

Queensland Independent Remuneration Tribunal Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the *Queensland Independent Remuneration Tribunal Act 2013*.

Policy objectives and the reasons for them

On 11 July 2013, the Premier announced the establishment of a Tribunal to determine the future remuneration and allowances for State Members of Parliament under a five point plan to reform the Queensland Parliament's entitlements system.

The five point plan involves:

- breaking the nexus between the remuneration of Federal and State Members of Parliament;
- formally establishing the Tribunal to determine State Members of Parliaments' salary and allowances;
- ensuring that determinations of the Tribunal are independent, binding and not subject to change by politicians;
- ensuring that back pay for current and former State Members of Parliament is only applicable from 1 July 2013; and
- tasking the Tribunal with conducting a full review of State Members of Parliaments' allowances to ensure they are not a defacto salary, but proper reimbursement of expenses incurred in serving an electorate.

The Premier's announcement arose in the context of ongoing concerns about the link between the annual salary of Commonwealth Members of Parliament and Queensland Members of Parliament.

The *Parliament of Queensland Act 2001* currently provides that a member of the Queensland Legislative Assembly is entitled to an annual salary that is \$500 less than the annual salary of a member of the Commonwealth Parliament. However, in August 2010, Commonwealth Members of Parliament received a 4.29 per cent salary increase and the former Premier limited the increase for Queensland Members of Parliament to 2.5 per cent. This effectively broke the \$500 nexus with Commonwealth Members of Parliament.

In August 2011, Queensland Members of Parliament received a 2.5 per cent increase, while Commonwealth Members of Parliament received a 3.1 per cent increase.

On 15 March 2012, during the 2012 State Election campaign, Commonwealth Members of Parliament received a 31.2 per cent increase and later, on 1 July 2012, a further 3 per cent

salary increase. On 1 July 2013 a further 2.4 per cent increase was received by Commonwealth Members of Parliament. These salary increases were not passed on to Queensland Members of Parliament.

The Acting Premier released a press statement on 1 July 2013 announcing, among other things, that following receipt of legal advice the \$500 nexus should be complied with and reinstated from 1 July 2013.

Subsequently on 4 July 2013 the Governor in Council approved gazettal of a 41.9 per cent salary increase for Queensland Members with effect from 1 July 2013.

Therefore, the objectives of the Bill are to implement the Premier's five point plan outlined above to:

- establish an independent Tribunal to review and determine the salaries, allowances and entitlements of members and former members of the Legislative Assembly;
- break the salary nexus between the remuneration of Federal and State Members of Parliament, and between State Members of Parliament and Local Government Councillors; and
- return salary levels for State Members of Parliament to the levels that applied on 30 June 2013 and ensure no flow on effects to members and former members in relation to salaries, allowances, entitlements and superannuation from the 1 July 2013 salary increase.

Achievement of policy objectives

The Tribunal

To achieve its objectives, the Bill will establish an independent Tribunal and set out its functions and powers to review and determine the salaries, allowances and entitlements of Members and former Members of the Queensland Legislative Assembly.

The Bill will:

- establish the Tribunal as a statutory authority with legislative independence to review and make determinations about the remuneration of members and former members of the Legislative Assembly;
- provide that the Tribunal will be required to act independently, impartially and fairly and will not be subject to any direction or control by any entity or Minister;
- provide strict eligibility requirements for the appointment of Tribunal members to ensure they are not a person who would likely have a conflict of interest in carrying out their responsibilities on the Tribunal;
- ensure that should a Tribunal member have a conflict of interest in a matter to be considered by the Tribunal they must disclose the interest and not take part in the consideration or decision regarding the matter unless otherwise consented to by the remaining Tribunal members;
- enable the Governor in Council to terminate the appointment of a Tribunal member in limited circumstances;
- require the Tribunal to prepare a written report about the operations of the Tribunal during each financial year;
- provide that when making a determination the Tribunal may have regard to the value to the community of a member carrying out the member's role, functions and

responsibilities; the importance of a member being appropriately remunerated for carrying out the member's role, functions and responsibilities; relevant laws applying to members; and any other matters the Tribunal considers appropriate; and

- require the Tribunal to consult with and consider the views of the Clerk of the Parliament about the determination; ensure any allowances paid to a member reflect the amount of reasonable expenses incurred by a member in servicing the member's electorate and that these allowances are not a substitute for remuneration.

