



RESEARCH NOTE

Number 39, March 97
ISSN 1323-5664

Public Sector Reform in Queensland: the *Public Service Act 1996*

The standard and delivery of public services and the accountability of public servants seem increasingly subject to scrutiny and criticism. On 25 November 1996, the Minister for Industrial Relations and Minister Assisting the Prime Minister for the Public Service, the Hon Peter Reith, released a Discussion Paper exploring the way ahead for the Australian Public Service (APS). The paper suggests, amongst other things, that in addition to the APS the Commonwealth should look to other sources of advice, including academia and State governments.

Given that background, this note considers recent legislative changes affecting the public service in Queensland, particularly the Public Service Act 1996 (Qld) [the Act], which was assented to in October 1996. Rather than comprehensively discussing each of the matters raised by the Act, this note highlights a number of issues for consideration.

***Public Service Act 1996:* Objects and Principles**

The objects of the Act are set out in Part 1, and include the establishment of the public service as 'an apolitical entity responsive to Government needs'. Services are to be provided to Government in 'a professional and non-partisan way'. Further, the Act provides for the 'administration of the public service and the management and employment of public service employees'.

Part 3 of the Act sets out the principles of public service management and employment. Manage-

ment is to be directed to the provision of 'effective and efficient services to the community and Government', implementing Government policies, maintaining impartiality in advising Government, managing resources in a fully accountable manner, and ensuring the ongoing development of public service employees.

Part 3 also provides that public service employment should be based on merit, provide equal employment opportunity and access to appropriate training, avoid nepotism, and provide avenues of appeal.

Role of the Premier

The Act places considerable importance on the role of the Premier in the management of the Queensland Public Service. Section 27 provides that the Premier is to 'promote the overall effectiveness, efficiency and economy of the public service', assess the quality of public service management, and advise individual Ministers on how to improve the management of their departments. Section 29 further empowers the Premier to initiate and carry out management reviews of departments, parts of departments and other government agencies.

The Premier may also fix the maximum number of employees in a department (section 30) and may direct departmental heads to act in accordance with any such ruling (section 31).

Office of the Public Service

The Act establishes an Office of the Public Service, to be headed

by a Public Service Commissioner. Amongst other things, the Office is to undertake management reviews as directed by the Premier, advise the public service on 'best practice' management and employment, and decide public service pay and conditions as well as appeals under the Act.

The Commissioner is to be appointed by the Governor in Council and is to enter into an employment contract with the Premier. As well as remuneration, the contract must provide for a term of no more than 5 years and for performance standards set by the Premier. The contract must also state that it may be terminated on one month's notice (section 39).

Public Service Staffing

The Act reforms the structure of the Queensland Public Service. Departments are to be headed by Chief Executives who will enter into employment contracts with the Premier. The contracts will be for up to 5 years (with the possibility of re-appointment) and can be terminated on one month's notice.

The Chief Executive may appoint Senior Executives. Except where the Senior Executive is employed on tenure, he or she must enter into a contract with the Chief Executive, and it must contain terms similar to those included in the contract between the Chief Executive and the Premier.

The Senior Executive Service Level 1 band is to be phased out and replaced by a Senior Officer band (not a part of the Senior Executive Service). The Chief Executive may also appoint 'Officers'

to his or her department (section 67). Subsection 67(2) provides that appointments must only be gazetted if the vacant position had been advertised in the *Gazette* or if gazettal is required by the Act. Officers may be appointed on tenure or on contract. If the officer is appointed on contract, he or she enters into the contract with the relevant Chief Executive.

Merit Appointments

Appointment as a public service employee must be on the basis of merit alone (section 78). In deciding the merits of an applicant, regard must be had, amongst other things, to the applicant's abilities, aptitudes, skills, qualifications, experience and relevant personal qualities [subsection 78(2)]. Subsection 78(3) provides that the section does not apply in cases of transfer or redeployment, and allows the Commissioner to state the section does not apply in other cases.

Disciplinary Action

Part 6 of the Act sets out the grounds for which disciplinary action may be taken and the forms that action may take. Officers may be disciplined for, amongst other things, inefficiency, incompetence, being absent from duty without leave, failing to obey a reasonable command of an authorised officer and misconduct. Misconduct may be disgraceful conduct in an official capacity or in a private capacity that reflects seriously and adversely on the public sector. The Act states that 'victimising another public service employee in the course of the other employee's employment in the public service' is an example of misconduct (p 52).

Appeals

Part 7 of the Act allows for appeals to the Public Service Commissioner in certain circumstances, including decisions to

discipline an officer. Section 107 provides that although a party to an appeal may be represented by an agent, he or she may not be represented by a lawyer. Appeals from a decision made, for example, by the Commissioner, may be made to the Industrial Relations Commission as an industrial matter.

Comment

The *Public Service Act 1996* (Qld) is not without precedent. For example, under the previous Queensland administration, Chief Executives signed contracts of employment with the Premier.

The Act does, however, appear to centre greater responsibility and power on the Premier. Only experience will show whether this will lead to the better provision of advice to the Government and a more efficient delivery of services to the community. However, it is somewhat surprising that this considerable transfer of power has occurred with little debate in relation to the doctrine of ministerial responsibility. As is well known, this doctrine states that elected ministers are responsible for actions taken by their departments to Parliament, and through Parliament, to the people. There can be no doubt that the relevance of this doctrine has been strained in recent years. The role of ministers in the Queensland Parliament, must surely be queried given the reforms enacted by the *Public Service Act 1996* (Qld).

There are also other issues to be considered. Are Chief Executives eligible for compensation if dismissed prior to the end of a contract? If not, and given that Chief Executives may be dismissed at will, there is a possibility that it may be difficult to attract leading managers to the Public Service. The contracts entered into between Chief Executives and senior executives are also problematic. Such contracts may blur who

senior executives actually work for: the Chief Executive, the individual Minister or the Crown more generally. At the very least, considerable power is vested in the Chief Executive to dismiss senior executives at will.

Unfortunately, the term 'lawyer' is not defined in Part 7 of the Act. Does it include persons who hold law degrees, persons admitted to practice or persons holding practising certificates? The Act does, however, attempt to come to terms with what constitutes 'merit' in appointment—although the reference to 'experience' may be seen by some as a reference to 'seniority'—as well as what amounts to 'misconduct'.

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