

Parliamentary Service and Other Acts Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Parliamentary Service and Other Acts Amendment Bill 2011.

Policy objectives and the reasons for them

On 15 December 2010, the Committee System Review Committee tabled its report titled *Review of the Queensland Parliamentary Committee System*. The Government responded to the report on 9 March 2011. In this response, the Government supported the establishment of a Committee of the Legislative Assembly (CLA) to among other things, oversee the Parliament's budget, facilities management for parliamentary committees, maintenance for the parliamentary buildings, and policies for the management of the Parliament. The Government also referred the task of reviewing the *Parliamentary Service Act 1988* to the CLA.

The CLA has recommended to the Government that the administrative functions of the Speaker under *Parliamentary Service Act 1988*, with respect to the Parliamentary Service, be conferred upon to either the CLA or the Clerk of the Parliament.

The objective of the Bill is to vest the management of the Parliamentary Service with the CLA and the Clerk. This will give a parliamentary committee made up of an equal number of Government and non-Government members a role in the management of the Parliamentary Service. The CLA will be required to operate in a bipartisan way as the chair of the CLA will not have a casting vote at meetings.

The Bill also inserts certain provisions to clarify the functions of the Speaker of the Legislative Assembly to protect the independence of the office of Speaker and to provide that nothing in the *Parliamentary Service Act 1988* derogates from any power, right or immunity traditionally held or exercised by the Speaker on behalf of the Legislative Assembly.

The Bill also makes amendments to the *Auditor-General Act 2009* to implement the Government's response to Public Accounts and Public Works Committee (PAPWC) *Report No. 5: Inquiry into an Evaluation of the Effectiveness of the Performance Management Systems audit mandate* and PAPWC *Report No. 7: Inquiry to formally review the 'Report of the 2010 Strategic Review of the Queensland Audit Office' to consider the recommendations and comment on other findings where appropriate.*

Achievement of policy objectives

The Bill provides for the transfer of the management of the Parliamentary Service from the Speaker to the CLA and the Clerk. In many cases this is implemented by the omission of references to the Speaker and the insertion of references to the CLA or the Clerk.

The Bill also inserts clear provisions providing that the functions of the CLA and the Clerk under the Act do not interfere with or abrogate the Speaker's functions:

- directing the behaviour, demeanour and conduct of persons within the parliamentary precinct,
- making by-laws prescribing penalties for persons failing to comply with directions while in the parliamentary precinct,
- under the *Parliament of Queensland Act 2001*, and
- under Standing Rules and Orders.

Additionally, the Bill inserts clear provisions that, apart from conferring particular administrative functions on the CLA and Clerk, the *Parliamentary Service Act 1988* is not intended to derogate from any power, right or immunity traditionally held by the Speaker on behalf of the Legislative Assembly.

In relation to the amendments to the *Auditor-General Act 2009*, the Bill:

- extends the Auditor-General's powers to undertake full performance audits of public sector entities and requires the Auditor-General to prepare a three-year strategic plan in relation to performance audits and performance management system audits (recommendations 3 and 5, PAPWC Report No. 5),
- provides the Auditor-General with new powers to conduct an audit of a matter relating to public money and property (recommendations 5 and 6, PAPWC Report No. 7),

- allows the Auditor-General to exempt public sector entities from audit where the Auditor-General considers the audit to be of small size and low risk (recommendations 7 and 8, PAPWC Report No. 7),
- provides for a fixed, non-renewable seven-year term of appointment for the Auditor-General (recommendation 9, PAPWC Report No. 7), and
- provides for additional amendments including providing that the Auditor-General is able to undertake an audit jointly, or in collaboration with, an Auditor-General from another Australian jurisdiction.

Alternative ways of achieving policy objectives

There are no alternative methods of achieving the policy objectives as the proposed changes require amendments to current legislation.

Estimated cost for government implementation

The Bill does not directly result in additional expenditure and as a result the Bill will not initially require allocation of significant additional funds for its implementation.

Consistency with Fundamental Legislative Principles

The Bill is considered to be consistent with fundamental legislative principles set out in the *Legislative Standards Act 1992*. However, it is noted that the Bill raises an issue as to whether it provides appropriate protection against self-incrimination.

The Bill inserts a new section 36A in the *Auditor-General Act 2009* which will give the Auditor-General power to conduct an audit of a matter relating to public money and property that could involve considering Government financial transactions with third parties such as companies, community organisations and individuals.

In conducting this type of audit, existing sections 47 and 48 of the *Auditor-General Act 2009* will allow an auditor to require information, documents or evidence from a person. Although the person must comply with the requirement and it is not a reasonable excuse that giving the information, document or evidence might tend to incriminate the person,

sections 47 and 48 also provide that the information, documents or evidence are not admissible in a criminal proceeding against the person.

