

# Public Service Bill 2008

## Explanatory Notes

### General Outline

#### Objectives of the Bill

The main purposes of the Bill are to:

- establish a high performing apolitical public service that is responsive to Government priorities and focused on the delivery of services in a professional and non-partisan way;
- promote the effectiveness and efficiency of government entities;
- provide for the administration of the public service and the employment and management of public service employees;
- provide for the rights and obligations of public service employees; and
- promote equality of employment opportunity in the public service and in other particular agencies in the public sector.

The Bill establishes the Public Service Commission to undertake the human resource and performance management functions of government.

#### Reasons for the objectives and how they will be achieved

The Bill provides a legislative foundation for ensuring that Queensland has a high performing public service that is responsive, innovative, accountable, effective and efficient.

To achieve the objectives, the Bill sets out principles to guide public service management, public service employment and the work performance and personal conduct of public service employees.

The Bill will establish a new Public Service Commission (the Commission) and repeal the *Public Service Act 1996* and *Service Delivery and Performance Commission Act 2005*. The Commission represents an amalgamation and enhancement of the functions of the Office of the Public

Service Commissioner (OPSC) and the Service Delivery and Performance Commission (SDPC), and will drive the human resource and performance management functions of government.

The Bill will establish a separate Chief Executive Service and continues the Senior Executive Service, which are designed to provide the public service with high performing leaders who will actively promote the purposes and the principles of the Bill. The Bill sets out a legislative structure to deliver this objective that allows mobility, flexibility and responsiveness to the needs of contemporary government.

The Bill will also incorporate the provisions of the *Equal Opportunity in Public Employment Act 1992* which reinforces the status of equal opportunity in public service employment by ensuring the core EEO principles are inherent and fundamental to the operation of the public service.

Further, the Bill incorporates provisions of the *Crown Employees Act 1958* which provides that public service employees who resign their positions to contest Commonwealth or State elections are able to apply for reappointment if not elected. This further streamlines the number of statutes governing public service employment and consolidates these provisions within the primary public service legislation.

## **Alternatives to the Bill**

An alternative option to the Bill would be to retain the *Public Service Act 1996* in its current form and to retain the OPSC and SDPC as separate commissions. However this would not provide an appropriate legislative framework or the best governance arrangements to enable implementation of the Government's program for reform and modernisation of the public service.

## **Administrative cost to government for implementation**

There are no direct administrative costs to government arising from the Bill as the reforms will be met from within existing resources.

## **Consistency with fundamental legislative principles**

The Bill is generally consistent with fundamental legislative principles.

The Bill provides that the Commission chief executive and the Minister for Industrial Relations may issue directives about employees. Consistent with existing arrangements under the *Public Service Act 1996*, the Bill does not make directives subordinate legislation. Directives relate to the operational administration of the public service, and require regular amendment. The relevant clause provides for a balance between administrative flexibility and ensuring sufficient transparency and accountability by requiring that a directive may only be made by gazette notice, and that a ruling must be published on the relevant agency website (this is a new requirement). The Bill also specifically provides that if a ruling is inconsistent with an Act or subordinate legislation, the Act or subordinate legislation prevails to the extent of the inconsistency.

The Bill provides that particular election candidates who have resigned from public service employment may apply for reappointment within three months after the return of the writ for the election. Provision is not made for appeal or review on the merits of a decision not to reinstate the person because the person voluntarily resigned from their public service employment. The entitlement to request reappointment is in addition to a person's normal employment entitlements.

The Bill also does not require adherence to natural justice where an employee is suspended with normal remuneration for non-disciplinary reasons. The clause facilitates suspension that does not arise as a result of disciplinary action, for example where an employee discloses a conflict of interest in relation to their employment activities and cannot be allocated elsewhere within the department without prejudicing the proper and efficient management of the department. This action can only be taken after the chief executive has considered all appropriate alternate duties that may be available for the officer to perform and the employee retains the benefit of normal remuneration and continuity of employment.

In addition, the Bill does not require adherence to natural justice where an employee is suspended for disciplinary reasons with normal remuneration. This is because the employee retains the benefit of normal remuneration and continuity of employment, subject to the outcome of disciplinary proceedings.

The Bill further allows the Governor in Council to remove a term appointee from office at any time. This reflects pre-existing provisions within the *Public Service Act 1996*. In addition, officers are provided with public service re-employment rights if they were public service officers for five years prior to their appointment to the statutory office.

## **Consultation**

A Union Reference Group was established to provide input into the public service reform process comprising representatives of the Queensland Council of Unions, Australian Workers' Union, Queensland Public Service Union, Queensland Teachers' Union, Queensland Nurses' Union and the Liquor, Hospitality and Miscellaneous Union. Union representatives support the proposed reform process for the Queensland public service and have generally endorsed the Bill.

An Independent Advisory Panel comprising the current Service Delivery and Performance Commissioners John Story and Marian Micalizzi, academics Dr Anne Tiernan and Dr Jackie Huggins and business leaders James Strong and Ann Sherry has been established to oversee the creation of the new Public Service Commission. The members of the panel have agreed on key priorities for the new Commission and have endorsed the approach and content of the Bill.

Development of the Bill was overseen by a CEO Steering Committee comprising the Director-General of the Department of the Premier and Cabinet, the Under Treasurer, the Public Service Commissioner, the Chair of the Service Delivery and Performance Commission and the Directors-General of the Departments of Employment and Industrial Relations; Justice and Attorney-General; and Education, Training and the Arts.

All government departments were consulted on the Bill. No departments raised any significant objections to the Bill proceeding.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, and the extent to which it is uniform with or complementary to the Commonwealth or another state is not relevant in this context. However approaches in other jurisdictions were taken into consideration in the development of the Bill.

# Notes On Provisions

## Chapter 1 Introduction

### Part 1 Preliminary

Clause 1 states the short title of the Act.

Clause 2 states when the Act commences.

Clause 3 states the main purposes of the Act and sets out how the Act helps to achieve these purposes.

The Act helps to achieve these purposes by:

- fixing the principles to guide public service management, public service employment and the work performance and personal conduct of public service employees;
- establishing a Public Service Commission to enhance the public service's human resource management and capability, and review and improve the overall effectiveness and efficiency of government entities; and
- establishing a Chief Executive Service and a Senior Executive Service to provide the public service with high performing leaders who will actively promote the purposes and the principles.

Clause 4 inserts a dictionary in the schedule to define key terms in the Act.

## **Part 2**                      **Queensland Public Service**

### **Division 1**                **Basic concepts**

This division sets out the fundamental structures and relationships that are the foundation of the Queensland public service.

Clause 5 clarifies that the Queensland public service consists of persons employed under the Act, namely public service employees.

The schedule dictionary also provides a definition of a public service employee. In summary, public service employees include public service officers (chief executives, senior executives or other types of officers), general employees and temporary employees.

Clause 6 provides that public service employees are employed in departments or public service offices. 'Department' is outlined in clause 7; 'public service office' in clause 21.

Clause 7 states that a department is an entity declared under division 2 to be a department of government.

Clause 8 states who is a public service officer. A public service officer is a person employed under the Act as a chief executive, senior executive or an officer of another type.

Clause 9 combines sections 9 and 16 of the *Public Service Act 1996*, and defines public service employees. The clause states that a public service employee includes a public service officer, a general employee and a temporary employee. The clause states that public service employees are employees for the *Industrial Relations Act 1999*.

The clause states that it is subject to clauses 215(3) and 218 which exclude the jurisdiction of the Queensland Industrial Relations Commission for decisions against which a person has appealed to the Commission chief executive and particular matters from the concept of industrial matter. This is to ensure that a person cannot appeal twice by pursuing the same matter through different jurisdictions.

Clause 10 is a new clause that states who is a chief executive. In relation to departments, the clause states that a chief executive is the person who holds appointment under this Act as the chief executive of that department. In

relation to public service offices, the matter is dealt with under clauses 22 and 23.

To assist with interpretation, the clause also notes clause 103 which clarifies that references within the Bill to the chief executive of a chief executive would be a reference to the Minister.

Clause 11 is a new clause that sets out the relationship between chief executives and the public service employees in their departments. This clarifies the employer/employee relationship within the public service, namely that the chief executive of a department is the employer of the public service employees in that department on behalf of the State and the employees of a department are responsible to that department's chief executive in performing their duties.

Clause 12 describes the application of the Act to different types of employees. The Act mainly applies to public service officers – chief executives, senior executives and other officers.

However, some provisions of the Act expressly apply to all public service employees. For example, clause 42 allows the Minister to direct action about surplus public service employees, and is applicable to all public service employees.

The clause also states that a provision of the Act may expressly apply to a general or temporary employee. For example, clause 55 allows the making of directives to apply the Act to general and temporary employees.

In addition, the clause notes clause 23 which outlines the application of the Act to public service employees in public service offices declared by regulation. For employees of this particular type of public service office, the employees are only subject to the provisions of the Act as provided for in the regulation.

Clause 13 states that the Act does not apply to particular offices, but does not prevent the holder of such an office from having or exercising powers under the Act.