Salary nexus

The Bill will break the salary nexus between the remuneration of Commonwealth and State Members of Parliament and the salary nexus between the remuneration of State Members of Parliament and Local Government Councillors.

Any actions taken between 1 September 2009 (the first time a Commonwealth salary increase was not passed on in full) and 30 June 2013, where the Commonwealth Members of Parliament salary increase was not passed on, or not passed on in full to State Members of Parliament, will be retrospectively validated and confirmed under the Bill.

1 July 2013 salary increase

The Bill will stop the effect of changes to salaries from 1 July 2013 and, until the first determination for members of the Legislative Assembly is made by the Tribunal, will return the salaries to the 30 June 2013 rates. The first determination for members of the Legislative Assembly will be applied from 1 July 2013, and the Clerk of the Parliament is enabled to recover any overpayments since that date.

Alternative ways of achieving policy objectives

Consideration was previously given to the following alternative options regarding the setting of the base salary of Queensland Members of Parliament:

1. referring the matter to the Committee of the Legislative Assembly for advice with the Committee taking advice from external experts to arrive at a recommendation to the Parliament of a new mechanism;
2. linking the base salary of Queensland Members of Parliament to the nearest rate in the Senior Executive Service of the Public Service;
3. amending the *Parliament of Queensland Act 2001* to link percentage increases to the base salary of Queensland Members of Parliament to the same percentage increases received by public servants in the Core Queensland Government's Department Certified Agreement; or
4. retaining a nexus with Federal Members of Parliament but amending the *Parliament of Queensland Act 2001* to provide a greater variation than \$500, for example, \$50 000 less.

While options one to four would have required minimal changes to the existing legislative framework for setting the salaries, allowances and entitlements of Queensland Members of Parliament, the establishment of an Independent Remuneration Tribunal is considered to be the most effective option in removing Members of Parliament from any involvement in determining their salaries, allowances and entitlements.

The establishment of an independent Tribunal will provide for independent and legally binding decisions on Members and former Members of Parliament and remove any perceived or actual conflict of interest in the determination of the salaries, allowances and entitlements of Members and former Members of Parliament.

Estimated cost for government implementation

It is expected that the costs of administering and resourcing the Tribunal will be minimal. A secretariat of existing departmental officers has been established within the Department of the Premier and Cabinet to support the Tribunal and the Bill requires the Chief Executive to make available to the Tribunal the staff assistance and resources the Tribunal needs to effectively perform its functions. The Bill also provides that in making a determination the Tribunal must have regard to effective and efficient processes in carrying out its functions.

Tribunal members will be entitled to meeting and special assignment fees in accordance with the Government Policy *Remuneration of Part-time Chairs and Members of Government Boards, Committees and Statutory Authorities*, for their work on the Tribunal.

Consistency with fundamental legislative principles

Regard should be had to whether the legislation makes rights and liberties, or obligations dependent on administrative power only if the power is sufficiently defined and subject to appropriate review -

Legislative Standards Act 1992, section 4 (3)(a)

The Bill provides that there is no administrative or judicial review of the Tribunal's determinations, other than on a question going to the Tribunal's jurisdiction. However, this is considered justified to ensure certainty of the Tribunal's decisions which are intended to be binding on Members and former Members of Parliament. It will also be open to the Queensland Parliament to overturn a Tribunal's determination through an Act of Parliament. Additionally, this provision is consistent with the New South Wales Parliamentary Remuneration Tribunal whose determinations or rulings are not subject to judicial review.

Regard should be had to whether the legislation affects rights and liberties, or imposes obligations retrospectively -

Legislative Standards Act 1992, section 4 (3)(g)

Retrospective provisions are contained in the Bill to break the nexus between the salaries of Commonwealth Members and Queensland Members of Parliament from 1 September 2009 and enables Members of Parliaments' salary rates to be returned to the levels which applied on 30 June 2013.

The retrospective provisions aim at preventing any Member or former Member of Parliament from pursuing monies or superannuation benefits that they did not receive in accordance with the *Parliament of Queensland Act 2001* between 1 September 2009 and 30 June 2013.

These retrospective provisions are considered justified as they confirm a policy position which was publicly announced on many occasions by the former Premier from 2009 to 2011 and is corrective action for the consequence of not maintaining the salary nexus with

Commonwealth members. The Premier, in his public announcement of 11 July 2013, also announced that retrospective provisions would be provided for in the legislation.

