

Queensland



PUBLIC SERVICE AMENDMENT BILL 2000

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2000

A BILL

FOR

An Act to amend the Public Service Act 1996, and for other purposes

The Parliament of Queensland enacts—

1

PART 1—PRELIMINARY

2

Short title

3

Clause **1.** This Act may be cited as the *Public Service Amendment Act 2000*.

4

PART 2—AMENDMENT OF PUBLIC SERVICE ACT 1996

5

6

Act amended in pt 2 and sch 1

7

Clause **2.** This part and schedule 1 amend the *Public Service Act 1996*.

8

Amendment of s 23 (Principles of public service management)

9

Clause **3.** Section 23—

10

insert—

11

‘(j) ensuring that equal employment opportunity and diversity
principles apply in the public service; and

12

13

(k) promoting meritorious selection processes.’.

14

Amendment of s 24 (Principles of public service employment)

15

Clause **4.** Section 24—

16

insert—

17

‘(i) ensuring public service workplaces are free of unlawful
discrimination; and

18

19

- (j) without limiting paragraph (i), ensuring public service workplaces are free of sexual harassment and workplace harassment.’. 1
2

Amendment of s 25 (Principles of work performance and personal conduct) 3
4

Clause 5. Section 25— 5

insert— 6

- ‘(i) fulfilling the employee’s ethics obligations under the *Public Sector Ethics Act 1994* and complying with any code of conduct approved under that Act for the employee’s public sector entity; and 7
8
9
10

- (j) showing respect for others, including through the avoidance of unlawful discrimination, sexual harassment or workplace harassment.’. 11
12
13

Replacement of pt 4, div 2, hdg and ss 32–34 14

Clause 6. Part 4, division 2, heading and sections 32 to 34— 15

omit, insert— 16

‘Division 2—Commissioner for Public Service Merit and Equity 17

‘The commissioner and office 18

‘32.(1) There is to be a Commissioner for Public Service Merit and Equity. 19
20

‘(2) An office called the Office of Public Service Merit and Equity is established. 21
22

‘(3) The office consists of the commissioner and the staff of the office. 23

‘(4) The staff of the office are the public service employees employed in the department who are designated as staff of the office by— 24
25

- (a) for an employee appointed by the Governor in Council—the Governor in Council; or 26
27

- (b) for an employee appointed by the chief executive—the chief executive. 1
2

‘Functions of commissioner

‘33. The functions of the commissioner are to— 3
4

- (a) promote the principles of public service management and public service employment stated in part 3 that are relevant to the functions of the commissioner stated in paragraphs (c) to (n); and 5
6
7
- (b) provide high level advice to Ministers and chief executives on how the principles mentioned in paragraph (a) are to be achieved; and 8
9
10
- (c) consider and decide overall employment conditions and workforce practices for persons selected to be employed, or employed, as— 11
12
13
- (i) senior executives; or 14
- (ii) senior officers; or 15
- (iii) public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer; and 16
17
18
- (d) hear and decide appeals under this Act; and 19
- (e) ensure the transfer and redeployment of public service employees arising out of the requirements of sections 81 and 85; and 20
21
- (f) provide support to departments in continuously improving public service administration and management through the training, mobility and ongoing development of senior executives and senior officers; and 22
23
24
25
- (g) provide leadership in promoting understanding and acceptance of equality of employment opportunity and diversity principles; and 26
27
- (h) provide leadership in promoting ethical conduct within the public service; and 28
29
- (i) develop principles to guide recruitment and selection policy and practice for public service employees; and 30
31

Public Service Amendment

(j) provide ways to support the fair treatment of public service employees and resolution of employment grievances; and	1 2
(k) give directions about the matters to be considered for the purposes of section 81(1); and	3 4
(l) provide advice and direction on the suspension or disciplining of individual public service employees; and	5 6
(m) provide administrative support for the Integrity Commissioner; and	7 8
(n) perform other functions given to the commissioner under this or another Act or by the Premier; and	9 10
(o) perform functions incidental to a function under another paragraph of this section.	11 12
 ‘Rulings by commissioner	 13
‘34.(1) The commissioner may issue directives or guidelines about a matter relating to a function of the commissioner under section 33.	14 15
‘(2) However, the commissioner is authorised to issue a directive or guideline about a matter relating to a function of the commissioner under section 33(i), only to the extent the directive or guideline is about—	16 17 18
(a) senior executives; or	19
(b) senior officers; or	20
(c) public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer.	21 22
 ‘Rulings by industrial relations Minister	 23
‘34A.(1) The industrial relations Minister may issue directives and guidelines relating to public service employees, other than—	24 25
(a) senior executives; or	26
(b) senior officers; or	27
(c) public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer.	28 29