The clause excludes the application of the Act to offices to which appointments are made by the Governor alone; where the salary or appointments are provided for under the *Judicial Remuneration Act 2007*, *District Court of Queensland Act 1967* or the *Magistrates Act 1991* (e.g. judges, magistrates, or judicial registrars); or honorary offices.

This clause further states that the Act does not apply to the employment of a person as an associate to a Supreme Court judge, District Court judge or industrial commissioner.

## **Division 2            Departments of government**

This division sets up the necessary legislative framework to support machinery of government actions.

Clause 14 states that departments of government are the entities declared to be departments of government by the Governor in Council by gazette notice. This includes parts of departments declared as such by the Governor in Council by gazette notice.

Clause 15 provides that the Governor in Council may by gazette notice establish a department or another government entity; amalgamate government entities; add a government entity to a department or another government entity; divide a department or another government entity; name or rename a department or another government entity; or abolish a department. This provision enables machinery of government changes by which departmental structures are formalised.

Clause 16 states that the Governor in Council may by gazette notice make declarations in relation to the functions of a department or another government entity.

Clause 17 states that the Governor in Council may by gazette notice give a function to a department or another government entity; change or discontinue a function given to a department or another government entity; or transfer a function given to a department or another government entity to a different government entity.

Clauses 18, 19 and 20 are extracted from section 16 of the *Public Service Act 1996*.

Clause 18 makes provision for other powers of the Governor in Council to allow the making of a gazette notice under this division.

Clause 19 makes provision for public service employees in the case of amalgamation of government departments. Employees of a department amalgamated with another department become employees of the other department, unless the Governor in Council decides otherwise. However,



this clause does not limit clause 18, which provides for other powers of the Governor in Council in relation to this division.

Clause 20 excludes the application of this division to separate government entities. The clause makes it clear that a gazette notice under this division cannot have any effect on a government entity established or regulated by another Act as a separate entity.

### **Division 3            Public service offices**

Clause 21 is an amalgamation of section 17 and section 18 of the *Public Service Act 1996* and makes provision for public service offices and their heads.

This clause provides for two types of public service offices: a) a public service office by enactment (as listed in schedule 1 of the Bill); and b) a public service office declared by regulation. Public service offices declared by regulation replace ‘public sector units’ under the *Public Service Act 1996*.

The heads of public service offices are identified in schedule 1 of the Bill or by regulation.

Clause 22 states that subject to clause 23 and any regulation made under it, the Act and other Acts apply to a public service office and its public service employees as if the office were a department and the head of the office were the department’s chief executive. However, the clause does not affect particular provisions about accountable officers or the meaning of department under the *Financial Administration and Audit Act 1977*.

Also, the clause clarifies that the head of the public service office has all the functions and powers of the chief executive of a department in relation to the office’s public service employees.

Clause 23 sets out the application of the Act to public service offices declared by regulation. This clause limits the application of the Act to this type of public service office, which will replace the ‘public sector units’ declared under the *Public Service Regulation 2007*. References to ‘public sector units’ in other legislation will be subject to the *Acts Interpretation Act 1954*, which defines public sector units consistent with the definition previously provided under the *Public Service Act 1996*. Schedule 3, clause 2 of the Bill inserts a definition of ‘public sector unit’ in the *Acts*

*Interpretation Act 1954* as a department, part of a department, public service office or part of a public service office.

The making of a regulation under this clause may specify what provisions of the Act apply to the office and the way in which the provisions are to apply. However, an application provision cannot reduce an employee's overall employment conditions, unless the reduction arises from a change in a person's employment that is sought by the person.

## **Division 4            Government entities**

Clause 24 describes what is and what is not a government entity. A 'government entity' is the broadest term and encompasses departments and public service offices, as well as other entities established under legislation for a State purpose, entities declared under regulation to be a government entity and court registries. Exclusions include local governments, the Parliamentary Service, the Executive Council and the Legislative Assembly.

## **Part 3                    General public service principles**

Clause 25 sets out the management and employment principles. The principles are fundamental to the operation of the public service and provide the overall framework under which the public service operates. The management principles balance long-standing values for the public service (e.g. the need for impartiality and integrity) with contemporary priorities (e.g. promoting the Government as an employer of choice). The employment principles reflect the standards to which public service employment is to be held, reinforcing the need for fair treatment of employees, flexible working environments and a diverse and highly skilled workforce.

Clause 26 recognises that public service employment involves a public trust, and sets out work performance and personal conduct principles. These principles are a combination of ethical obligations (e.g. carrying out duties with impartiality and integrity) and work performance standards (e.g. collaborating with other departments with a focus on public

service-wide priorities). This clause is complementary to the operation of the *Public Sector Ethics Act 1994*, which sets out the ethics principles for public officials and under which agency codes of conduct are made.

## **Part 4                      The merit principle**

Clause 27 establishes that the selection of an eligible person for appointment or secondment as a public service employee must be based on merit alone. This clause establishes merit as the pre-eminent ground upon which appointment decisions must be made within the public service.

Clause 28 sets out the criteria which must be taken into account in deciding merit, including a person's abilities, aptitude, skills, qualifications, knowledge, experience and personal qualities and, where relevant, previous work experience and potential for professional development.

Clause 29 provides that the Commission chief executive may issue a directive which provides for the way in which the merit principle must be applied in selection processes for appointments or secondments. This directive will provide specific guidance to departments in the application of the merit principle in selection processes to ensure a continued high level of accountability in public service appointment processes.

## **Chapter 2              Equality of employment opportunity**

Chapter 2 is a new chapter dealing with equality of employment opportunity, which will replace the *Equal Opportunity in Public Employment Act 1992*. The incorporation of the equality of employment opportunity (EEO) principles within the Bill will ensure that core EEO principles are inherent and fundamental to the operation of the public service.

Clause 30 establishes the scope of application of the EEO obligation and provides definitions of key terms, including the definition of EEO target groups. All entities which are subject to the chapter are required to act to

enable fair access to public service employment opportunities by members of the EEO target groups and must act to eliminate unlawful discrimination. However, this clause does not require that action be taken which would be incompatible with the merit principle.

Clause 31 makes provision for an annual EEO reporting requirement. Each agency must provide a report to the Commission chief executive regarding the outcome of its actions under the EEO obligations within three months after the end of the financial year. The EEO reports are able to be provided with other reporting information provided to the Commission chief executive.

Clause 32 allows the Commission chief executive to grant an agency an exemption from the EEO reporting requirement and specifies that the exemption or cancellation must be in writing.

Clause 33 allows the Commission chief executive to make a recommendation to a relevant agency's chief executive to take action to address EEO concerns if the Commission chief executive is dissatisfied with a matter relating to an EEO report.

Clause 34 describes what a chief executive must do in relation to compliance with a recommendation under clause 33. The agency chief executive must ensure the action is taken or provide reasons to the departmental Minister and the Commission chief executive as to why the action cannot be taken.

## **Chapter 3 Administration**

### **Part 1 The Minister's role**

#### **Division 1 General provisions**

Clause 35 describes the scope of 'public service offices' for the purposes of this part. The part applies to public service offices, departments and the police service, but does not apply to the Integrity Commissioner, the Office

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of the Information Commissioner, or the Queensland Audit Office. Other independent entities excluded from the jurisdiction of the Service Delivery and Performance Commission (such as the Crime and Misconduct Commission and the office of the Ombudsman) are not subject to the part as they do not fall within the definition of public service office. A regulation under clause 21(1)(b) may declare other government entities as public services offices to which this part applies.

Clause 36 describes the Minister's functions in relation to the public service and public service offices. The Minister has an overall responsibility to promote the effective operation of the public service and monitor the effectiveness and efficiency of these operations. The Minister may authorise reviews to assess the effectiveness or efficiency of public service offices, or advise other Ministers about steps which should be taken in this regard.

## **Division 2      Obtaining reports**

### **Subdivision 1    Commission reports**

Clause 37 provides for the process whereby the Minister may authorise Commission reviews. These reviews could be for a single public service office or for a whole-of-Government review of particular aspects of the public service's operations. An obligation is imposed on the relevant chief executive to give the Commission the assistance it requires in conducting the review. The report of the review must be tabled in the Legislative Assembly, consistent with the current requirements for Service Delivery and Performance Commission reports.

Clause 38 describes the matters that may be included in a referral from the Minister for a Commission review. The Minister may undertake a number of actions in referring a matter for review, including providing terms of reference, setting consultation requirements or asking the Commission for advice about whether a review is warranted.

## **Subdivision 2 Other reports**

Clause 39 provides that the Minister may require the chief executive of a department to give the Minister a report about particular aspects of the department's application of the management and employment principles.

Clauses 40 and 41 derive from section 29 of the *Public Service Act 1996*. These clauses reflect pre-existing functions and powers under this Act.

Clause 40 provides for the Minister to authorise a person to conduct a management review of the functions or activities of a stated public service office. The report of the review may be provided to the relevant departmental Minister, chief executive or head and anyone else considered appropriate.