Consultation

The Premier publicly announced the establishment of the Queensland Independent Remuneration Tribunal on 11 July 2013.

The Clerk of the Parliament and the Queensland Independent Remuneration Tribunal, which was established administratively on 16 July 2013, have been consulted in the development of the Bill and support the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland. However, other jurisdictions, including the Commonwealth, New South Wales, Western Australia and the Australian Capital Territory, have tribunals responsible for determining the salaries, allowances and entitlements of Members of Parliament in their jurisdictions. The remuneration tribunals and relevant establishing legislation in these jurisdictions were taken into consideration during the development of the Bill.

Notes on provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Bill.

Clause 2 states that the Act commences, or is taken to have commenced on 9 August 2013.

Clause 3 provides that in accordance with the policy objectives of the Bill the main purpose of the Act is to establish the Queensland Independent Remuneration Tribunal to review and decide remuneration in connection with members and former members of the Legislative Assembly.

Clause 4 provides that the Act binds all persons, including the State.

Clause 5 references the dictionary in schedule 1 for definitions of particular words used in the Act.

Part 2 Queensland Independent Remuneration Tribunal

Clause 6 establishes the Queensland Independent Remuneration Tribunal as a statutory authority.

Clause 7 outlines that the Tribunal has the functions of reviewing and making determinations about the remuneration in connection with members and former members of the Legislative Assembly.

Clause 8 specifies that the Tribunal has the powers necessary or convenient to perform its functions, including any additional powers given to it under this or another Act. This clause is in recognition of the need for the Tribunal to be independent and have flexibility with regard to certain principles, in reviewing and making determinations about the remuneration of members and former members of the Legislative Assembly.

Clause 9 provides legislative independence for the Tribunal and Tribunal members and implements the policy objective of providing an independent, impartial and fair mechanism for determining the remuneration in connection with members and former members of the Legislative Assembly without any direction or control by any entity, including any Minister.

Clause 10 stipulates that the Tribunal consists of three persons appointed by the Governor in Council.

Clause 11 lists when a person is eligible for appointment as a Tribunal member and when a person is not eligible for appointment to the Tribunal. The intent of this provision is to ensure that any Tribunal members are suitably qualified for appointment and any conflicts of interest, or perceived conflicts of interest that may result if an ineligible person is appointed are avoided as far as possible prior to appointment to the Tribunal.

The dictionary in schedule 1 of the Bill defines ‘conviction’, ‘indictable offence’ and ‘spent conviction’ for the purposes of the Bill.

Clause 12 provides that a Tribunal member is appointed by the Governor in Council for a fixed term of three years, unless the member is being appointed to fill a casual vacancy under clause 20. A fixed term provides certainty for, and ensures the independence of, Tribunal members.

To allow for continuity of expertise and experience on the Tribunal a member may be reappointed. There are no limits in the Bill on the number of times that a member may be reappointed by the Governor in Council.

Clause 13 outlines the conditions of appointment for Tribunal members including that they are appointed on a part-time basis with remuneration and allowances decided by the Governor in Council. Tribunal members also hold office on the conditions not provided for in this Act that are decided by the Governor in Council and are appointed under this Act, and not the *Public Service Act 2008*.

Clause 14 enables the Governor in Council to appoint one Tribunal member to be the chairman of the Tribunal. The member appointed as the chairman may be appointed chairman at the same time as they are appointed as a Tribunal member and holds office as chairman for the term of their appointment as a Tribunal member.

Clause 15 allows the Minister to ask the Commissioner of the Queensland Police Service for a written report about the criminal history (as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986* to the extent the criminal history relates to indictable offences (other than spent convictions), and a brief description of the circumstances of a conviction mentioned in the criminal history of a Tribunal member, or person being considered for appointment as a Tribunal member.

The inclusion of a current Tribunal member is to allow the Minister to seek a report about the member's criminal history if the Tribunal member is proposed for reappointment, or to check that there have been no changes in the Tribunal member's criminal history since they were appointed to the Tribunal.

If the request relates to a person being considered for appointment to the Tribunal the Minister may only make the request if the person has given the Minister written consent for the request.

The Commissioner of the Queensland Police Service must comply with the request only in relation to information in the Commissioner's possession or to which the Commissioner has access.