Consequently, it is considered that the Bill provides sufficient protection against self-incrimination.

Consultation

Consultation has occurred with the CLA, the Speaker of the Legislative Assembly and the Clerk of the Parliament in relation to the amendments to the *Parliamentary Service Act 1988*.

The Auditor-General was consulted in relation to the amendments to the *Auditor-General Act 2009*.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland. However, it draws on practices that exist in other Australian and international jurisdictions.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Bill.

Clause 2 provides that the Act is to commence on a day to be set by proclamation.

Part 2 Amendment of Acts Interpretation Act 1954

Clause 3 notes that this part amends the *Acts Interpretation Act 1954*.

Clause 4 amends subsection 14B(3)(f) by changing the definition of extrinsic material for Bills introduced from the commencement of the provision to include Members' speeches made to the Legislative Assembly when introducing Bills.

This reflects the revised practice of Members making speeches addressing Bills upon their presentation, as opposed to at the moving of the second reading speech.

Clause 5 inserts a new section 53 which preserves the status of second reading speeches, for Bills introduced prior to the commencement of the provision, as extrinsic material.

Part 3 Amendment of Auditor-General Act 2009

Clause 6 notes that this part amends the *Auditor-General Act 2009*.

Clause 7 omits subsection 9(3) of the *Auditor-General Act 2009* as the amendment to section 10 provides that the Auditor-General cannot be reappointed.

Clause 8 replaces section 10 of the *Auditor-General Act 2009* to provide that the appointment of the Auditor-General is for a fixed, non-renewable term of seven years. This implements recommendation 9 of PAPWC Report No.7.

Clause 9 omits the note from subsection 12(1) of the *Auditor-General Act 2009* as the amendments to section 10 provides that the Auditor-General cannot be reappointed.

Clause 10 amends incorrect references to subsections in section 19 of the *Auditor-General Act 2009*.

Clause 11 amends the heading of Part 3 of the *Auditor-General Act 2009* to refer to 'audit mandate'. This amendment reflects that the Auditor-General may conduct an audit relating to property that is, or was, held or received by a public sector entity and given to a non-public sector entity.

Clause 12 replaces subsection 30(3)(a) of the *Auditor-General Act 2009* to include reference to a public sector entity exempted from audit by the Auditor-General under new section 30A.

Clause 13 inserts a new section 30A to provide for the exemption of public sector entities from audit by the Auditor-General. This implements recommendations 7 and 8 of PAPWC Report No. 7.

Subsection 30A(1) provides that the Auditor-General may exempt a public sector entity from audit by the Auditor-General for a financial year by providing written notice.

Subsection 30A(2) provides that the Auditor-General may grant an exemption only if the Auditor-General is reasonably satisfied that the audit of the public sector entity for the financial year is small in size and of low risk having regard to a general standard mentioned in new section 58(1)(a)(iii).

Subsection 30A(3) provides that an exempted public sector entity must engage an appropriately qualified person to audit the entity for the financial year.

Subsection 30A(4) provides that for the purposes of auditing the public sector entity, the engaged auditor has all the powers of an authorised auditor under the *Auditor-General Act 2009*.

Subsection 30A(5) provides that the engaged auditor must give the certified annual financial statements and a report on the audit to the accountable officer, the chief executive officer, or the chairperson of the public sector entity as the case may be.

Subsection 30A(6) provides that the public sector entity must give the Auditor-General any document about the audit of the public sector entity requested by the Auditor-General.

Subsection 30A(7) provides that a notice under subsection 30A(1) may exempt a public sector entity for up to three financial years. Subsection 30A(8) provides that more than one notice may be made under subsection 30A(1) for a public sector entity.

Subsection 30A(9) provides that the Auditor-General may repeal an exemption granted to a public sector entity under subsection 30A(1) by written notice.

Subsection 30A(10) provides that a valid exercise of a function or power under an exemption continues to be valid despite the exemption being revoked.

Subsection 30A(11) provides that a list of public sector entities granted an exemption under this section must be published on the Queensland Audit Office website.

Subsection 30A(12) provides that this section does not prevent the Auditor-General from performing any of the functions or exercising any of the powers of the Auditor-General under this Act for the audit of an exempted public sector entity.

Subsection 30A(13) defines ‘appropriately qualified person’ with reference to relevant professional qualifications and memberships.

Clause 14 amends section 32 of the *Auditor-General Act 2009* (Exemption of foreign-based controlled entities and other controlled entities from audit by Auditor-General) to include reference to public sector entities exempted from audit under the new section 30A.