Clause 41 makes provision for the conduct of management reviews by the person authorised under clause 40. The person may enter official premises, require the production of official documents and interview relevant people. The chief executive or the head of the public service office and all other employees must give the authorised person the help needed to answer any question relevant to the review. However, a protection against self-incrimination is included in the clause by providing that employees are not required to answer questions in an interview where it might incriminate the person of a criminal offence or they would have a claim of privilege against self-incrimination if asked the question in a Supreme Court action. In accordance with fundamental legislative principles, this protects individuals' rights and liberties by preventing an abrogation of a privilege against self-incrimination.

## **Division 3 Miscellaneous provision**

Clause 42 makes provision for the Minister to direct action about surplus public service employees, where the Minister is satisfied a department employs more public service employees than it needs to for the effective, efficient and appropriate performance of its functions. Action taken must be in accordance with relevant rulings of the Commission chief executive.

## **Part 2                      The Public Service Commission and its role**

Part 2 sets out the legislative framework for the operations of the new Public Service Commission and its role in the public service.

Clause 43 formally establishes the Public Service Commission.

Clause 44 provides that the Commission represents the State and has the status, privileges and immunities of the State.

Clause 45 describes the Commission. The Commission consists of a chairperson and at least three other members appointed by the Governor in Council, as well as the Commission chief executive and the chief executives of the departments administering the *Parliament of Queensland Act 2001* (the Department of the Premier and Cabinet), the *Statutory Bodies Financial Arrangements Act 1982* (Queensland Treasury) and the *Industrial Relations Act 1999* (the Department of Employment and Industrial Relations).

Clause 46 sets out the main functions of the Commission in its overall role of enhancing the public service's human resource management and development functions; and delivering reviews in support of the Government's efficiency agenda.

## **Part 3                      Rulings by the Commission chief executive and Industrial Relations Minister**

### **Division 1                General provisions about rulings**

Clause 47 sets out the authorisation of the Commission chief executive or the Industrial Relations Minister to make rulings which apply to public service employees or other employees of public service offices. Rulings may be either a directive, which is binding, or a guideline, which is for guidance only.

Clause 48 makes provision for the making of and access to rulings. The clause states that a directive may only be made by gazette notice; a guideline may be made in the way the Commission chief executive or the Industrial Relations Minister considers appropriate. The clause also requires that a ruling be published on the Commission or departmental website as soon as practicable after it is made.

Consistent with existing arrangements under the *Public Service Act 1996*, the Bill does not make directives subordinate legislation. Directives relate to the operational administration of the public service, and require regular amendment. The clause provides for a balance between administrative flexibility and ensuring sufficient transparency and accountability by requiring that a directive may only be made by gazette notice, and that a ruling must be published on the relevant agency website, which is a new requirement.

Clause 49 provides that a reference to a ruling may be a ruling made by either the Commission chief executive or the Industrial Relations Minister under the Act.

Clause 50 provides criteria for the making of a ruling. This is a new requirement which reinforces the importance of consultation between the Commission chief executive and the Industrial Relations Minister in making rulings by providing that they must consider any advice given to each other about improving the effectiveness and efficiency of the public service.

Clause 51 states that, in the event that a ruling is inconsistent with an Act or subordinate legislation, the Act or subordinate legislation prevails to the extent of the inconsistency.

Clause 52 sets out the relationship between directives and industrial instruments.

## **Division 2            General ruling-making powers**

Clause 53 sets out general ruling-making powers of the Commission chief executive. The clause provides that the Commission chief executive may make rulings about any of the Commission's functions (such as recruitment and selection and performance management standards for the public service) or overall employment conditions for chief executives, senior



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executives or officers on contract at remuneration equivalent to or higher than a senior executive.

Ruling-making powers of the Commission chief executive include clauses 29 (Directives about the merit principle), 101 (Declaration of interests), 121 (Basis of employment—tenure or contract), 128 (Notification of proposed appointments), 136 (Voluntary retirement), 138 (Action because of surplus), 149 (Review of status of temporary employees), 187 (Grounds for discipline) and 195 (Decisions against which appeals can not be made).

Clause 54 sets out general ruling-making powers of the Industrial Relations Minister, and reflects the division of responsibilities in ruling-making powers with the Commission chief executive. The clause allows the Minister to make rulings in relation to non-executive employees, who are officers remunerated at an equivalent of up to the level of a senior officer.

Clause 55 states that a directive may apply a provision of the Act to a general or temporary employee and enables the provision to apply to the employee as if the person were an officer.

## **Part 4                      Particular provisions about the commission and commission reviews**

### **Division 1                Commissioners**

#### **Subdivision 1        Commission chief executive**

Subdivision 1 makes provision for the Commission chief executive as the key officer responsible for carrying out the Commission's functions, and requires that the Commission chief executive perform their functions independently, impartially, fairly and in the public interest.

Clause 56 allows for the appointment of eligible persons as the Commission chief executive by the Governor in Council. The clause also provides that the Governor in Council decides the term of the appointment, however the term cannot be more than five years and the appointment must

be on a full-time basis. Persons are disqualified from appointment if they hold certain offices, have been convicted of an indictable offence or have been an insolvent under administration or disqualified from managing corporations under the *Corporations Act 2001* (Cth).

Clause 57 describes the basis of the Commission chief executive's employment and requires that the person who is appointed as Commission chief executive must enter into a written contract of employment with the Minister.

Clause 58 describes the main statutory and other functions of the Commission chief executive, and makes clear that the Commission chief executive is responsible for the performance of the Commission's functions.

Clause 59 establishes that the Commission chief executive must perform their functions independently, impartially, fairly and in the public interest.

Clause 60 provides for a person to be appointed to act as Commission chief executive during vacancies in the office. The appointee is not required to be an existing public service officer.

Clause 61 preserves the Commission chief executive's accrued public service rights if they are an existing public service officer.

Clause 62 provides for and limits delegation powers of the Commission chief executive. The Commission chief executive may delegate functions to an appropriately qualified staff member of the Commission. The Commission chief executive may delegate the function of hearing and deciding appeals to any appropriately qualified person. However, the clause provides that the powers to make rulings, approve reports or appoint or second senior executives cannot be delegated.

Clause 63 provides for the terms of resignation of the Commission chief executive by signed notice to the Minister with at least one month's notice.

## **Subdivision 2 Appointed commissioners**

Clause 64 makes provision for commissioners to be appointed by the Governor in Council for terms of not longer than five years. Persons are disqualified from appointment if they hold certain offices, have been convicted of an indictable offence or have been an insolvent under

administration or disqualified from managing corporations under the *Corporations Act 2001* (Cth).

Clause 65 sets out the procedure for disclosure of direct or indirect interests by appointed commissioners at Commission meetings.

Clause 66 provides for the resignation of an appointed commissioner by signed notice to the Minister.

### **Subdivision 3    Miscellaneous provisions**

Clause 67 allows for criminal history checks to be undertaken to confirm the suitability of a person for appointment as the Commission chief executive or an appointed commissioner. The Minister may ask the Police Commissioner for a report about the person's criminal history, but only if the person has provided written consent. If a criminal history includes a recorded conviction, the Police Commissioner's report must be in writing and the Minister must destroy the report as soon as practicable after the decision has been made. The dictionary refers to section 3 of the *Criminal Law (Rehabilitation of Offenders) Act 1986* for the meaning of criminal history in this clause.

Clause 68 allows for the appointment of an appointed commissioner as deputy chairperson in the absence of the chairperson.

## **Division 2            Meetings and other business**

Clause 69 allows the Commission to conduct its business, including meetings, in the way it considers appropriate, subject to this part.

Clause 70 sets out arrangements for the calling of meetings.

Clause 71 establishes that the quorum for a Commission meeting is any four commissioners.

Clause 72 makes provision for the appointment of deputies to commissioners who are chief executives of a department. The clause states that a commissioner may appoint an appropriately qualified public service officer to attend Commission meetings and exercise the commissioner's powers under the Act.

Clause 73 sets out who presides at Commission meetings, including in the absence of the chairperson and deputy chairperson.

Clause 74 provides for the use of technology allowing contemporaneous and continuous communication, such as video-conferencing equipment, at Commission meetings.

Clause 75 makes provision for a Commission decision to be made outside meetings if it is made with the written agreement of at least four commissioners, and if notice of the proposed decision is given under procedures approved by the Commission.

Clause 76 requires that the Commission keep minutes of its meetings and records of decisions.

## **Division 3            Staff and agents**

Clause 77 provides for the employment of staff by the Commission chief executive. The Commission chief executive may employ officers or arrange with the chief executive of a department or head of a public service office for employees to be made available to the Commission. Commission staff members are to be employed under the Act.

Clause 78 sets out that staff members of the Commission are subject to the direction of the Commission chief executive.

Clause 79 makes provision for the engagement of agents by the Commission to meet temporary circumstances.

## **Division 4            Commission reviews and reports**

### **Subdivision 1    Conduct and scope**

Clause 80 states that the Commission chief executive must keep the Minister informed of the general conduct of each Commission review.

Clause 81 provides that if the Minister asks the Commission for particular information concerning a Commission review, the Commission must

comply with the request and give the help the Minister needs to consider the information; the information provided is confidential.

Clause 82 makes provision for disclosures of documents or information to the Commission or a Commission official for the purpose of a Commission review.

