

PUBLIC SECTOR LEGISLATION IN QUEENSLAND: OLD OR NEW DIRECTIONS

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It has been 150 years since the Queensland public service was established. This paper looks back over the successive civil and public service acts in Queensland from 1859 to 2009, to examine the why the acts were passed, the changing structure of the public sector and the political justifications for the changes. It will establish how much has changed and how much has stayed the same over 150 years. Discussions regarding the success of the public service acts will be approached from an accountability perspective and will work to determine how effective the legislation has been in creating an independent and efficient public sector. The paper will demonstrate that change has occurred but some of it has turned back on itself; proposals that were rejected in the past have reappeared as fresh ideas and innovations. Finally, the paper will make conclusions as to the progress or repetition of public sector legislation in Queensland.

Building the Public Service – 1859-1920

In 1859, the British civil service had banned pre-Reform Act practices such as buying and selling public office, granting of royal sinecures and nominal offices. These changes did not eliminate patronage in the British or New South Wales civil service (McMartin 1987, Eddy 1969), but set a benchmark for Queensland's public sector. In the interim arrangements laid out in an Executive Council Minute of 23 January 1860, Governor George Bowen aspired to create a Queensland bureaucracy that emulated the best qualities of the new British civil service. He wanted public officials who were graduates of a liberal education, medically fit, morally sound (that is of a gentlemanly character), faithful and diligent who possessed a vested interest in Queensland (Fraser 1963). Promotion was based on whether the clerk was "faithful and diligent". Thus, at least in theory, Bowen rejected seniority in favour of merit. He also intended that civil servants would be neutral politically (*Queensland Government Gazette*, 28 July 1860 in Scott et al. 2001).

In the end, the remote colony lacked sufficient qualified applicants resulting in poor standards of performance (Knox 1977). Also, the British ideal of a standardised and central bureaucracy did not fit well with the geographic isolation of many officials and the many independent government boards and authorities (Cohen 1995, Davies 1998). Finally, entry examinations were rarely conducted, and ministers, under secretaries and, ironically, the Governor made most appointments down to the lowest levels (Cohen 1995).

The new Queensland Parliament passed *The Civil Service Act of 1863*, which made significant changes to Bowen's Executive Council Minute. They rejected Bowen's Northcote Trevelyan style civil service in favour of a system that served their own needs. The government rhetoric throughout the colonial period revolved around the creation of a quality civil service whilst protecting the needs of employees. The Act retained the moral qualification, merit selection via entry exams and instituted a system where promotion would be given to the most senior qualified person available in the service. But in practice the system was structured to allow the government to use the bureaucracy as a method of patronage and persuasion. Ministers could

and did make cronyistic appointments outside of the rules and had the power to effectively make arbitrary dismissals by judging a staff member to be “unfit” for the service.

In 1866 an inquiry was held into the public sector, despite ministers’ protestations, in the 1863 and 1864 debates that the legislation was fine and only needed proper implementation. The primary issue under investigation was the failure of the merit principle (Macalister QPD 1866), and the Committee of Inquiry found salary increments and promotions were provided irrespective of a person’s quality of service (Walsh QPD 1866, Watts QPD 1866). Some MLA’s claimed ministers did not supervise their officers, and all ministers were so amenable to give jobs to place-hunters that many positions were sinecures (Walsh QPD 1866). The government responded by introducing but not passing, the *Civil Service Act Repeal Bill of 1866*. Bills often were defeated in these days before strict party discipline. In 1868, yet another *Civil Service Bill* was introduced to “sweep away the incongruities and absurdities of the original Act” (Pugh QPD 1868) that allowed managers to continue practices such as providing increments without merit to “persons of no ability, but, still, who worked hard and were willing” (Register General quoted by Pugh QPD 1868). The 1868 Bill also failed.

In 1869, Parliament took the unprecedented, and never repeated step, of removing all regulation of civil servants. It was argued that the small size of the service made formal control unnecessary. For twenty years there was no legislative control of the civil service. Consequently, there was also no control over appointments or the provision of appeals. It can be assumed that the new system, or lack thereof, was unsuccessful as eventually the Parliament returned to regulation.