Clause 15 amends section 34 of the *Auditor-General Act 2009* (Auditor-General to be appointed auditor of every company public sector entity) to refer to a company exempted from audit by the Auditor-General under new section 30A. The clause also renumbers the section.

Clause 16 inserts a new section 36A to provide that the Auditor-General may conduct an audit of a matter relating to public money and property. This implements recommendation 5 of PAPWC Report No.7 to allow the Auditor-General to ‘follow-the-dollar’ in relation to financial transactions between Government and non-government entities.

Subsection 36A(1) provides that the Auditor-General may conduct an audit of a matter relating to money or property that is, or was, held or received by a public sector entity and given to a non-public sector entity.

Subsection 36A(2) provides that the object of conducting the audit includes deciding whether the money or property has been applied economically, efficiently and effectively for the purposes for which it was given to the non-public sector entity.

Subsection 36A(3) provides that if the Auditor-General conducts an audit under this section the Auditor-General must apply the general standards set out in the Auditor-General’s report mentioned in section 58 of the *Auditor-General Act 2009*.

Clause 17 inserts a new section 37A in the *Auditor-General Act 2009* which provides the Auditor-General with the power to conduct a performance audit of a public sector entity. This implements recommendation 3 of PAPWC Report No. 5 to allow the Auditor-General

to examine the performance management systems of a public sector entity and to go a step further by examining whether these systems are working effectively.

Subsection 37A(1) provides that the Auditor-General may conduct a performance audit of all or any particular activities of a public sector entity subject to subsection 37A(6).

Subsection 37A(2) provides that the performance audit may be conducted as a separate audit or as part of another audit, including an audit of another public sector entity under this section.

Subsection 37A(3) provides that the object of the performance audit includes deciding whether the objectives of the public sector entity are being achieved economically, efficiently and effectively and in compliance with all relevant laws.

Subsection 37A(4) provides that when conducting the performance audit, the Auditor-General must have regard to the prescribed requirements that apply to the entity.

Subsection 37A(5) provides that the Auditor-General must not question the merits of policy objectives of the State or local government including a decision of Cabinet, a direction of a Minister, a policy statement in the budget papers of the State or local government, a document evidencing a policy decision of Cabinet or a Minister, or a document evidencing a policy decision of a local government.

Subsection 37A(6) provides that if the public sector entity is a Government Owned Corporation (GOC) or a controlled entity of a GOC, the Auditor-General may conduct a performance audit if requested by the Legislative Assembly, the parliamentary committee, the Treasurer or an appropriate Minister.

Subsection 37A(7) provides that this section does not prevent the Auditor-General from asking the parliamentary committee, the Treasurer or an appropriate Minister to make a request to undertake an audit under subsection 37A(6).

Subsection 37A(8) defines 'budget papers' to mean the budget papers of the State tabled in Parliament with an annual appropriation Act. The subsection defines 'annual appropriation Act' by reference to section 6 of the *Financial Accountability Act 2009*.

Clause 18 amends section 38 of the *Auditor-General Act 2009* so that the existing power of the Auditor-General to conduct a performance

management systems audit of a GOC or a controlled entity of a GOC still applies. The clause also renumbers the section.

Clause 19 inserts a new section 38A to require that the Auditor-General is to prepare a strategic audit plan. This implements recommendation 5 of PAPWC Report No. 5.

Subsection 38A(1) provides that the Auditor-General must prepare a strategic audit plan for performance audits and performance management systems audits that the Auditor-General proposes to conduct in the next three years.

Subsection 38A(2) provides that when preparing the strategic audit plan, the Auditor-General must consult with the parliamentary committee and any relevant entity, such as a department proposed to be the subject of a performance audit, and prepare a draft of the strategic audit plan.

Subsection 38A(3) provides that the Auditor-General must give the draft of the strategic audit plan to the parliamentary committee.

Subsection 38A(4) provides that the parliamentary committee must return the draft with any comments to the Auditor-General within 42 days of receiving the draft.

Subsection 38A(5) and 38(6) provide that the Auditor-General must consider any comments made by the parliamentary committee when finalising the strategic audit plan and finalise the plan before the end of each financial year.

Subsection 38A(7) provides that the strategic audit plan must be published on the Queensland Audit Office website.

Subsection 38A(8) provides that no person is to direct the Auditor-General in relation to the content of the strategic audit plan.

Subsection 38A(9) defines ‘relevant entity’ to mean a public sector entity that the Auditor-General proposes to include in a draft of the strategic audit plan or a portfolio committee for a public sector entity. The subsection defines ‘portfolio committee’ by reference to the schedule in the *Parliament of Queensland Act 2001*.