## **Subdivision 2 Reports**

Clause 83 sets out procedures whereby a public service office which is the subject of a Commission review is to be provided with a draft report. This clause allows the public service office the opportunity to respond to any issues raised in the course of the review and for the office's response to be included within the final report.

Clause 84 describes the content requirements for a final report of a Commission review, including consideration of relevant viewpoints and options; the Commission's recommendations; details of consultation and any statement the Commission is asked to include.

Clause 85 provides a procedure for the reporting of sensitive information. The clause states that sensitive information is information that would be contrary to the public interest to disclose, for example, the disclosure would reveal trade secrets; information for which in a judicial proceeding, the State would have a basis for claiming that the disclosure should not be permitted, for example, on the basis of legal professional privilege. Such sensitive information need not be included in Commission reports. If the report is a final report, the Commission may include the information in a separate document given to the Minister.

## **Division 5 Miscellaneous provisions**

Clause 86 describes how the Commission's functions may be performed. The clause applies to the Commission's conduct of reviews and is subject to the terms of the Minister's referral.

Clause 87 provides for confidentiality relating to Commission reviews to the Minister, and establishes an offence of 200 penalty units or one year's imprisonment in relation to the misuse of protected information. The

clause applies to a person who, in their capacity as a Commission official, has acquired or accessed protected information.

Clause 88 protects Commission officials from civil liability for an act or omission made honestly and without negligence under the Act, and attaches liability thereby prevented to the State.

## **Chapter 4      Chief executives, senior executives and senior officers**

### **Part 1            Chief executives**

#### **Division 1        The Chief Executive Service**

This division provides for a Chief Executive Service that is separate from the Senior Executive Service.

Clause 89 establishes a Chief Executive Service, and provides that the service consists of chief executives appointed under division 2.

Clause 90 sets out the purpose of the Chief Executive Service and how it is to be achieved. As leaders within the public service, chief executives are expected to provide a high level, strategic leadership role, focusing on the overall effectiveness and efficiency of the public service in accordance with the Government's priorities.

Clause 91 enables the Minister to make Chief Executive Service standards which provide for competencies expected of and ethical standards for chief executives, complementary to existing obligations under the *Public Sector Ethics Act 1994*. These standards would acknowledge the unique roles and responsibilities of chief executives as accountable officers within the public service.

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## **Division 2            Appointments**

This division allows for the appointment of chief executives, and for the Minister to assign a chief executive to a particular department.

Clause 92 enables the Governor in Council to appoint chief executives.

Clause 93 provides for the appointment of a chief executive to a particular department by signed public notice by the Minister.

Clause 94 allows the appointment by the departmental Minister of a person to act as chief executive in the absence of the chief executive. It does not matter whether the person appointed is or is not already a public service officer.

Clause 95 provides for the appointment of a statutory officer, such as the Police Commissioner, as the chief executive of a department.

Clause 96 describes the basis of a chief executive's employment and requires that each person appointed as chief executive must enter into a written contract of employment with the Minister.

Clause 97 sets out the term of a chief executive's appointment, and resignation and termination procedures in relation to chief executives. The clause states that the term of a chief executive's appointment cannot be more than five years and a chief executive may resign by signed notice at least one month before the notice is to take effect. A chief executive's appointment and contract of employment may be terminated by the Governor in Council.

## **Division 3            Functions**

Clause 98 describes the responsibilities of chief executives in managing their departments within the context of overall Government priorities. A key change from the *Public Service Act 1996* is the inclusion of compliance with EEO obligations in the responsibilities of a chief executive of a department. This links with the inclusion of the EEO provisions within the Bill to reinforce the pivotal status of EEO within the public service.

Clause 99 sets out how chief executives must discharge their responsibilities, including observing the management and employment

principles; complying with relevant laws, industrial instruments and directives; and having regard to all relevant guidelines.

Clause 100 delineates the extent of a chief executive's autonomy. The clause provides that the chief executive of a department is subject to the directions of the departmental Minister in managing the department. However, in making decisions about particular individuals, the chief executive must act independently, impartially and fairly and is not subject to the directions of any Minister.

## **Division 4            Miscellaneous provisions**

Clause 101 provides for the declaration of interests by a chief executive and sets out the process whereby a chief executive provides a statement about their interests.

Clause 102 describes the procedure for dealing with any conflicts of interest chief executives may encounter in discharging their duties. This maintains an appropriate process whereby chief executives must disclose any conflicts of interest to the departmental Minister and not take further action regarding the matter unless otherwise authorised.

Clause 103 provides for delegation of the chief executive's functions or powers under this or another Act to an appropriately qualified person. This clause maintains the delegation power under the *Public Service Act 1996* but further provides that any delegation made under another Act is subject to that Act.

Clause 104 clarifies that for a chief executive, references in the Act to the person's chief executive refer to the Minister.

## **Part 2                Senior executives**

### **Division 1            The Senior Executive Service**

Clause 105 continues the Senior Executive Service as part of the public service.



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Clause 106 sets out the purposes of the Senior Executive Service and how they are to be achieved. These purposes reflect the leadership role of senior executives within government and reflect their responsibilities of ensuring a public service-wide perspective and developing their skills both within and outside government. The Senior Executive Service will consist of a core of mobile, highly skilled senior executives.

Clause 107 describes the role of the Commission chief executive in facilitating the purposes of the Senior Executive Service. The Commission will have a strengthened role in relation to management of senior executives, which will include implementing executive development programs for senior executives.

Clause 108 states that the Senior Executive Service consists of persons employed under the Act as senior executives.

Clause 109 provides that the Governor in Council may fix the number and classification levels of the Senior Executive Service in a department by gazette notice. This mechanism ensures overall control and accountability over the numbers and levels of senior executives across government. The Commission chief executive must be consulted prior to a gazette notice being made.

## **Division 2            Appointment matters**

Clause 110 makes provision for the appointment of senior executives. This clause represents a change from the previous method of appointment of senior executives by the Governor in Council and will streamline appointment processes in government. Appointments will be by signed notice which is required to be publicly notified.

Clause 111 provides for senior executive secondments. The Commission chief executive may by signed notice make or cancel secondments. The clause allows the flexibility for a secondment to include a lower classification level, but only with the senior executive's consent. Before acting, the Commission chief executive must take reasonable steps to consult with relevant chief executives regarding the secondment.

Clause 112 allows a department's chief executive to appoint a person from within or outside the public service to act as a senior executive. This clause addresses a shortcoming of the *Public Service Act 1996* where this power was not explicitly provided.

Clause 113 describes the basis of a senior executive's employment and the requirement to enter into a contract with their chief executive. The Commission chief executive may issue a directive regarding senior executive contracts, which must be complied with by the chief executive, to provide government-wide consistency on the terms and conditions of these contracts.

Clause 114 sets out a maximum five year term of appointment for senior executives, and resignation and termination procedures. In accordance with the *Acts Interpretation Act 1954*, appointments include reappointments, and senior executives are eligible for reappointment.

### **Division 3            Transfers and redeployment**

Clause 115 provides for the transfer or redeployment of senior executives either within or between departments. The Commission chief executive may make the transfer only following consultation with the affected chief executive, and if a redeployment is made to a lower level, it may only be made with the senior executive's consent.

### **Part 3                    Purpose of position of senior officers**

Clause 116 provides the purpose of senior officer positions. This distinguishes senior officers as a distinct group within the public service, as the primary feeder group to the Senior Executive Service. Accordingly, the purpose of senior officers reflects a requirement for professional development and a whole-of-government approach. While senior officers are considered to be officers potentially able to be appointed to the Senior Executive Service, the objects of the Act also make it clear that recruitment is to be directed towards a diverse and highly skilled workforce drawing from government and non-government sectors.

Clause 117 describes the role of the Commission chief executive in relation to senior officer positions and reflects a strengthened role for the Commission in facilitating the professional development of senior officers as potential future senior executives.

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## **Chapter 5      Staffing generally**

### **Part 1              Preliminary**

Clause 118 excludes the application of the chapter to chief executives or senior executives, with the exception of division 2 and clause 127 (Requirement about citizenship etc.), but clarifies that the chapter applies to other public service officers including senior officers.

### **Part 2              Appointment matters**

#### **Division 1          General provisions**

Clause 119 provides for the appointment of public service officers by chief executives of departments. Appoint does not include transfer in this clause. Public notice of an appointment must be publicly notified if the position had been advertised, or if notice of the appointment is required under an Act to be publicly notified.

Clause 120 provides for officer secondments. Secondment is defined in the dictionary to include temporary employment on different duties at level, at a higher level or at a lower level than the officer's current classification level. The clause provides a protection to ensure that an employee cannot be seconded to a lower classification level without their consent, for example, at the officer's request for personal reasons.

The clause further provides for secondments between departments by agreement between relevant chief executives and for the circumstances in which the secondment must be publicly notified.

Clause 121 describes the basis of an officer's employment whether on tenure or contract. Appointments as officers are generally on tenure unless the department's chief executive has declared it to be available on contract for a fixed term. This clause removes a previous requirement to seek approval for fixed term contracts by directive of the Public Service

Commissioner, and provide greater administrative flexibility for chief executives in management of their departments. However, chief executives will be subject to directives providing for the circumstances in which officers may be appointed on contract for a fixed term to provide guidance and consistency in application across the public service.