Public Service Amendment

‘(2) Directives and guidelines relating to public service employees issued under subsection (1) must be about—	1 2
(a) their remuneration and conditions of employment; or	3
(b) workforce management and development policies and practices applying to them, including recruitment and selection policies and practices.	4 5 6
‘(3) If the industrial relations Minister proposes to issue a directive or guideline, the Minister must consult with the commissioner about its details.	7 8
‘(4) If, after the consultation, agreement has not been reached about the proposed directive or guideline because of an issue relating to a principle of public service management or public service employment it is the commissioner’s function to promote, the commissioner must—	9 10 11 12
(a) advise the Premier; and	13
(b) give a copy of the advice to the industrial relations Minister.	14
‘(5) The industrial relations Minister may issue a directive or guideline the subject of advice under subsection (4) only with the agreement of the Premier.	15 16 17
‘Rulings generally	18
‘34B.(1) This section applies to directives and guidelines issued under section 34 or 34A.	19 20
‘(2) A directive—	21
(a) is to be issued by gazette notice; and	22
(b) is binding on the public service employees, and other employees of public sector units, to whom the directive applies.	23 24
‘(3) A guideline is for the guidance of the public service employees, and other employees of public sector units, to whom the guideline applies.	25 26
‘(4) If a directive or guideline is inconsistent with this or another Act or subordinate legislation under either Act, the Act or subordinate legislation prevails over the directive or guideline to the extent of the inconsistency.’.	27 28 29

	Amendment of s 36 (Annual report)	1
Clause	7.(1) Section 36(2)—	2
	<i>renumber</i> as section 36(3).	3
	(2) Section 36—	4
	<i>insert</i> —	5
	‘ (2) The commissioner must include in the report advice about any direction given to the commissioner, or any other circumstance, that the commissioner considers impacted, or had a tendency to impact, on the commissioner’s ability to perform functions independently, impartially, fairly, and in the public interest.’.	6 7 8 9 10
	Amendment of s 104 (Decision on appeal)	11
Clause	8.(1) Section 104(1)(b), as an example—	12
	<i>insert</i> —	13
	‘ <i>Example of a direction under paragraph (b)</i> —	14
	The commissioner could, if permitted under a directive, direct that a new selection committee be formed, without all or any of the original members, to undertake a recommenced or continued process.’.	15 16 17
	(2) Section 104(2)(b)—	18
	<i>omit, insert</i> —	19
	‘(b) that the relative merits of the appellant and the successful applicant were not correctly decided.’.	20 21
	Amendment of s 118 (Regulation-making power)	22
Clause	9. Section 118(3), ‘conditions of employment,’—	23
	<i>omit, insert</i> —	24
	‘conditions of employment or about workforce management and development policies and practices,’.	25 26

	Replacement of pt 11, div 2	1
Clause	10. Part 11, division 2—	2
	<i>omit, insert—</i>	3
	<i>‘Division 2—Transitional provisions for Public Service Amendment Act 2000</i>	4
		5
	‘Rulings	6
	‘145.(1) Subsections (2) and (3) apply to a ruling if, immediately before the commencement of this section, the ruling—	7
		8
	(a) was in force under this Act; and	9
	(b) was issued by the Public Service Commissioner; and	10
	(c) deals with subject matter that, on and from the commencement of this section, is subject matter about which the industrial relations Minister, rather than the commissioner, may issue a ruling.	11
		12
		13
	‘(2) The ruling continues to have the same effect after the commencement of this section as it had immediately before the commencement and, for this purpose, is taken to be a ruling issued by the industrial relations Minister.	14
		15
		16
		17
	‘(3) However, if the ruling is a directive, it is taken to be a directive of the Commissioner for Public Service Merit and Equity, but only for the purposes of—	18
		19
		20
	(a) section 117; ¹ and	21
	(b) the <i>Industrial Relations Act 1999</i> , section 687. ²	22
	‘(4) Subject to subsections (1) to (3), rulings in force immediately before the commencement of this section continue to have the same effect after the commencement of this section as they had immediately before the commencement.	23
		24
		25
		26

¹ Section 117 (Relationship between directives and awards etc.)

² *Industrial Relations Act 1999*, section 687 (Conflict between industrial instruments etc. and statutory decision)

*Public Service Amendment***‘Transition of appointment**

‘146.(1) If, immediately before the commencement of this section, a person held appointment as the Public Service Commissioner, the person is taken to have been appointed under this Act as the Commissioner for Public Service Merit and Equity—

- (a) for the remainder of the person’s term of appointment; and
- (b) on the same terms and conditions as the person held appointment as the Public Service Commissioner.

‘(2) This section has effect despite anything in section 32.

‘Outstanding appeals

‘147. If an appeal under part 7 had been started, but not finished, before the commencement of this section, the appeal may be finished as if section 104 had not been amended by the *Public Service Amendment Act 2000*.

‘References

‘148. In an Act, including this Act, or document—

- (a) a reference to the Public Service Commissioner may, if the context permits, be taken to be a reference to the Commissioner for Public Service Merit and Equity; and
- (b) a reference to the Office of the Public Service or to the Office of the Public Service Commissioner may, if the context permits, be taken to be a reference to the Office of Public Service Merit and Equity.’.