In 1888, another Royal Commission criticised the prominence of political patronage in appointments (Fraser 1959). In response, Parliament passed *The Civil Service Act of 1889* establishing a Civil Service Board of senior bureaucrats to take matters of examinations, promotions, employment terms and conditions and discipline out of the hands of ministers. In its first annual report, the Board noted that the Act resulted in better administration as well as ensuring that entry into the public service was based on merit and that promotions were dependent upon merit and seniority, thus ensuring that officers had a ‘reasonable prospect of advancement’ (Civil Service Board 1891).

The Home Secretary gave the Board credit for turning a “congested” civil service of 1,597 classified staff and many supernumeraries into 1,388 staff with very few supernumeraries (QPD 1896). He also said they “have given me great assistance in the working of my department in regard to economy, promotions, and transfers.” (Home Secretary QPD 1896) He was particularly pleased that the existence of the Board relieved Ministers from having to deal with place-hunters (Home Secretary QPD 1896). But once again the legislation was to have a short life. A new Bill was introduced in 1896 as a “consolidation” of the law regarding the public sector, (QPD 1896) and replaced the ‘Civil Service Board’ with a ‘Public Service Board’ that had reduced powers.

The 1896 Act retained the provisions of the 1889 legislation. The debate on the Bill contained many references to the assurance that merit would be the only consideration in appointments and promotions, (QPD 1896, O’Connell QPD 1896) thus it clearly was not in practice. However, the Act increased the power of ministers by removing the Board’s power to oversee appointments to non-entry positions from outside the service, and giving full authority over the process to the Governor in Council; in effect the ministers (*Public Service Act of 1896*, s.36). Some members already believed the Board to be the puppet of ministers, so the new clause was not popular (O’Connell QPD 1896, Leahy QPD 1896). However, the Governor in Council lost the power to intervene in disciplinary matters commenced within an agency with department heads dealing with minor cases of negligence or carelessness subject to a right of appeal to the

Board (*Public Service Act of 1896*, s.46). But ministers kept the power to discipline for any other breach (*Public Service Act of 1896*, s.41).

This new structure was also soon abandoned. According to Fraser, the Board was not regarded as independent of political influence. In the 1896 debate Leahy said if the Board was not going to be independent then it was better to abolish it altogether (Leahy QPD 1896, Daniels QPD 1896). Obviously the government agreed, and an amendment of the Act in 1901 disbanded the Board and created a new board comprising the members of Cabinet (*Public Service Act Amendment Act of 1901*, s.5). This version of the Board lasted until 1920 (Fraser 1959).

In summary, throughout the colonial period the public sector was caught between aspirational goals and a system which allowed ministerial control, and therefore manipulation of, all staffing issues. The parliament was well aware of the opportunities for corruption under this arrangement but successive governments thwarted reform. There was only a brief period of civil service independence under a bureaucrat run board, but this never escaped the perception of being a political puppet and was abolished. In addition, the managers within the public sector appear to have routinely ignored the merit principle and allocated increments and promotion entirely on the basis of seniority regardless of individual performance. A major change was needed to establish an independent public sector with an ethical culture.

The Era of Paternal Commissioners: 1920-1987

The *Public Service Acts Amendment Act of 1920* replaced the Public Service Board with a Public Service Commissioner with control over most operation and employment matters (*Public Service Acts Amendment Act of 1920*, s.3). The Premier, Edward Theodore, said ministers had to delegate their powers because: they did not have time to administer large public sector agencies and deal with matters before the Board; (Fraser 1959) there were so many public servants that ministers did not know their employees well enough to make detailed personnel decisions, and most ministers did not have appropriate experience to carry out this role. The Premier claimed that a single Commissioner would also rectify the lack of uniformity in decisions or standards across agencies (Theodore QPD 1922). John D. Story was appointed as the first Public Service Commissioner in 1920.

Support for Story as Commissioner was bipartisan (Theodore QPD 1922, Vowles QPD 1922, Fletcher QPD 1922, Taylor QPD 1922, Barnes QPD 1922). Many admitted that the system's success largely depended on the skill, knowledge and character of its incumbent (Theodore QPD 1922). Theodore said "... under the system of the Public Service Commissioner public servants have greater freedom and liberty than they ever had before." (QPD 1922) Two years of experience with the commissioner model, combined with Story's popularity, resulted in the *Public Service Act 1922*, which led to forty-six years of relative stability in statutory control over public sector affairs via the only period of independent public sector management in Queensland.