Clause 20 amends section 40(4) of the *Auditor-General Act 2009* to replace references to ‘auditor-general’s’ with ‘auditor’s’ to account for the role of auditors engaged in relation to new section 30A and to ensure that certified statements and reports are provided to the appropriate persons.

Clause 21 inserts a new section 42A to provide that the Auditor-General may conduct an audit jointly, or in collaboration, with the Auditor-General of the Commonwealth or another State if the Auditor-General reasonably believes the Commonwealth or other State has an interest in the audit. Section 33A of the *Acts Interpretation Act 1954* provides that a reference in an Act to a ‘State’ includes a ‘Territory’.

Clause 22 amends section 46 of the *Auditor-General Act 2009* to provide that for the purpose of conducting an audit under new section 36A, subsections 46(2) and 46(3)(a)(i) and 46(3)(a)(ii) do not apply to a non-public sector entity subject to audit. The clause also renumbers the section.

Clause 23 amends section 53 of the *Auditor-General Act 2009* to change references to ‘information’ in subsections 53(2) and 53(3) to ‘protected information’.

The clause amends subsection 53(3)(a) to refer to a ‘portfolio committee’ as defined under the *Parliament of Queensland Act 2001*.

The clause also inserts a new subsection of 53(3)(e) to provide that section 53 does not prevent the disclosure of information to the Auditor-General of the Commonwealth or another State or Territory if the Auditor-General conducts an audit jointly, or in collaboration, with the Auditor-General of the Commonwealth or another State or Territory under new section 42A.

The clause also amends the definition of ‘protected information’ to include observations, comments, suggestions or notations made by auditors in the conduct of an audit that are not publicly available.

Clause 24 amends subsection 54(4) of the *Auditor-General Act 2009* to ensure that if there are observations or suggestions that arise out of an audit report of a matter under section 36A that the Auditor-General considers require attention or further consideration, the Auditor-General must give them, and any comments on them to the accountable officer, chief executive officer or chairperson of the relevant public sector entity and to any other person whom the Auditor-General considers to have a special interest in the report. The clause also renumbers the section.

Clause 25 inserts a new subsection 58(1)(a)(iii) to require the Auditor-General to set out the general standards the Auditor-General is to apply in order to decide under new section 30A that an audit of a public sector entity for a financial year is small in size and of low risk.

Clause 26 amends section 60 of the *Auditor-General Act 2009* to provide that the requirement for the Auditor-General to prepare annual reports on audits of public sector entities to the Legislative Assembly does not apply to an audit of a matter under new section 36A, as this is expressly provided for in new section 61A.

The clause also provides that, if a public sector entity was granted an exemption under new section 30A for the relevant financial year, the Auditor-General's report to the Legislative Assembly on each audit conducted must state that the public sector entity was granted an exemption under section 30A and the reasons for the exemption. The clause also renumbers the section.

Clause 27 inserts a new section 61A relating to audits of a matter concerning public money or property conducted under new section 36A.

Subsection 61A(1) implements recommendation 6 of PAPWC Report No. 7 to provide that if the Auditor-General conducts an audit of a matter under section 36A, the Auditor-General must prepare a report to the Legislative Assembly setting out the reasons for conducting the audit and the results of the audit.

Subsection 61A(2) provides that if the Auditor-General proposes to make an adverse comment about a non-public sector entity in the report, the Auditor-General must not make the adverse comment unless, before the report is prepared, the Auditor-General gives the non-public sector entity an opportunity to make submissions about the proposed adverse comment.

Subsection 61A(3) provides that if the non-public sector entity makes submissions and the Auditor-General still proposes to make the adverse comment, the Auditor-General must ensure the non-public sector entity's submissions, or a fair statement of them, are included in the report.

Clause 28 inserts a new subsection 64(3A) to provide that if the Auditor-General proposes to include a matter of significance in a report to the Legislative Assembly and the Auditor-General gives written advice of the matter under subsections 64(2) or (3), the Auditor-General must as soon as practicable give a copy of the written advice to the Premier. The clause also amends subsection 64(4) to clarify that only a person mentioned in subsection 64(3) may make comments to the Auditor-General on the matter. The clause also renumbers the section.

Clause 29 amends section 65 of the *Auditor-General Act 2009* to refer to reports, or proposed reports, prepared by the Auditor-General under new section 61A.

Clause 30 amends subsection 66(1) of the *Auditor-General Act 2009* to refer to an ‘entity’ rather than a ‘public sector entity’, as an audit under the new section 36A may involve an entity which is not part of the public sector. Section 36 of the *Acts Interpretation Act 1954* defines an ‘entity’ to include a person and an unincorporated body.

