentary Service.

It is noted that appointments made through clause 16 (Direct appointment) are relatively rare so the limitation of the right is quite small.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of limiting the right is to generally ensure that the Clerk of the Parliament can manage some promotions and appointments fairly and efficiently and undertake recruitment practices quickly and efficiently if required to do so to meet prevailing operational requirements. In certain circumstances the direct appointment of an officer to a position without a formal recruitment and selection process will be more efficient which contributes to ensuring a strong Parliamentary Service to support the democratic process.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation of the human right is necessary as the Clerk of the Parliament has a statutory responsibility to ensure the efficient and economical management of the Parliamentary Service. To meet this obligation the Clerk of the Parliament must have some flexibility in managing promotions and appointments and flexible recruitment options available to use to meet prevailing operational requirements. The exemptions in the subordinate legislation support the Clerk of the Parliament in meeting these obligations.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

The Act provides for rules to be made for the management of the Parliamentary Service and to exempt vacancies from the requirement for advertising to support the efficient and economical management of the Parliamentary Service.

The provisions in clause 16 and the exemptions provided for in Schedule 2 are reasonably consistent with the types of provisions and exemptions that generally exist within the broader Queensland public sector. Achieving the flexibility required could not readily be achieved through other means. Advertising vacancies is a time consuming and resource intensive process and is not always the most suitable method of making an appointment to a vacancy. The flexibility provided through direct appointments and exempting certain positions from advertising supports a strong Parliamentary Service to support the democratic process.

- (e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The benefits of allowing the Clerk of the Parliament flexibility in the management of promotions and appointments and some recruitment practices to meet the statutory obligations of the position outweigh the minor limitations on human rights as a result of the subordinate legislation.

Conclusion

I consider that the *Parliamentary Service Rule 2021* is compatible with the *Human Rights Act 2019* because it does limit, restrict or interfere with human rights, but the limitations are reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

ANNASTACIA PALASZCZUK MP
PREMIER OF QUEENSLAND
MINISTER FOR TRADE

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