Clause 122 sets out the basis of employment for officers on contract. Equivalent contracts under the *Public Service Act 1996* were commonly known as 'section 70' contracts.

The clause states that the person must enter into a written contract of employment with the department's chief executive. The clause protects individual rights by providing that a person is not required to enter into a contract if they hold appointment on tenure immediately before it is to be on contract. The clause also affirms that the person's overall employment conditions under the contract must not, on balance, be less than those that the person would be entitled to if they were appointed on tenure and that the Queensland Industrial Relations Commission may hear and decide matters in relation to contract disputes.

Clause 123 provides for reversionary rights if an officer originally employed on tenure is subsequently employed as an officer on contract, and the contract is terminated other than by disciplinary action. This clause preserves rights of individuals by protecting security of tenure and providing for a person to continue to be employed under the same conditions.

Clause 124 provides that if an officer employed on contract accepts employment on tenure, the contract is taken to be terminated by agreement of the parties. The clause clarifies that the person is not entitled to payment under the contract because of the termination.

Clause 125 states that a department's chief executive may decide whether an appointment is on a part-time or full-time basis. The redrafting of this clause from a presumption that all appointments are full-time unless decided otherwise reflects a move towards increased flexibility in working arrangements within the public service.

Clause 126 makes provision for the probationary appointment of officers. The clause has been amended to provide for a probationary period of three months rather than six months and for a longer probationary period to be agreed in writing for consistency with the *Industrial Relations Act 1999*. During the probationary period, a chief executive may confirm the appointment, extend the probationary period or terminate the person's

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employment. The clause retains the maximum probationary period of 13 months and provides that if a person's employment is not confirmed or terminated within 13 months, the appointment is taken to have been confirmed.

Clause 127 sets out citizenship, permanent residency or visa requirements for appointment of officers to the public service. An officer who is ineligible to be a public service officer under this clause may have their employment as an officer terminated.

Clause 128 describes the process for notification of proposed appointments in accordance with requirements of a directive.

## **Division 2            Reappointment of particular election candidates**

This division is a re-enactment of provisions from the *Crown Employees Act 1958* and consolidates these provisions into the principal legislation governing the public service.

Clause 129 provides definitions for this part.

Clause 130 allows a person who resigned from a permanent office with the State and unsuccessfully ran as a candidate for election for State or Commonwealth Parliament or the Senate to ask to be reappointed to their former office. The clause states that the request cannot be more than three months after the return of the writ for the election, and that the request can only be made by notice to the person who has the power to appoint to the former office.

Clause 131 makes provision for dealing with such requests and the process for reappointment. The merit provisions are not required to be applied, in view of the fact that the person would have held a previous appointment in the public service, to which the merit principle would have applied. However, this does not preclude the merit provisions from being taken into account in the decision on whether a reappointment should be made.

Provision is not made for appeal or review on the merits of a decision not to reinstate the person. This maintains the current situation and acknowledges that the person voluntarily resigned from their public service employment to seek election to public office. The entitlement to request

reappointment is in addition to a person's normal employment entitlements.

Clause 132 ensures that a person appointed under section 131 retains continuity of employment. The clause states that the continuity of the person's service with the State is not broken by their resignation to seek election to public office, however the period of their absence cannot be taken into account for working out their total period of service.

## **Part 3                      Transfers and redeployment**

Clause 133 makes provision for the transfer or redeployment of officers. The clause provides increased flexibility for chief executives to redeploy officers with their consent (including at the person's request) to a position at a lower classification level. The clause makes provision for the consultation processes required between chief executives for inter-departmental transfers or redeployments.

Clause 134 describes the consequences if a transfer is refused and provides for officers to establish grounds on which transfers may be refused. If the officer establishes reasonable grounds to the chief executive's satisfaction, the transfer is cancelled and the refusal must not be used to prejudice the officer's prospects for future promotion or advancement. However, if the officer refuses the transfer after failing to establish reasonable grounds, the chief executive may terminate the officer's employment.

## **Part 4                      Termination, suspension and related matters**

### **Division 1                General provisions**

Clause 135 makes provision for a standard two week resignation period for officers. The clause also states that an officer may resign within a shorter period if approved by their chief executive.

Clause 136 provides for voluntary retirement and states that an officer or general employee may elect to retire from the public service if they have turned 55 years or if they are permitted to retire under a directive.

Clause 137 deals with suspension in circumstances other than disciplinary action. This clause provides flexibility for a chief executive to suspend an officer from duty for non-disciplinary reasons, for example, where an employee discloses a conflict of interest in relation to their employment activities and cannot be allocated elsewhere within the department without prejudicing the proper and efficient management of the department. The period of the suspension cannot be more than a reasonable period in order to avoid the prejudice, the suspended officer is entitled to normal remuneration for the period of the suspension, and the continuity of the officer's service as a public service officer is not affected. Further, the suspension can only occur after the chief executive has considered all appropriate alternate duties that may be available for the officer to perform.

The clause does not require adherence to natural justice as the employee retains the benefit of normal remuneration and continuity of employment. The clause is not intended to limit or affect clause 189, which deals with suspensions on disciplinary grounds.

Clause 138 makes provision for a chief executive to take action in relation to surplus employees. This action may be taken where the chief executive believes that the department employs a surplus of employees for its requirements or where the duties performed by a particular employee are no longer required.

## **Division 2            Removal of statutory office holders    who are term appointees**

### **Subdivision 1    Preliminary**

Clause 139 defines a statutory office as an office established under an Act and to which a person is appointed by a Minister or the Governor in Council.

Clause 140 defines term appointees and lists exclusions from the definition, such as judicial officers and other officers listed in schedule 2 of the Bill (e.g. independent office holders such as the Chairperson of the Crime and

Misconduct Commission, the Director of Public Prosecutions and the Electoral Commissioner).

## **Subdivision 2 Removal of term appointees**

Clause 141 makes provision for the removal of term appointees. This reflects pre-existing provisions within the *Public Service Act 1996* and mirrors similar powers for the removal of statutory office holders in other relevant Acts.

Clause 142 provides that the subdivision does not affect removal powers which may be exercised under another Act.

## **Subdivision 3 Re-employment and entitlements**

Clause 143 protects the re-employment and other entitlements of a person removed from a statutory office where they were previously appointed as a public service officer continuously for at least five years.

Clause 144 entitles the person to be re-employed at the same classification level and remuneration to which they would have been entitled had they continued in public service employment.

Clause 145 provides the Commission chief executive with the function of identifying alternative public service employment for these officers and the power to direct a chief executive to employ the person.

Clause 146 clarifies that the person is not entitled to receive any additional compensation as a result of their removal from the statutory office.

## **Part 5 General and temporary employees**

Clause 147 sets out the basis of employment of general employees, who perform duties and functions that are different from the work of the public service mainstream. These employees may be engaged by chief executives



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to perform work of a type not ordinarily performed by an officer, on either a tenured, temporary (full-time or part-time) or casual basis.

Clause 148 sets out the basis of employment of temporary employees. To meet temporary circumstances, a chief executive may employ a person to perform work of a type ordinarily performed by an officer other than a senior executive, on a temporary (full-time or part-time) or casual basis. The clause affirms that a person employed as a temporary employee does not, by the employment, become an officer.

Clauses 147 and 148 also make provision for directives to be made about the employment of general and temporary employees.

Clause 149 introduces a new requirement for chief executives to review temporary employees' status at the end of a continuous three year employment period. This clause provides an additional avenue through which temporary employees can advance their claims for conversion to tenured status.

The clause states that at the end of each three year period during which a temporary employee has been continuously employed in a department, the chief executive of the department must, within the period provided for in a Commission chief executive directive, decide whether the person's employment with the department is to a) continue as a temporary employee, or b) be as a general employee on tenure or as a public service officer. This requirement is subject to a transitional period under clause 233 which provides for a 12 month implementation timeframe for chief executives. The criteria and future timeframes for making such decisions will be provided under a directive of the Commission chief executive.

## **Part 6                      Assessing suitability of persons to be engaged in particular employment**

### **Division 1                Preliminary**

Clause 150 includes definitions relevant for this part.

## **Division 2            Relevant duties**

Clause 151 clarifies that this division applies if, under a part 6 directive, a chief executive decides that, because of the nature of particular duties to be performed in the department, it may be necessary to have regard to the criminal history of anyone engaged to perform those duties ('relevant duties'). This division does not apply if the chief executive decides that the particular duties are likely to involve child-related duties. Division 2 is subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986* and does not limit any other law under which the criminal history of a person may be obtained.

Clause 152 provides authority to a chief executive to ask a person, in accordance with a part 6 directive, for written consent to obtain the person's criminal history. This clause applies to a person even if the person is a public service employee at the time that the chief executive proposes to engage the person to perform relevant duties.

Clause 153 provides that this clause applies if a person does not consent, or withdraws their consent, to the obtaining of criminal history. If the person is a public service employee, the chief executive must ensure the person does not perform the relevant duties. If the person is not a public service employee, the chief executive is not required to consider the person for engagement to perform the relevant duties.