In a further reduction of ministerial control, the 1922 Act gave the Industrial Arbitration Court the power to set pay and standards for all but the most senior officers, whose terms and conditions would be determined by Parliament.

Under Story and his successors, J McCracken, D W Fraser and H C Hinton, separate exams were introduced for each division in the service and public sector vacancies were advertised for the first time and made subject to limited appeal rights (*Public Service Act 1922*, s.19). Story also attempted to reduce the silo mentality in favour of a sector-wide approach. However, Story was resolutely opposed to improving the lot of female employees.

Female employment was restricted in five ways:

- In the 1930s, while the State Government was the largest employer of women in the State, most female public servants were either teachers or held 'routine' positions of a purely clerical nature. A 1932 regulation restricted women to clerk-typist positions (Story 1933),
- Only male employees would be allocated tasks that would lead to advancement up the hierarchy,
- Women could not supervise men (Colley 2004),
- The Commissioner had power to make regulations in relation to "the terms on which the service of female officer may be dispensed with upon marriage", (*Public Service Act 1922*, s.51(1)(ii)) resulting in the institution of the 'marriage bar' in 1923, under which female employees were dismissed if they did not resign when they were married (Story 1923); and
- The *Public Service Act Amendment Act 1920* had provided different pay scales for men and women.

Queensland public sector pay rates for women were higher than those proscribed in industrial awards. However, Story noted that raising pay to equal levels would be a serious impost on the state purse (Story 1936). Story had no sympathy for the treatment of women, although he did see value in female employees as teachers of 'lower classes' and proficient operators of 'machinery' in work such as typing, telephone exchanges and accounting (Story 1933).

Public sector managers continued to give increments automatically and rely on seniority for promotions. Story tried to stamp out these practices. Increments were only to be paid on the Commissioner's recommendation subject to Governor in Council approval (*Public Service Act of 1922*, s.20(2)). In his first report in 1921, Story noted that:

The awards provide that no person shall be entitled to receive any increase of salary by virtue of the awards unless his conduct, diligence, and general efficiency have been certified by the Public Service Commissioner to have been and to be satisfactory... *carte blanche* certificates cannot be given. (Story 1921)

However, the attempt to resolve the issue was ended when the Industrial Commission stated that all increments were to be paid without review (Howatson 1988).

They were no more successful in regard to seniority. The system was so ingrained that in 1918, the General Officers Association had complained that some promotions were being decided on the basis of merit and that employees no longer had the confidence of relying on their expectation of promotion (Colley 2004). Story reiterated: "Promotion depends first upon *efficiency*..." (Story 1927, his emphasis). In the 1940's Story's successor, J McCracken demonstrated the durability of this practice when he saw the need to emphasise that seniority was not the final determinant of selection: "If progress is to be achieved in Service administration and real efficiency obtained, the higher qualifications and superior efficiency of the junior officer must outweigh the seniority of the older but less efficient officer." (McCracken 1942) However, the power of seniority was still sufficiently in practice that the Professional Officers Association did not remove its support for the practice until 1975-76 (Whitehouse and Wiltshire 1987).

During this period the opportunities for the ministry to interfere with the operation of the public service was greatly reduced. Cabinet kept final say on all important decisions and could ignore the Public Service Commissioner or act without his support. However, this appears not to have occurred very often. The changes did not remove suspicions of cronyism but the public service commissioners denied it occurred within the service:

34. Contrary to belief in some quarters, service appointments are clear of any consideration of patronage either political or otherwise... Staff appointments and

promotions are made solely on merit and where two officers are equally efficient then the senior officer is promoted. (McCracken 1943)

But the public sector grew too large to be administered by an individual commissioner. In 1968, the Bjelke-Petersen government introduced the *Public Service Act Amendment Act 1968* claiming it would respond to “increased activity in promoting the development of the State’s economy, expanding government programmes, technological changes, and the growing complexity of public administration.” (Howatson 1988) The single commissioner was replaced by a three member Public Service Board; the Board performed the functions of the former Public Service Commissioner and its Chair was head of the Board’s administrative arm (*Public Service Act Amendment Act 1968*, s.7A). Ultimately, the Board had the independent power of the former Commissioners except that management of promotions shifted to individual permanent heads of departments (*Public Service Act Amendment Act 1968*, s.19).