Clause 31 inserts a new Part 7, Division 3 in the *Auditor-General Act 2009* to provide for transitional provisions for the Bill.

The clause inserts a new section 87 that requires the first strategic audit plan to be prepared under new section 38A to be finalised before either 1 July 2012 or another date agreed between the Auditor-General and the parliamentary committee.

The clause inserts a new section 88 that provides that if before commencement of this section the Auditor-General had started a performance management systems audit of a public sector entity, other than a GOC or a controlled entity of a GOC, and the audit has not been finished, the Auditor-General may finish the audit as if section 38 had not been amended by this Bill.

The clause also inserts a new section 89 that provides that the appointment of the current Auditor-General continues in force until the end of the term stated in the Auditor-General’s instrument of appointment or otherwise ends under this Act. New section 89 also states that the current Auditor-General cannot be reappointed under section 10 of the *Auditor-General Act 2009*.

Clause 32 amends the Dictionary set out in the Schedule of the *Auditor-General Act 2009*.

Part 4 Amendment of Financial Accountability Act 2009

Clause 33 notes that this part amends the *Financial Accountability Act 2009*.

Clause 34 amends subsection 62(1)(c) of the *Financial Accountability Act 2009* to provide that accountable officers and statutory bodies must, in the way and within the time stated in a financial and performance management standard, have the annual financial statements audited as required under the *Auditor-General Act 2009*.

Clause 35 amends subsection 66(2) of the *Financial Accountability Act 2009* to provide that the role of the CLA is not limited or interfered with by the Clerk of the Parliament being the accountable officer for the Parliamentary Service and Legislative Assembly.

Part 5 Amendment of Legislative Standards Act 1992

Clause 36 notes that this part amends the *Legislative Standards Act 1992*.

Clause 37 amends subsection 22(1) to provide that explanatory notes must be circulated to Members of the Legislative Assembly when Bills are introduced, rather than before the resumption of the second reading debate.

Part 6 Amendment of Parliamentary Service Act 1988

Clause 38 notes that this part amends the *Parliamentary Service Act 1988*.

Clause 39 amends section 4 of the *Parliamentary Service Act 1988* by inserting definitions for ‘CLA’, ‘function’ and ‘Office of the Speaker’.

The definitions provide that a reference to the ‘CLA’ is a reference to the Committee of the Legislative Assembly, a reference to ‘function’ includes power and a reference to the ‘Office of the Speaker’ is the administrative unit within the Parliamentary Service established for the purposes of directly supporting the Speaker in the discharge of the Speaker’s functions.

Clause 40 inserts new sections 4A and 4B.

New section 4A provides for the roles of the CLA, Speaker and Clerk under the *Parliamentary Service Act 1988*.

Subsection 4A(1) notes that the *Parliamentary Service Act 1988* makes provisions for the management of Parliament by conferring certain administrative functions on the CLA, the Speaker and the Clerk.

Subsection 4A(2) provides that the functions of the CLA and the Clerk under the *Parliamentary Service Act 1988* do not limit the Speaker's functions in relation to directing behaviour, demeanour and conduct of persons within the parliamentary precinct. This includes not limiting the Speaker's ability to make by-laws prescribing penalties for persons failing to comply with directions while within the parliamentary precinct.

This subsection also provides that the functions of the CLA and the Clerk under the *Parliamentary Service Act 1988* do not limit the Speaker's functions under the *Parliament of Queensland Act 2001* and under the Standing Rules and Orders.

Subsection 4A(3) further stipulates that, apart from conferring specific administrative functions on the CLA and the Clerk, nothing under the *Parliamentary Service Act 1988* takes away from any powers, rights or immunities traditionally considered to be held or exercised by the Speaker on behalf of the Legislative Assembly.

Section 4B provides arrangements for the performance of the functions of the CLA under the *Parliamentary Service Act 1988* following the expiration or dissolution of the Legislative Assembly.

Subsection 4B(1) notes that this section applies on the expiry or dissolution of the Legislative Assembly.

Subsections 4B(2) and 4B(3) provides that under the *Parliamentary Service Act 1988* the CLA continues to exist until the end of the day prior to the polling day. These subsections further provide that from the polling day until a meeting of the Parliament at which new members of the CLA are appointed, the functions of the Committee are to be performed by the Clerk in accordance with the policies of the previous Committee.

Subsection 4B(4) inserts a definition for 'polling day' to make clear that this is a reference to a general election for the Legislative Assembly following the dissolution or expiry of the previous Assembly.