Clause 154 requires the Police Commissioner to provide a criminal history report to a chief executive at the chief executive's request, if a person has given written consent. The request may include the person's name, and any other name that the chief executive believes the person may use or may have used; the person's gender and date and place of birth and the person's address. The Police Commissioner must provide the requested report, subject to the provisions of clauses 166 and 167.

Clause 155 applies after the person's criminal history report is given to the chief executive. This clause provides that the chief executive must have regard to the person's criminal history in making an assessment about the person's suitability for engagement to perform the relevant duties, in accordance with a part 6 directive.

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## **Division 3            Child-related duties**

Clause 156 provides that division 3 applies if, under a part 6 directive, the chief executive of a department decides that duties to be performed in the department are likely to involve providing dedicated services or activities if:

- a child is the primary or significant client or children are the primary or significant client group; or
- the nature of contact with a child or children, and the context in which that contact happens, creates an unacceptable level of risk for the child or children.

Duties to which the division applies are ‘child-related duties’. This clause also clarifies that this division applies despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986* and does not limit any other law under which the police information of a person may be obtained.

Clause 157 gives authority to a chief executive, under a part 6 directive, to ask a person for written consent for the chief executive to obtain the person’s police information. This clause applies to a person even if the person is a public service employee at the time that the chief executive proposes to engage the person to perform the relevant duties. The chief executive must ask each person employed in child-related duties for written consent to obtain the person’s police information at least every two years, in accordance with a part 6 directive. A chief executive need not request consent if satisfied that the person is prescribed under a regulation as an exempt person (e.g. registered teachers and holders of current positive notices, or ‘blue cards’, issued by the Commissioner for Children and Young People and Child Guardian).

Clause 158 applies if a person does not consent, or withdraws their consent, to the obtaining of police information. If the person is a public service employee, the chief executive must ensure the person does not perform child-related duties. If the person is not a public service employee, the chief executive is not required to consider the person for engagement to perform the child-related duties.

Clause 159 provides that if the person gives written consent to obtain police information about the person, the chief executive may ask the Police Commissioner for a written report. The chief executive’s request may include the person’s name, and any other name that the chief executive

believes the person may use or may have used; the person's gender and date and place of birth; and the person's address.

Clause 160 provides that this clause applies if a chief executive asks for a written report about a person's police information. The Police Commissioner must give the requested report and any request for a brief description of the circumstances of a conviction, charge or investigative information under subsection (5), to the chief executive, subject to the provisions of clauses 166 and 167.

The Police Commissioner must provide certain information about a person who is or has been a relevant disqualified person; and about a person who is or has been the subject of an application for a disqualification order or named as the respondent to an application for an offender prohibition order and the order was not made. If the police information report includes information about a conviction, charge or investigative information, the chief executive may ask the Police Commissioner for a brief description of the circumstances of the charge, conviction or investigative information.

Clause 160 (6) provides for circumstances where the Police Commissioner need not disclose investigative information about a person. This includes where the Police Commissioner is reasonably satisfied that the disclosure may prejudice another investigation. If the Police Commissioner does provide the chief executive with investigative information, the Police Commissioner must give notice, in the approved form, to the person that the Police Commissioner has decided that information about the person is investigative information and that the investigative information has been given to the chief executive.

Clause 161 applies if the Police Commissioner decides that information about a person is investigative information. The person may appeal to a Magistrates Court about the decision within 14 days of the notice given under clause 160(7). The chief executive and Police Commissioner must be given a copy of the notice of appeal and, in hearing the appeal, the Magistrates Court is to decide afresh whether information given to the chief executive as investigative information about a person is investigative information.

A person who is the relevant complainant under the *Commission for Children and Young People and Child Guardian Act 2000*, section 121A, must not be asked or called on by the person to give evidence in person before the court. However, this does not prevent documentary evidence being tendered and received in evidence by the court. After hearing the

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appeal, the court may confirm or set aside the decision and the clerk of the court is to give the appellant notice of the decision. The court must have regard to the matters the Police Commissioner was required to have regard to under the *Commission for Children and Young People and Child Guardian Act 2000*, when the Police Commissioner made the decision.

If, on appeal, the court sets aside the Police Commissioner's decision that information given to the chief executive about a person is investigative information, the chief executive must re-assess the person's suitability to be engaged or continue to be engaged to perform child-related duties.

Clause 162 provides that after receiving a police report about the person, the chief executive must, under a part 6 directive, consider the police information in making an assessment about the person's suitability for engagement, or continued engagement, to perform duties that are likely to involve child-related duties.

Clause 163 applies in relation to a decision of a chief executive about whether a person is suitable for engagement, or continued engagement, to perform child-related duties in the department.

Clause 163 (2), (3) and (4) provide that a chief executive must decide the person is suitable in certain circumstances listed in subsection (2), except if the chief executive is satisfied that it is an exceptional case in which it would not be in the best interests of children to make that decision. The exceptional case consideration does not apply if there is no police information about the person. If the chief executive is satisfied that it is an exceptional case, the chief executive must not decide the person is suitable for engagement or continued engagement to perform child-related duties.

Clause 163 (5), (6) and (7) provide that a chief executive must decide the person is not suitable in certain circumstances, listed in subsection (5), except if the chief executive is satisfied that it is an exceptional case in which it would not harm the best interests of children for the chief executive to make that decision. The exceptional case consideration does not apply if the person is a relevant disqualified person. If the chief executive is satisfied that it is an exceptional case, the chief executive must decide the person is suitable for engagement or continued engagement to perform child-related duties.

Decisions made under this clause by the chief executive must be made under a part 6 directive.

Clause 164 applies if the chief executive is deciding whether or not there is an exceptional case as mentioned in clause 163(3) or (6).

This clause provides a number of considerations that the chief executive must have regard to in deciding whether or not an exceptional case exists. It also provides for considerations that the chief executive must have regard to, if the chief executive is aware of investigative information about the person.

Clause 165 provides that a chief executive may enter into an arrangement with another chief executive or with an entity prescribed under regulation in relation to a matter under this division. The chief executive may delegate his or her powers under this division to a person under the arrangement.

## **Division 4                      Provisions relating to reports under divisions 2 and 3**

Clause 166 provides that the duty that is imposed upon the Police Commissioner to comply with a request to give the chief executive a written report about a person's criminal history or police information or to otherwise give information under clause 169, applies only to information in the Police Commissioner's possession or to which the Police Commissioner has access.

Clause 167 provides that if a criminal history or police information request is no longer required, the chief executive must tell the Police Commissioner the requested report is no longer required, by written notice. If the Police Commissioner is notified before giving the requested report, the Police Commissioner must not give the report to the chief executive.

Clause 168 provides that information about a person given to the Police Commissioner by a chief executive under clauses 154 or 160, must not be accessed, disclosed or used for any purpose, except for a purpose under this part or any other purpose relevant to law enforcement. This does not apply to information the Police Commissioner obtained before the chief executive gave the information to the Police Commissioner.

Clause 169 provides that after a chief executive has made an assessment about a person under division 2 or 3 and the person's criminal history report or police information report is no longer required to be kept under a

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part 6 directive, the chief executive must destroy the report and any other document in accordance with a part 6 directive.

## **Division 5            Other matters including notifications, offences and rulings**

Clause 170 requires a prosecuting authority (the Police Commissioner or the Director of Public Prosecutions) to notify a chief executive of particular information in certain circumstances, where the authority is aware that a person is a public service employee. This clause sets out the particulars that must be provided if the person:

- is committed for trial or convicted of an indictable offence or a disqualifying offence that is not an indictable offence, including where the prosecution ends without the person being convicted (this includes a *nolle prosequi*, mistrial);
- has a disqualification order or offender prohibition order made against the person; or
- has appealed against the conviction or making of the order and the appeal is finally decided or has otherwise ended.

If the Police Commissioner gives the chief executive investigative information about the person, the Police Commissioner must give notice, in the approved form, to the person that the Police Commissioner has decided that information about the person is investigative information and that the investigative information has been given to the chief executive.

Clause 171 provides that it is an offence punishable by a maximum penalty of 100 penalty units if a person knowingly gives a chief executive consent as mentioned in clauses 152 or 157, or another document for this part, containing information that is false or misleading in a material particular. For a complaint under this clause, it is enough for the charge to state that the information was, without specifying which, false or misleading. If a person is a public service employee, they may also be subject to disciplinary action under chapter 6.

Clause 172 makes it an offence punishable by a maximum penalty of 100 penalty units if a person who is or has been a public service employee in a department or a selection panel member and who, in that capacity, acquired information or gained access to a document under part 6 about a person's

criminal history or police information, disclosed the information or gave access to the document to anyone else. The penalty does not apply if the information was disclosed or access was given to a document to a public service employee in the department or a selection panel member for the purpose of assessing the person's suitability to be engaged to perform the relevant duties or child-related duties, in relation to which the criminal history or police information was obtained. The penalty also does not apply if the information or document was released with the person's consent, or disclosure or giving of access if otherwise required under an Act.

