

PARLIAMENT OF QUEENSLAND AMENDMENT BILL 2004

EXPLANATORY NOTES

Title of the Bill

Parliament of Queensland Amendment Bill 2004.

Policy Objectives of the Bill

To reinstate the previously applicable exemption in respect of land transactions from the statutory prohibition on Members' transacting business with the State under section 71 of the *Parliament of Queensland Act 2001*.

Achieving the Policy Objectives of the Legislation

Section 71 of the *Parliament of Queensland Act 2001* provides that a Member of Parliament must not transact business, directly or indirectly, with an entity of the State. Under the terms of the provision, if a Member contravenes the section, a contract with an entity of the State is invalidated to the extent of the contravention. In addition, under section 72(1)(h) of the Act, a Member's seat becomes vacant if the Assembly, by resolution, decides the Member has contravened section 71(1), provided that the Assembly does not also make a declaration under section 73. Section 73 provides that the Assembly may disregard certain disqualifying events, in specific circumstances.

Prior to the consolidation of the *Parliament of Queensland Act 2001*, sections 6 and 7A of the *Constitution Act 1867* applied to disqualify Members of the Assembly from entering into certain contracts with the State. The disqualification extended only to agreements 'for the furnishing or providing of wares and merchandise'. Along with other specified exemptions, agreements for the purchase of land from, or sale of land to, the State were specifically excluded from the disqualification.

It has been confirmed that, during the drafting stage of the consolidation process in 2001, the specific exemption with respect to land transactions with the State provided for in the *Constitution Act 1867* was inadvertently excluded from the consolidated *Parliament of Queensland Act 2001*.

This omission has had the effect of increasing the scope of s.71 beyond that of the previously applicable provisions. Section 71 now applies to cases which were specifically and intentionally excluded by the earlier provisions. The scope of the provision has been extended at least as far as to disqualify Members from entering into agreements with the State that involve transactions in land.

The Bill amends section 70(2) of the *Parliament of Queensland Act 2001*. The proposed amendment will effectively reinstate the exemption in respect of land transactions that was previously applicable under the *Constitution Act 1867*. The amended section 70(2) provides that a Member does not "transact business" with an entity of the State in specified circumstances, including contracts to sell an interest in land to, or acquire an interest in land from, an entity of the State, provided that the terms of the agreement for sale or purchase are not more favourable to the Member than they would be to a member of the public.

The Bill also provides for a transitional provision to be inserted into the Act. The draft provision states that 'during the transitional period, section 71(2) is taken always to have applied in relation to a contract as if the amendment of section 70(2)(a) had commenced on 6 June 2002'. This date is the date upon which the *Parliament of Queensland Act 2001* commenced. "Transitional period" is defined as the period starting at the beginning of 6 June 2002 and ending at the end of the day before the commencement of the proposed amendment.

The practical effect of the proposed transitional provision will be the same as if the proposed amendment was to apply retrospectively, from 6 June 2002. The transitional period will ensure that all transactions in land since 6 June 2002 that would have been covered under the previously applicable provisions will be exempted under the amended s.70.

Administrative Cost

Future administrative costs to the Government will be minimal.

Consistency with Fundamental Legislative Principles

The Bill is consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

The Bill inserts a deeming provision that effectively applies the land transaction exemption inserted by Clause 3(1) of the Bill from 6 June 2002. This retrospective operation is not considered to be objectionable, for the following reasons:

- the omission of the exemption from the *Parliament of Queensland Act 2001* was inadvertent, and was therefore also not publicised;
- the amendment is intended to be curative in nature, so as to restore the previously applicable exemption; and
- the practical difficulty of seeking to undo any land transactions between Members of the Assembly and the State that may have taken place since 6 June 2002.

Consultation

The Crown Solicitor and Acting Crown Solicitor were consulted on the Bill.

NOTES ON CLAUSES

Clause 1 sets out the short title of the Act.

Clause 2 provides that the Act amends the *Parliament of Queensland Act 2001*.

Clause 3 inserts a new section 70(2)(a)(ii) of the *Parliament of Queensland Act 2001*.

Section 70 of the *Parliament of Queensland Act 2001* defines the term ‘transacts business’ and specifically excludes certain circumstances from the definition of that term. The new section 70(2)(a)(ii) provides that a Member does not transact business with the State in relation to:

- contracts for provision by the State of goods or services, that are available to the public, on the same terms that they are available to the public;
- contracts for acquisition from the State of an interest in land, that is available to the public, on the same terms that the interest is available to the public; or
- contracts for acquisition by an entity of the State of an interest in land on terms not less favourable to the entity than if the sale were by a member of the public.

The effect of the new provision is that a Member would be able to sell an interest in land to, or acquire an interest in land from, an entity of the State, provided that the terms of the agreement for sale or purchase are not more favourable to the Member than they would be to a member of the public.

The clause also deletes the list of '*Examples of subparagraph (ii)*' from section 70(2)(a). The list of examples is no longer necessary given the more comprehensive definition provided by the new subparagraph (ii).

Clause 4 inserts a new section 163 as a transitional provision.

Section 163(1) provides that during the transitional period, section 71(2) is taken always to have applied in relation to a contract as if the amendment of section 70(2)(a)(ii) had commenced on 6 June 2002.

This provision will ensure that contracts that would be excluded from the definition of 'transacts business' under the new 70(2)(a)(ii), that were entered into between 6 June 2002 (the date of commencement of the *Parliament of Queensland Act 2001*) and the date of commencement of the amendment, will not be invalidated under section 71(2).

Section 163(2) provides that in deciding whether a Member has contravened section 71(1) during the transitional period, section 72(1)(h) is taken to apply as if the amendment of section 70(2)(a)(ii) had commenced on 6 June 2002.

This provision will ensure that contracts that would be excluded from the definition of 'transacts business' under the new 70(2)(a)(ii), that were entered into between 6 June 2002 (the date of commencement of the *Parliament of Queensland Act 2001*) and the date of commencement of the amendment, will not be grounds for a resolution by the Assembly that a Member who entered into such a contract has contravened section 71(1), and, as a consequence, could have their seat declared vacant.

Section 163(3) provides that section 159(6) of the *Parliament of Queensland Act 2001* has effect as if the amendment had commenced on 6

June 2002. Section 159(6) is a transitional provision that ensures section 71(1) applies to continuations of transactions that were commenced prior to the commencement of the Act, but does not apply to transactions completed prior to commencement of the Act. The new section 163(3) clarifies the operation of section 159(6) to ensure that it is read as if the amendment to section 70(2)(a)(ii) had commenced on 6 June 2002.

Section 163(4) defines terms used in the section.

The section states that “*transitional period*” means the period starting at the beginning of 6 June 2002 and ending at the day before the commencement of the amendment of section 70(2)(a)(ii). The effect of this definition is to ensure that there is no period of time during which a Member who entered into a contract that would be exempted under the amended 70(2)(a)(ii) could be found to have contravened section 71(1).