Clause 41 amends the heading of Part 2 to provide that the part now contains the administrative functions of the CLA in addition to the Speaker.

Clause 42 amends section 5 to reflect that the CLA, instead of the Speaker, will have responsibility for deciding policies in relation to parliamentary accommodation and services.

Clause 43 amends section 6 to reflect that the CLA will now conduct certain roles in relation to the Parliamentary Service that were previously conducted by the Speaker.

Subsection 6(1)(d) will be removed to reflect the new separation of roles in relation to the salaries and conditions of employment for the Legislative Assembly. The subsection will be replaced by clause 49, which provides that the Clerk is to be the employing authority, for the Legislative Assembly, of Parliamentary Service officers and employees and clause 58, which provides that salaries and conditions of employment for officers and employees of the Parliamentary Service are to be decided by the Clerk.

The clause inserts a new subsection 6(2) which provides that the CLA must ensure the Speaker is given the necessary administrative and other support to enable the Speaker to perform the Speaker's functions efficiently and effectively. The provision ensures that the Speaker continues to be appropriately resourced to discharge his or her functions.

The clause inserts a new subsection 6(3) noting that the CLA must consult with the Speaker before deciding a matter affecting the Speaker or the Legislative Assembly chamber. This new section provides examples of the provision including consultation must occur before deciding matters relating to the budget for the Office of the Speaker, staffing resources for the Legislative Assembly chamber on sitting days and capital works and maintenance of the Legislative Assembly chamber.

The clause inserts a new subsection 6(4) which provides that the Clerk and the Parliamentary Service officers and employees must follow the reasonable directions of the Speaker relating to the operation of the Legislative Assembly and the Speaker's functions relating to the Legislative Assembly.

This provision reflects that the Speaker will still have the capacity to direct the Parliamentary Service to ensure the proper functioning of the Legislative Assembly and the Speaker's role regardless of the revised role of the Speaker in administrative matters.

Clause 44 amends section 7 by removing the reference to the Speaker's role in relation to the Parliamentary Service. This amendment to the

Speaker's powers for administrative functions reflects the revised administrative arrangements for the Parliamentary Service.

Clause 45 amends section 8, which currently provides for the Speaker's delegation of administrative powers under the *Parliamentary Service Act 1988*, to reflect that these functions may now be delegated by the CLA.

The clause replaces a reference to 'powers' with a reference to 'functions'. This amendment is consistent with the insertion of a definition in section 4 of the Act which provides that functions include powers.

New subsection 8(2) provides that these functions may be delegated to a member of the CLA, the Speaker, the Deputy Speaker, the Clerk or a Parliamentary Service officer or employee. The clause also inserts a new subsection 8(3) which provides that these powers of delegation do not extend to functions of deciding major policies guiding the operation and management of the Parliamentary Service or deciding the remuneration, conditions of employment and other benefits given to the Clerk. This subsection requires that these major decisions will need to be determined by the Committee itself.

Clause 46 removes section 9 which provided the Speaker with the power to establish a Speaker's Advisory Committee to advise on issues arising under the *Parliamentary Service Act 1988*. The Speaker's Advisory Committee will no longer be required as the administration of matters under the Act is to be determined by the CLA.

Clause 47 amends section 10 by providing that the role of preparing and tabling an annual report on the Parliamentary Service's operation during the year in the Legislative Assembly will be undertaken by the CLA in place of the Speaker.

Clause 48 amends section 18 to reflect that the CLA must also be consulted prior to the appointment of a Clerk of the Parliament by the Governor, on the recommendation of the Minister. Consultation will still be required with the Speaker prior to any appointment of a Clerk.

Clause 49 amends section 20 by providing that the Clerk, as the chief executive of the Parliamentary Service, is to be responsible to the CLA in relation to the efficient and economical management of the Parliamentary Service. The clause inserts a new subsection 20(3) which provides that the Clerk is to be the employing authority of Parliamentary Service officers and employees on behalf of the Legislative Assembly.

Clause 50 inserts a new section 20A which provides that the Clerk has the control of the parliamentary precinct and accommodation supplied elsewhere by the Legislative Assembly for its Members, subject to the CLA's policies. The clause also inserts a note that the Speaker's functions relating to the determination of behaviour within the parliamentary precinct are not limited by the Clerk's control under this new section.

Clause 51 amends three references to functions, powers and duties in section 22 to simply refer to functions. This amendment is made as clause 39 will insert a new definition into section 4 of the Act providing that a reference to a function is taken to include a power. Additionally, the *Acts Interpretation Act 1954* provides that a reference to a function is taken to include a duty.