After the passage of the Amendment Act, the government implemented three major changes to the criteria for merit. First, it improved the employment opportunities for women by removing the ‘marriage bar’ in 1969 and, in 1973, allowing women who held a senior certificate to apply to sit the entrance exam on the same footing as men (*Queensland Government Gazette* 1973). Second, in 1983 the government repealed the requirement that union members have a preference for employment in the public sector, which had been first instituted under the 1922 Act (Colley 2004). Finally, it reinstated government control over some appointments by placing senior officers under ministerial control and out of public scrutiny by removing them from the award and no longer publishing their appointments, salary and reclassification in the government gazette (Colley 2004).

Since 1920 the Queensland public sector entered a period of independence from the previous ministerial control. It retained it through the bipartisan support for a series of public service commissioners and, later, a Public Service Board. But this period ended through the introduction of new private sector management ideologies from both the government and academia. It was replaced by a plethora of claims of “reform” under the guise of new Acts containing substantially the same provisions.

An ‘Exciting’ New Era of Modernisation: 1988-2009

The period from 1988 to the present saw the largest amount of public sector legislation in Queensland history. Change was driven by the perceived need for greater productivity. During this period, the Queensland public service adopted decentralised and independent management of agencies subject to moderate levels of supervision and control. It would also see an increased intervention by the ministry into the management of senior appointments; a point that every Opposition would decry as a breach of public sector independence then enhance once they took office.

In 1987, the *Public Sector Review*, or Savage Report, reviewed the efficiency of the Queensland public sector and recommended improving the quality of the sector through decentralised management, use of contracts for senior staff, a more efficient merit system and the publication of a Code of Conduct. The Report was short on reasoning; no balanced arguments or justifications were provided for either the recommended pro-private sector management style. While many submissions and interviews were conducted, their contents and influence on the report were not elucidated (Thornton 1988).

Not all the Savage recommendations were given effect, although some were rushed into place. The *Public Service (Board’s Powers and Function) Bill 1987* was introduced as an interim

measure in 1987 to cover the period before the accepted recommendations of the Savage Report could be implemented. The Bill was part of a streamlining process under which: “there would be opportunities for more flexibility for staffing and, indeed, enhancement of the public service generally.” (Lester QPD 1987) Despite Opposition allegations of Machiavellian plots, the government claimed that it wanted to remove the obfuscation of the old system and replace it with a more flexible style of management. As Mike Ahern reflected the Public Service Board had been a convenient excuse for bureaucratic indecision and an excuse for mismanagement allowing departmental heads to blame it for delays and poor decisions (Ahern QPD 1990).

The Savage recommendations that were accepted were finally put in force in the *Public Service Management and Employment Act 1988*. The government claimed it would “usher in a new and exciting era in public service management.” (Austin QPD 1988) Private sector management methods would be introduced to modernise the public sector to deal with tighter funding regimes and higher productivity demands (Austin QPD 1988). These goals would be achieved by giving CEO’s more autonomy in management of their agencies, making public servants more accountable, highlighting management and performance issues and increasing flexibility. The Act brought in the most significant changes since 1922 by shifting public sector administrative power from the ministry or Board to the CEO’s.

There was also some sleight of hand about innovation that would become standard practice in all subsequent bill debates. The government claimed eight ‘new initiatives’, but only half, probation, decentralisation, performance appraisal and extension of discipline to CEO’s, were new. The provision of ‘principles of management’ was illusory as they were and remain unenforceable guidelines. The claims of protection of tenure and the need for contracts were spurious. Ministers increased their control of the most important staff, that is, senior appointees, through the operation of contracts. The only power ministers had lost was access to minor appointments as a means of rewarding the ‘soldiers’ from the party. The next government would rectify this situation through the creation of a separate ministerial staff.