Amendment of sch 3 (Dictionary)

Clause **11.(1)** Schedule 3, definition “**commissioner**”—
omit.

(2) Schedule 3—

insert—

Public Service Amendment

- ‘ **“commissioner”** means the Commissioner for Public Service Merit and Equity. 1
2
- “sexual harassment”** means sexual harassment as described in the 3
Anti-Discrimination Act 1991, section 119. 4
- “workplace harassment”** is behaviour, other than behaviour that is sexual 5
harassment, that— 6
- (a) is directed at an individual or group of workers associated with a 7
workplace; and 8
 - (b) is offensive, belittling or threatening; and 9
 - (c) is unwelcome and unsolicited; and 10
 - (d) is of the type that— 11
 - (i) is usually unreciprocated; and 12
 - (ii) can usually be expected to be repeated; and 13
 - (iii) makes the workplace, or association with the work of the 14
workplace, unpleasant, humiliating or intimidating for the 15
individual or group of workers; and 16
 - (iv) can make it difficult for effective work to be done. 17
- “unlawful discrimination”** means discrimination that is prohibited under 18
the *Anti-Discrimination Act 1991*.’ 19

PART 3—MINOR AMENDMENT OF OTHER ACTS 20

Acts amended in sch 2 21

- Clause 12. Schedule 2 amends the Acts it mentions. 22
23

SCHEDULE 1	1
MINOR AMENDMENTS OF PUBLIC SERVICE ACT	2
1996	3
section 2	4
1. Section 3(c), ‘public service commissioner’—	5
<i>omit, insert—</i>	6
‘Commissioner for Public Service Merit and Equity’.	7
2. Section 31, after ‘commissioner’—	8
<i>insert—</i>	9
‘or industrial relations Minister’.	10
3. Section 95(4)(a)(ii)—	11
<i>omit, insert—</i>	12
‘(ii) a public service employee appointed to perform a role in the	13
Office of Public Service Merit and Equity; or’.	14
4. Part 11, division 1, heading, after ‘provisions’—	15
<i>insert—</i>	16
‘ <i>for Act No. 37 of 1996</i> ’.	17
5. Schedule 1, item 10—	18
<i>omit.</i>	19
	20

SCHEDULE 2	1
MINOR AMENDMENTS OF OTHER ACTS	2
section 12	3
EQUAL OPPORTUNITY IN PUBLIC EMPLOYMENT ACT 1992	4 5
1. Section 3—	6
<i>insert—</i>	7
‘ “ commissioner ” means the Commissioner for Public Service Merit and Equity under the <i>Public Service Act 1996</i> .’	8 9
2. Section 3, definition “reporting period”, paragraph (b), ‘public service commissioner’—	10 11
<i>omit, insert—</i>	12
‘commissioner’.	13
3. Sections 9, 10, 11, 14(1) and (5), 15, 16(b), 17, 20(a), 22(a), 25(1) and 26, ‘public service commissioner’—	14 15
<i>omit, insert—</i>	16
‘commissioner’.	17
4. Part 3, division 5, subdivision A, heading—	18
<i>omit, insert—</i>	19
‘ <i>Subdivision A—Supervision by commissioner</i> ’.	20

SCHEDULE 2 (continued)

FINANCIAL ADMINISTRATION AND AUDIT ACT	1
1977	2

- | | |
|---|---|
| 1. Section 70(1), ‘Public Service Commissioner’— | 3 |
| <i>omit, insert—</i> | 4 |
| ‘Commissioner for Public Service Merit and Equity’. | 5 |

GOVERNMENT OWNED CORPORATIONS ACT 1993	6
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- | | |
|---|---|
| 1. Section 171(7)(a)— | 7 |
| <i>omit, insert—</i> | 8 |
| ‘(a) the Office of Public Service Merit and Equity; and’. | 9 |

INDUSTRIAL RELATIONS ACT 1999	10
--------------------------------------	----

- | | |
|---|----|
| 1. Sections 686(1)(a) and 687(1)(a)(i), ‘public service commissioner’— | 11 |
| <i>omit, insert—</i> | 12 |
| ‘Commissioner for Public Service Merit and Equity’. | 13 |
|
2. Section 687(1)(a)(ii), ‘section 34(2)’— | 14 |
| <i>omit, insert—</i> | 15 |
| ‘section 34A(1)’. | 16 |

SCHEDULE 2 (continued)

PARLIAMENTARY COMMISSIONER ACT 1974**1. Section 10B(6), ‘public service commissioner’—***omit, insert—*

‘Commissioner for Public Service Merit and Equity’.

WHISTLEBLOWERS PROTECTION ACT 1994**1. Sections 11(3)(c) and 46(3), ‘public service commissioner’—***omit, insert—*

‘Commissioner for Public Service Merit and Equity’.

2. Section 46(4), (5) and (6), ‘public service commissioner’—*omit, insert—*

‘commissioner’.