The clause also amends subsection 22(1)(b)(ii) to replace a reference to the Speaker with a reference to the CLA. This amendment will provide that during a non-temporary vacancy in the office of the Clerk, the CLA will appoint an officer to act in the office.

Clause 52 omits a reference to the Speaker in subsection 24(2) and replaces it with a reference to the CLA. This amendment reflects that, in addition to prescribed statutory functions, the Parliamentary Service also has functions conferred upon it from time to time by the CLA.

Clause 53 amends section 25 by replacing a reference to 'powers' with a reference to 'functions'. This amendment is consistent with the insertion of a definition in section 4 of the Act which provides that functions include powers.

Clause 54 replaces section 26 with a new section relating to the appointment of Parliamentary Service officers and employees. This new section reflects the revised employing arrangements within the Parliamentary Service where the Clerk is to be the employing officer.

New subsection 26(1) provides that the Clerk may appoint appropriately qualified and competent persons as officers, probationary officers, or employees of the Parliamentary Service.

New subsection 26(2) provides that the Speaker may appoint appropriately qualified and competent persons as officers, probationary officers, or employees of the Parliamentary Service within the Office of the Speaker. This provision reflects that the Speaker is to retain the power to select and appoint appropriate persons to staff the Office of the Speaker.

Clause 55 omits a reference to the Speaker in subsection 26AA(1) and replaces it with a reference to the Clerk. This amends the section to provide that the Clerk may employ staff of electorate officers on the recommendation of the relevant Member. This amendment results from the new provision that the Clerk is the employing authority for the Parliamentary Service.

Clause 56 replaces references to the Speaker in subsections 27(1)(b) and 27(3) with a reference to the Clerk and the CLA. These amendments provide that the Clerk may declare which offices are to be on a part-time basis and the CLA may declare which offices are to be on a contractual basis.

Clause 57 omits references to the Speaker in section 28 and replaces the reference with the Clerk in relation to the conditions of employment on contract in the Parliamentary Service.

Clause 58 amends section 29 to provide that the CLA will decide the salary and conditions of employment for the Clerk and that the Clerk will decide the salaries and conditions of employment for Parliamentary Service officers and employees.

The clause also inserts a new subsection 29(2) providing that the CLA must ensure that the remuneration, conditions of employment and other benefits given to the Clerk are comparable to those of other officers and employees of the State conducting similar duties.

New subsection 29(3) provides that the Clerk must ensure the remuneration, conditions of employment and other benefits given to Parliamentary Service officers and employees are commensurate to those of other officers and employees of the State conducting similar duties.

Clause 59 replaces references to the Speaker in section 31 with references to the Clerk. This section relates to payments under the *Superannuation (State Public Sector) Act 1990*, for officers and employees in the Parliamentary Service.

Clause 60 replaces a reference to the Speaker in subsection 32(2)(b) with a reference to the CLA. This provision will provide that the CLA may prescribe rules as to which classes of office do not require advertising of vacancies.

Clause 61 replaces two references to the Speaker in subsection 35(4) relating to employment on probation with references to the Clerk. This

amendment is consequential to the Clerk becoming the employing authority for the Parliamentary Service.

Clause 62 omits references to the Speaker in subsections 37(3) and 37(4) and replaces the references with the Clerk in relation to the calling for retirements and resulting dismissals from the Parliamentary Service. This amendment is consequential to the Clerk becoming the employing authority for the Parliamentary Service.

Clause 63 omits a reference to the Speaker in section 38 and replaces the reference with the CLA in relation to the ability to prescribe rules relating to the mode of resignation or retirement from the Parliamentary Service.

Clause 64 omits references to the Speaker in subsections 39(1) and 39(2) and replaces the references with the Clerk in relation to the retrenchment of officers or employees in the Parliamentary Service. This amendment is consequential to the Clerk becoming the employing authority for the Parliamentary Service.

Clause 65 replaces a reference to the Speaker in section 40 with a reference to the Clerk. This amendment reflects the role of the Clerk as the approving officer of a code of conduct for officers and employees as the employing authority of the Parliamentary Service.

The clause makes an amendment to clarify that a combination of more than one discipline may be imposed. The clause also replaces subsections 40(4)(a) and 40(4)(b) with a single subsection to reflect that, under the new employing arrangements for officers, the Clerk may dismiss an officer.

Clause 66 amends section 41 to provide that the Clerk will now be responsible for matters relating to the suspension of Parliamentary Service officers or employees. This replaces existing provisions which provide that matters of suspension relating to officers are decided by the Speaker and matters relating to employees are decided by the Clerk.