During the Bjelke-Petersen years the government made mistakes so egregious they that led to public examination of the administration of government. In May 1987, the Acting Premier, the Hon Bill Gun, announced the formation of an inquiry into the allegations of corruption made in *The Courier Mail* and on the *Four Corners* program, ‘The Moonlight State’ (Fitzgerald 1989, Beattie 1996). The Inquiry resulted in corruption charges against senior police, ministers and a former Premier. However, while the Fitzgerald Inquiry established that there was corruption by police and ministers, and serious issues with government accountability, it did not identify widespread or systematic corruption in the public service.

Claims of patronage never disappeared. The most notable was a set of unsupported allegations and allusions made by a future Public Sector Management Commission commissioner, Peter Coaldrake (Coaldrake 1989, Hede 1993). Such claims were assisted by a general suspicion of government following the Fitzgerald Inquiry. The 1989 Labor Party platform on Public Sector Reform, *Making Government Work: Public Sector Reform Under a Goss Government*, claimed that not only was there political interference in the public sector, and therefore a breakdown of officials’ ability to provide full and frank advice, but the organisation itself was long overdue for structural reform and coordination (Goss 1989). Labor entered government in December 1989, carrying a public expectation that it would reform the ethical culture and systems of the Queensland public sector. The Party had campaigned on the platform of returning integrity to government, but its policies related to structural management reforms instead of ethical regimes. University academics developed its policies to make Queensland mirror the public sector reforms in other jurisdictions and the government characterised the initiatives as complementing the Fitzgerald Reform agenda.

The Labor government replaced the Commissioner with the Public Sector Management Commission (PSMC) and claimed it would be complementary third arm of reform to the Criminal Justice Commission and the Electoral and Administrative Review Commission, which were created by the previous government after Fitzgerald recommendations (Goss 1989). No reasoning was provided as to how the new Commission was associated with the vision. According to the Commissioners of the PSMC, its role included review of government agencies, introducing the SES, merit and equity protection and establishing consistent management standards. They justified the PSMC's establishment on the basis that a Public Service Board of some sort was needed to perform centralised roles such as collecting statistics (Coaldrake, Davis and Shand 1992).

The *Public Sector Legislation Amendment Act 1991* introduced the Senior Executive Service (SES) model into Queensland. The model provided for a core group of 'expert managers' who could move between government agencies providing their skills as required. They were the epitome of a cooperative government, ideally belonging to the public sector and not to an individual agency, giving them a government wide focus. The PSMC introduced a uniform merit selection process for line managers to use when appointing and promoting staff. This was the first such system in Queensland. The system was not perfect and a disreputable panel could undermine it, but it seems to have worked in most situations. The Government depicted itself as relying on merit but the Opposition presented evidence to the contrary. Many staff were appointed outside the merit process and seemed to have relationships with the ALP. The Labor government maintained the control over appointments that had existed since the *Public Service Act 1922*, but had the added benefit of a public assumption that government was ethical that diverted attention away from questionable practices.

More significant reforms arose out of the EARC review process, and resulted in legislation which would previously have been part of a public service act, for example, the *Public Sector Ethics Act 1994*, the *Whistleblowers Protection Act 1994* and the *Equal Opportunity in Public Employment Act 1992*. These initiatives did not affect the structure of the sector but enhanced the ethics and equity of its operation.

The Borbidge National-Liberal Party Coalition took power in 1996. Part of their campaign had been an attempt to obtain the support of the many disgruntled public servants. It is not surprising then that a major reform of the new government was the revamping of public service legislation. The new legislation was an attempt to both regain the faith of government employees and to return to the Savage reform agenda commenced in 1988, and its focus on commercial ideals and market forces rather than centralised bureaucracy. The members of the Coalition were more expedient than consistent. Once in government they did nothing to give effect to demands they had made in Opposition for a return to values and tenure, the advancement of good service for the public, and the rectification of other faults they perceived in Labor legislation. For example, the SES remained, albeit in a modified format, and some CEO's were replaced. However, the new government did abolish the PSMC and replace it with a far less powerful, less interventionist Public Service Commissioner.

The *Public Service Bill 1996* was introduced to correct a "cumbersome and costly procedural-oriented public service where results-oriented activities by line departments were often frustrated by too little authority and too many process requirements" (Borbidge QPD 1996, Simpson QPD 1996), namely the reporting to the PSMC and its authority. His goals were:

- more effective provision of goods and services;
- more efficient and flexible utilisation of resources;
- improvements in the accountability and responsiveness of the public service to the policy objectives of Government;

- increased openness and accessibility of decision-making processes for the community and the work force; and
- the creation of a highly skilled work force, with both management and workers committed to the achievement of specified objectives (Borbridge QPD 1996).