Clause 173 gives the Commission chief executive power to make rulings for part 6. A directive must make provision for the circumstances in which a chief executive may decide that it is necessary to obtain the criminal history of a person under clause 152 and must provide that a person must be given a reasonable opportunity to make written representations about the person's criminal history report, police information report or a decision of a chief executive that there is an exceptional case in clause 163(3) before an adverse decision about the person is made. For the purposes of this clause 'adverse decision' about a person means a decision about the person's suitability for engagement, or continued engagement, to perform the relevant duties or child-related duties in relation to which the person's criminal history or police information was obtained, other than a decision that the person is suitable to perform the relevant duties or child-related duties.

A directive made for this part must also make provision for a decision-making framework, including review and suspension processes, which is consistent with the relevant provisions of the *Commission for Children and Young People and Child Guardian Act 2000*. This provision has been included to ensure that the system for screening of employees for child-related employment is consistent with the system currently in use for employees in the private sector, which is regulated by the *Commission for Children and Young People and Child Guardian Act 2000*.

## **Part 7                      Mental or physical incapacity**

Clause 174 sets out when this part is to apply to public service employees. The clause states that the part applies to a public service employee if the



employee is absent from duty or the employee's chief executive is reasonably satisfied the employee is not performing his or her duties satisfactorily; and the chief executive reasonably suspects that the employee's absence or unsatisfactory performance is caused by mental or physical illness or disability.

Clause 175 allows the chief executive to require a medical examination of the employee and to appoint a doctor to provide a written medical report.

Clause 176 provides that an employee cannot be given sick leave for any period during which they fail to comply with the requirement in clause 175.

Clause 177 provides further details regarding the content of the medical examination report as previously prescribed under the *Public Service Regulation 2007*. The clause states that the report on the medical examination must include the examining doctor's opinion as to whether the employee has a mental or physical illness or disability, the likely direct or indirect effects and an estimate of how long the condition is expected to last.

The clause further describes the process to determine whether the report should be given to the employee. The clause provides that if the doctor's opinion is that the disclosure will not be prejudicial to the employee's mental or physical health or wellbeing, the chief executive must give the employee a copy of the report as soon as practicable after receiving it.

However, if the doctor's opinion is that the disclosure might be prejudicial to the employee's mental or physical health or wellbeing, the chief executive must not disclose the contents of the report to the employee but must, if requested in writing, disclose the report to another doctor nominated by the employee.

Clause 178 outlines the action to be taken by the chief executive following the report of the medical examination, which may include transfer, redeployment or retirement from the public service if it is not practicable to transfer or redeploy the employee.

Clause 179 requires the chief executive to keep a record of the requirement to submit to a medical examination and the report, which may be kept separate from other records about the employee if they consider it necessary to protect the employee's interests. This and other clauses have been relocated from the *Public Service Regulation 2007* to provide a more complete overview within the Bill of the process for undertaking medical examinations.

## **Part 8**                      **Miscellaneous provisions**

Clause 180 requires a public service employee to give evidence of age to their chief executive within one month after starting in the public service. This clause has been relocated from the *Public Service Regulation 2007*.

Clause 181 requires an employee to give notice to their chief executive of a charge or conviction for an indictable offence, and sets out how notice is to be given. This clause has been relocated from the *Public Service Regulation 2007*.

The clause also provides that under this clause, ‘convicted’ includes a finding of guilt, whether or not a conviction is recorded; and ‘indictable offence’ means an offence for which a charge may be laid by indictment or an equivalent process, whether that is the only, or an optional, way to lay a charge of the offence.

Clause 182 makes provision for the confidentiality of information contained in a notice to establish appropriate control over the access to and use of private information about an employee which might be contained in a notice under clause 181.

The clause sets out that it is an offence, punishable with up to 100 penalty units, to record or disclose protected information, whether directly or indirectly, or use the information to benefit any person, with exceptions as required under legislation or with consent.

Clause 183 allows for work performance arrangements to be entered into with entities within and external to government. A chief executive may make arrangements whereby a public service employee can perform work for another entity or an employee of another entity can perform work for a department. The clause sets out the administrative requirements for entering into the work performance arrangement, including authorisation procedures and payment arrangements.

Clause 184 facilitates the making of interchange arrangements within and external to government. Interchange arrangements differ from work performance arrangements in providing for either public or private sector employees to perform work within another entity, rather than on behalf of another entity. Such entities could include, for example, government departments from other jurisdictions or private companies such as law or engineering firms. These arrangements are considered beneficial to the

continued growth of the public service in terms of providing an improved level of connectivity between government and non-government sectors.

Clause 185 makes provision for the declaration of interests by a public service employee, and sets out when a chief executive may direct an employee to provide a declaration. An 'interest' is defined in the dictionary as a direct or indirect pecuniary or non-pecuniary interest and can relate to the employee or another person related or connected to the employee, as declared under a regulation.

Clause 186 describes the procedure for dealing with conflicts of interest and requires public service employees, other than chief executives, to disclose such conflicts and not take action regarding the matter unless authorised by the chief executive. The process for declaration of interests by a chief executive is covered by clause 101.

## **Chapter 6      Disciplinary action for public service officers**

Clause 187 sets out grounds for discipline of an officer by their chief executive. Grounds for discipline include performing duties carelessly, incompetently or inefficiently; misconduct; absentia from duty; or contravening the principles of the *Public Sector Ethics Act 1994* or provisions of codes of conduct. The clause defines misconduct as inappropriate or improper conduct in an official capacity or in a private capacity reflecting seriously and adversely on the public service.

Clause 188 outlines the disciplinary action that may be taken by an officer's chief executive in relation to an officer, including termination of employment, reduction of classification level, reduction in remuneration, imposition of a monetary penalty or a reprimand.

The clause sets limits in relation to monetary penalties, and affirms that the chief executive must comply with the Act and any relevant directive of the commission chief executive in making an order in relation to disciplinary action.

Clause 189 allows the chief executive to suspend an officer from duty if they reasonably believe the officer is liable to discipline under a

disciplinary law, and provides that the chief executive may cancel the suspension at any time.

Clause 190 sets out a procedure for disciplinary action. The clause states that in disciplining or suspending an officer, the chief executive must comply with the Act, any relevant directive of the Commission chief executive, and the principles of natural justice. However, natural justice is not required for the suspension of an officer on normal remuneration.

Clause 191 describes the effect of a suspension from duty. The clause states that the officer is entitled to normal remuneration for the period of the suspension, unless the chief executive decides otherwise. If the chief executive cancels the suspension and the officer resumes duty, the officer is entitled to be paid normal remuneration, as prescribed under a directive, to which the officer would have been entitled, less any amount earned by the officer from additional employment undertaken during the period of the suspension. The clause also states that continuity of the officer's service is not taken to have been broken as a result of the suspension.

Clause 192 provides additional procedures for suspension or termination of the employment of an officer and sets out the requirement for information on the suspension or termination to be provided by notice.

## **Chapter 7 Appeals and reviews**

### **Part 1 Appeals to the Commission chief executive**

#### **Division 1 Right of appeal**

Clause 193 makes provision for a person to appeal to the Commission chief executive against a decision. The clause states that a person may appeal to the Commission chief executive if an appeal may be made under clauses 194 and 196 which set out the decisions against which appeals may be made and the persons who are eligible to appeal.

Clause 194 sets out the decisions against which appeals may be made, such as decisions to take or not take action under a directive, disciplinary decisions or promotion decisions. The clause also provides new appeal rights for temporary employees regarding the review of their employment status under clause 149.

Clause 195 sets out the decisions against which appeals may not be made, such as decisions of the Governor in Council or a Minister or promotion, transfer, redeployment or secondment decisions relating to chief executives, senior executives or senior officers.

Clause 196 describes who may appeal to the Commission chief executive against a decision, which is generally a person aggrieved by or subject to the decision.

## **Division 2            Appeal procedures**

Clause 197 relocates provisions from the *Public Service Regulation 2007* to set out procedures for starting an appeal and providing notice of an appeal. The clause formalises the notice period for lodging an appeal with the Commission chief executive, namely 21 days after the decision was publicly notified (for promotion decisions) or notice of the decision was received. However, the Commission chief executive has a discretion to extend the 21 day time limit at any time.

Clause 198 provides for the Commission chief executive to give copies of an appeal notice under clause 197 to relevant parties.

Clause 199 makes provision for the Commission chief executive to stay a decision appealed against to secure the effectiveness of the appeal and sets conditions for the stay of operation.

Clause 200 allows the Commission chief executive to decline to hear particular appeals, but only in specified circumstances, including where the appellant has made an application to a court or tribunal, or the appeal is reasonably believed to be vexatious. The Commission chief executive may decline to hear a promotion decision unless satisfied that the appellant has an arguable case for the appeal.

The clause allows the Commission chief executive to decline to hear appeals against a promotion if the Commission chief executive considers that, on the basis of submissions made by the parties, the appellant has not

demonstrated an arguable case that is able to be supported or proved with evidence or arguments. This ability to decline to hear an appeal against a promotion is not intended to be a substitute for hearing a case on its merits and according the appellant full procedural fairness.

Clause 201 provides that appeal is by way of review and that the Commission chief executive must decide an appeal by reviewing the decision. The clause also affirms that for an appeal against a decision about a promotion or disciplinary action, the Commission chief executive must decide the appeal on the basis of the evidence available to the decision maker when the decision was made. However, this requirement does not prevent the commission chief executive from allowing other evidence to be taken into account.