Clause 67 amends section 42 to provide that dismissal or suspension of an officer or an employee shall be effected in writing, signed by the Clerk and given to the officer or employee. This amendment reflects the Clerk's revised role in relation to officers. This retains the current mode of dismissal or suspension for employees.

Clause 68 omits references to the Speaker in section 43 and replaces the references with the CLA in relation to appeals against promotional appointments and disciplinary action.

Clause 69 omits references to the Speaker in section 44 and replaces the references with the CLA in relation to reinstatements within the Parliamentary Service following dismissals.

Clause 70 replaces section 49 with a revised section which provides that, within the meaning of the *Industrial Relations Act 1999*, Parliamentary Service officers and employees who receive salaries or wages are employees and the Clerk is their employer and that the *Industrial Relations Act 1999* applies to them accordingly.

The new section 49 also provides that, within the meaning of the *Industrial Relations Act 1999*, the Clerk is an employee and the Speaker is their employer and that the *Industrial Relations Act 1999* applies to them accordingly.

Clause 71 amends section 55 to remove authority from the Speaker, and provide authority to the CLA, to make rules under the *Parliamentary Service Act 1988*. The existing provisions provide that these rules are subordinate legislation.

Clause 72 replaces a reference to the Speaker in section 59 with a reference to the CLA. Section 59 is a transitional provision which clarified that amendments to the *Parliamentary Service Rule 2000* by the *Electrical Safety and Other Legislation Amendment Act 2009* did not affect the power of the Speaker to amend or repeal the Rule. This clause is consequential to the amendment of section 55 by clause 71 which vests the power to make rules under the *Parliamentary Service Act 1988* with the CLA.

Clause 73 inserts a new Part 7, Division 3 providing transitional provisions for the *Parliamentary Service and Other Acts Amendment Act 2011*.

The clause inserts a new section 60 which defines ‘commencement’ within Division 3 as the commencement of the provision in which the term is used and which defines ‘former’ to mean as in force before amendment or repeal by the *Parliamentary Service and Other Acts Amendment Act 2011*.

The clause inserts section 61 which provides for when annual reports are to be prepared and tabled by the CLA and the Speaker.

New section 61 provides that the Speaker is to prepare an annual report under the former section 10 for the previously completed financial year, if an annual report has not already been prepared and tabled prior to commencement of the provision.

The section also provides that the Speaker is to prepare an annual report for the part of a financial year prior to commencement, unless commencement

occurs on 1 July. This annual report for part of a financial year may be combined with the report from the previous financial year under the new subsection 61(1) if applicable.

In this event, the CLA is to prepare an annual report for the part of the financial year following the commencement.

The clause also inserts section 62 which provides that persons employed as officers, probationary officers or employees of the Parliamentary Service prior to commencement will continue in their employment under the Clerk.

The clause inserts section 63 which provides that an approval made by the Speaker for an office within the Parliamentary Service to be open to part-time employment, under subsection 27(1)(b) of the Act, will continue in force as if it had been made by the Clerk.

The clause inserts section 64 which provides that declarations made by the Speaker for an office to be open to appointments on a contractual basis, under subsection 27(3) of the Act, will continue in force as if it had been made by the CLA.

The clause inserts section 65 which provides that approval made by the Speaker in relation to the conditions of contract employment within the Parliamentary Service, under subsection 28(1)(a) of the Act, will continue in force as if it had been made by the Clerk. The new section also provides that a contract under subsections 28(1)(b) or 28(2) will continue in force as if it had been made by the Clerk and the person.

The clause inserts section 66 which provides that approval made by the Speaker in relation to any provisions of a code of conduct, under section 40(1)(f) of the Act, will continue in force as if it had been made by the Clerk.

The clause inserts section 67 which provides that any suspension of officers of the Parliamentary Service made by the Speaker, under subsection 41(1) of the Act, will continue in force as if they had been made by the Clerk.

The clause inserts section 68 which provides that any rules made by the Speaker under section 55 of the Act will continue in force as if they had been made by the CLA. For the purpose of applying Part 7 of the *Statutory Instruments Act 1992*, the day on which the rule was originally made by the Speaker remains as the day on which the rule is taken to be made.

Part 7

Amendment of Parliament of Queensland Act 2001

Clause 74 notes that this part amends the *Parliament of Queensland Act 2001*.

Clause 75 amends section 5 of the *Parliament of Queensland Act 2001*, which provides the relationship between the Act and certain other Acts, to include that the *Parliamentary Service Act 1988* contains laws about the administrative powers of the CLA.

Clause 76 amends section 84 of the *Parliament of Queensland Act 2001* by inserting a note that the CLA also has functions under the *Parliamentary Service Act 1988*.

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