The control of public service employment administration remained with the CEO's but was increased to extend to the SES. All SES officers were moved to contract employment, and the reclassification of the SES 1 staff into non-SES Senior Officers halved the number of SES officers. The Premier was also provided with a formal mechanism to review agencies.

During the debate on the *Public Service Bill 1996*, Peter Beattie, then Opposition Leader, gave a commitment to make sure all appointments complied with merit (Beattie QPD 1996). However, when Beattie formed a new Labor government in 1998, ministerial staff were excluded from the merit process via a directive of the Public Service Commissioner. Merit was also excluded from the employment of base-grade clerks and secondments, and other exemptions from merit can also be obtained through the Department of Industrial Relations (Department of Industrial Relations 2002). These new options for exemptions are broader than those available to the ministry in the 19th Century. However, the exemptions were removed when Premier Anna Bligh formed government in late 2007 and subsequently introduced the *Public Service Bill 2008*.

In May 2008, Premier Anna Bligh tabled the first reading of the *Public Service Bill 2008* in Parliament. The Bill was later assented to on 11 June 2008 and came into force as the *Public Service Act 2008* on 1 July 2009. Bligh promoted the Bill as "...a vital step in our determined push to modernise the Queensland Public Service" (Bligh QPD 2008). However, the *Public Service Act 2008* maintained most sections of the previous *Public Service Act 1996*, only ushering in a few new changes. The main changes in the new Act were the replacement of the previous Public Service Commissioner with the Public Service Commission, the removal of a number of exemptions to the merit principle and greater emphasis on diversity in public sector employment.

However, the powers of the new Commission remain essentially the same as that of the previous Commissioner. Under section 46 of the Act, the Commission's functions involve overseeing human resources management whilst promoting the Act's management and employment principles, conducting commission reviews of 'particular matters', which may include the management of departments and to "...promote a culture of continuous improvement and organizational performance management across all public service offices". Premier Bligh trumpeted the introduction of the new Commission as a body that "...will have a clear mandate to bring fresh ideas and innovation to the table" (Bligh QPD 2008). However, given that the Commission carries out essentially the same roles as the previous Office of the Public Service Commissioner, and is not dissimilar to previous Commissions under the 1889, 1968 and 1991 Acts, it can hardly be described as 'innovative'. A supposed new initiative on equitable employment is really just the incorporation of the terms of the repealed *Equal Opportunity in Public Employment Act 1992* into the Act. The most significant improvement has been the, already noted, removal of the extensive list of exemptions to merit appointments (*Public Service Act 2008*, s.24 (h)).

The Opposition attacked the new Commission as "an additional arm of the government used to politicise and control the Public Service" (Springborg QPD 2008). However, there is little difference between the new Commission and the previous Commissioner that was originally established under the Borbridge government's 1996 Act.

While Premier Bligh promoted the *Public Service Act 2008* as an 'innovative' change to the public sector, most of its sections remain the same as the *Public Service Act 1996*. As discussed above, the shift to a Public Service Commission cannot be described as 'innovative' given its mirroring of past changes. However, the removal of exceptions to the merit principle as well as the integration of the EEO principle is a new change to public sector legislation and signals a move towards more inclusive employment practices; a sizeable shift from employment practices that were common in colonial times and well into the twentieth century.

Conclusion

Since Queensland gained its independence from New South Wales in 1859, the Queensland public service has weathered a number of changes. However, most of the changes to public sector legislation have been repetitive and thus, have not represented 'innovative' or 'modernising' steps, as asserted by successive governments. Recurring debates over the reliance upon merit for public sector appointments, the existence and role of public service commissions, as opposed to Commissioners and the re-emergence of patronage and nepotism under different governments, demonstrates the cyclical nature of public sector reform in Queensland and highlights the need to look at Queensland's history before moving ahead with further reforms. If future reformers look backwards before looking forwards, then the public sector *will* be able to progress with innovative and modernising changes, rather than simply repeating history.

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