Clause 202 describes the Commission chief executive's duties on appeal, namely observing the principles of natural justice and acting as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues.

Clause 203 allows the Commission chief executive to decide procedures in relation to the appeal, consistent with the informal and accessible nature of the Commission's appeal function. The Commission chief executive is not bound by the rules of evidence and may decide procedures for the appeal. The clause provides however that the Commission chief executive must comply with this part and any relevant procedural rules prescribed under a regulation.

Clause 204 makes provision for the representation of parties and states that a party to an appeal may appear personally or by an agent. The clause refines the restriction on a party being represented by a lawyer to state that a party may not be represented by a person if the party has instructed the person to act as their lawyer, and the person would be subject to the *Legal Profession Act 2007*. This seeks to address government and union concerns by clarifying that a person is not precluded from representing a party in a non-legal capacity, simply because they hold legal qualifications. The rephrased clause would therefore allow for instances where an officer of an industrial association, who also happens to be a lawyer, acts as an agent for a party to an appeal in their industrial capacity.

Clause 205 outlines the Commission chief executive's powers on appeal. The clause states that in hearing an appeal, the Commission chief executive may act in the absence of a person who has been given reasonable notice; receive evidence on oath or affirmation or by statutory declaration; require

a public service employee to attend as a witness to give evidence or produce documents or things; and require a public service employee attending as a witness to make an oath or affirmation. The clause also allows the Commission chief executive to administer an oath or affirmation to a person appearing as a witness.

Clause 206 provides for the process by which an appellant may withdraw an appeal.

Clause 207 states that an appeal lapses if the appellant stops being a public service employee, or stops being a person who may appeal against the decision the subject of the appeal.

### **Division 3            Deciding appeal**

Clause 208 makes provision for the Commission chief executive to decide an appeal by either confirming or setting aside a decision. Promotion decisions may only be set aside on the basis of a process deficiency.

Clause 209 sets out criteria for deciding whether a process deficiency has taken place in relation to an appeal against a promotion decision.

Clause 210 allows the Commission chief executive to reopen an appeal that has been decided if he or she is satisfied there are compelling reasons for hearing and deciding it again.

### **Division 4            Miscellaneous provisions**

The clauses in this division have been relocated from the *Public Service Regulation 2007* to consolidate provisions relating to the processes for undertaking appeals within the Bill.

Clause 211 provides that attendance at an appeal is part of an employee's duties if the employee is a party to the appeal or is requested or directed by the Commission chief executive to attend the proceeding.

Clause 212 sets out an employee's entitlement to travelling and other expenses and allowances in relation to attendance at an appeal proceeding as part of the employee's duties.

Clause 213 allows for the reimbursement for particular expenses of a person other than a public service employee who is requested to attend an appeal proceeding.

Clause 214 provides that the department or public service office whose decision is appealed against must pay particular expenses related to the appeal proceeding.

## **Part 2                      Alternate jurisdiction**

Clause 215 provides for the jurisdiction of the Queensland Industrial Relations Commission in industrial matters, and is to be read in conjunction with the *Industrial Relations Act 1999*.

The clause allows the Queensland Industrial Relations Commission to hear and decide, as an industrial matter, an application by a person aggrieved by a matter under clause 195(4). Clause 195(4) sets out decisions which cannot be appealed against, and includes a decision where the Commission, a commissioner or a staff member of the Commission would be party to the appeal, or where a matter has already been heard by the Queensland Industrial Relations Commission.

The Queensland Industrial Relations Commission cannot hear or decide, as an industrial matter, an application regarding a decision about which the person has appealed to the Commission chief executive.

## **Part 3                      Exclusion of particular matters from jurisdiction under other Acts**

Clause 216 sets out which matters are excluded from review under other Acts, consistent with current exclusions under the *Public Service Act 1996*.

Clause 217 describes the application of the *Industrial Relations Act 1999* to excluded matters.



Clause 218 describes the application of the *Judicial Review Act 1991* to excluded matters.

## **Chapter 8      Miscellaneous provisions**

Clause 219 describes the effect of the Act on the State. The clause states that the right or power of the State recognised at common law to dispense with the services of a person employed in the public service is not abrogated or restricted by any provision of the Act. However, the clause states that the Act binds the State, and a person who employs another person under the Act employs the person as the authorised agent of the State.

Clause 220 makes provision for acting appointments not made by the original appointor to be made by an acting appointor. The clause states that the *Acts Interpretation Act 1954*, section 24B(8) and (9) apply to the appointor and the appointee as if the appointment had been made under that section.

Clause 221 provides that an offence against the Act is a summary offence.

Clause 222 establishes the regulation-making power for the Governor in Council under the Act.

## **Chapter 9      Repeal and transitional provisions**

### **Part 1            Repeal provisions**

Clause 223 repeals the *Crown Employees Act 1958*, the *Equal Opportunity in Public Employment Act 1992*, the *Public Service Act 1996* and the *Service Delivery and Performance Commission Act 2005*.

## **Part 2                      Transitional provisions**

### **Division 1                Preliminary**

Clause 224 provides definitions for key terms in the part.

### **Division 2                Public service employees**

Clause 225 makes transitional arrangements to continue the employment of existing public service officers generally.

Clause 226 makes transitional arrangements to continue the employment of existing chief executives.

Clause 227 makes transitional arrangements to continue the employment of existing senior executives.

Clause 228 makes transitional arrangements to continue arrangements for existing tenured senior executives. All current arrangements for tenured senior executives, as provided for under the *Public Service Act 1996*, have been continued in the Bill.

Clause 229 excludes the application of clause 123 to a person employed in a department as an officer on a contract for a fixed term that was in existence before 1 December 1996.

Clause 230 makes transitional arrangements to continue the employment of existing employees employed on contract.

Clause 231 makes transitional arrangements to continue the employment of existing general employees.

Clause 232 makes transitional arrangements to continue the employment of existing temporary employees.

Clause 233 provides for transitional arrangements in the first review of the employment status of temporary employees by chief executives. The first review must be undertaken by the first anniversary of commencement of the Act, or a longer period as decided by directive.

### **Division 3            Rulings**

Clause 234 makes transitional arrangements to continue existing rulings under the *Public Service Act 1996*. However, a review of all rulings will be undertaken to ensure consistency with the Bill.

Clause 235 clarifies that in an Act or document, a reference to a ruling under the *Public Service Act 1996* may, if the context permits, be taken as a reference to a ruling of the same type under the Act.

### **Division 4            Disciplinary action and suspension**

Clause 236 makes transitional arrangements to continue existing disciplinary action.

Clause 237 makes transitional arrangements in relation to disciplinary action for prior acts and omissions. The clause states that chapter 6 applies to acts and omissions that happened before the changeover day as well as to acts and omissions that happen after the changeover day.

Clause 238 makes transitional arrangements to continue existing suspensions.

### **Division 5            Appeals**

Clause 239 makes transitional arrangements for outstanding appeals.

Clause 240 provides that appeals under the former Act are taken to be an appeal under this Act.

Clause 241 makes transitional arrangements in relation to former protective appeals, provisions covering which have been removed from the Bill.

Clause 242 makes transitional arrangements for appeal documents or information.

## **Division 6            Former commissioner and commission**

Clause 243 makes arrangements for the dissolution of the Office of the Public Service Commissioner and the Service Delivery and Performance Commission and for the office holders and contracts to end. No former office holder is entitled to compensation as a result of this action.

Clause 244 provides that references in a document other than an Act to the Public Service Commissioner or the Service Delivery and Performance Commission are to be taken as a reference to the Public Service Commission.

Clause 245 provides that staff of the Office of the Public Service Commissioner and the Service Delivery and Performance Commission become staff members of the Public Service Commission.

## **Division 7            Miscellaneous provisions**

Clause 246 makes specific provision in relation to the criminal history of persons obtained under the *Public Service Act 1996*.

Clause 247 makes transitional arrangements for existing term appointees.

Clause 248 makes transitional arrangements for the continuation of existing delegations by chief executives.

Clause 249 clarifies that in an Act or document, a reference to the repealed *Public Service Act 1996* or the repealed *Service Delivery and Performance Commission Act 2005* may, if the context permits, be taken as a reference to this Act. However, this does not apply to section 39 of the *Freedom of Information Act 1992*.

Clause 250 makes transitional arrangements for the continuation of approvals, decisions and notices made under provisions of the *Public Service Act 1996* which substantially correspond to provisions of the Bill.

Clause 251 makes transitional arrangements in relation to the *Public Service Regulation 2007*.

## **Chapter 10 Amendment of Acts**

Clause 252 provides for the consequential amendment of other Acts as detailed in schedule 3.

### **Schedule 1**

Schedule 1 lists public service offices and their respective enabling Acts and heads.

### **Schedule 2**

Schedule 2 lists statutory office holders who are not term appointees.

### **Schedule 3**

Schedule 3 details minor and consequential amendments to other Acts.

### **Schedule 4**

Schedule 4 provides a dictionary to define key terms in the Act.