The Minister must ensure a criminal history report is destroyed as soon as practicable after it is no longer needed for the purpose for which it was requested.

Clause 16 requires a Tribunal member to immediately disclose any changes in their criminal history to the Minister, unless the Tribunal member has a reasonable excuse.

Contravention by a Tribunal member of the requirement to disclose a change in their criminal history, without reasonable excuse, may lead to termination of their appointment by the Governor in Council under clause 18.

Clause 17 applies to a Tribunal member if they have a direct or indirect interest, financial or otherwise, in a matter being considered or about to be considered by the Tribunal and the interest could conflict with the proper performance of the member's duties for considering the matter.

As soon as practicable after the relevant facts come to the Tribunal member's knowledge the member must disclose the nature of the interest at a meeting of the tribunal and must not take part, or further part in any consideration of, or decision about, the matter without the consent of the other Tribunal members. The Tribunal member's disclosure must be recorded in the Tribunal's minutes.

Despite clause 23, for quorum purposes, if a Tribunal member is not present at a meeting of the Tribunal for consideration of, or decision about, the matter that they have an interest in and there would be a quorum if the member were present, the remaining members present is a quorum of the Tribunal for considering or deciding the matter at the meeting.

Enabling Tribunal members to assess the disclosed conflict of interest and decide whether to allow the disclosing member to take part in the consideration or decision about the matter maintains the independence of the Tribunal while ensuring that conflicts of interest are appropriately managed.

Clause 18 sets out the basis upon which a member may be removed from office by the Governor in Council. The grounds for terminating a Tribunal member's appointment are limited to ensure independence of the Tribunal.

Clause 19 specifies that where a member resigns; is removed by the Governor in Council under clause 18; or completes a term of office and is not reappointed, the office of the Tribunal member becomes vacant.

Clause 20 provides that where there is a casual vacancy in the office of a Tribunal member (for instance, if the member resigns) during the current term of that Tribunal member's appointment, another eligible person (the new member) is to be appointed by the Governor in Council for the remainder of their predecessor's term of appointment.

At the expiry of the new member's term of appointment under the casual vacancy provision, the new member may be reappointed by the Governor in Council under clause 12.

Clause 21 gives the Tribunal discretion, subject to the Act, in how it conducts its business, including its meetings. This clause recognises the independence of the Tribunal and that it is not subject to control by any entity in undertaking its functions.

Clause 22 enables the chairman to convene meetings of the Tribunal at the times and places the chairman decides. Where the chairman is present the chairman will preside. If the chairman is absent, another Tribunal member nominated by the chairman must preside.

A meeting of the Tribunal may be held using technology to allow reasonably contemporaneous and continuous communication between Tribunal members such as teleconferencing or videoconferencing. If this technology is used by a Tribunal member they are taken to be present at the meeting.

To enable ‘flying minutes’ a decision of the Tribunal, including a determination or ruling is validly made even if it is not made at a Tribunal meeting, if notice of the decision is given under procedures approved by the Tribunal and the quorum requirements are met.

Clause 23 provides that for making a determination or ruling, a quorum is three Tribunal members. The requirement for all Tribunal members to make a determination or ruling reflects the importance to be placed upon a determination or ruling.

For all other decisions (excluding a determination or ruling) a quorum is two Tribunal members. However, if a Tribunal member discloses a conflict of interest under clause 17, the quorum arrangements may vary depending on whether the conflict of interest disclosed is resolved to the remaining Tribunal members’ satisfaction.

Clause 24 requires the Tribunal to keep minutes of its meetings including a record of all decisions, including determinations and rulings, of the Tribunal.

Clause 25 provides that as the Tribunal is a statutory authority, the chief executive of the department with administrative responsibility for the Act must make available to the Tribunal the staff assistance and resources the Tribunal needs to effectively perform its functions.

Clause 26 provides that as soon as practicable after the end of the financial year, but within a period that will allow the report to be tabled in the Legislative Assembly within three months after the end of the financial year to which the report relates, the Tribunal must prepare an annual report about the operations of the Tribunal to give to the Clerk of the Parliament for tabling in the Legislative Assembly. On receiving the report the Clerk must table a copy of it in the Legislative Assembly.

Part 3 Tribunal’s determinations

Clause 27 enables the Tribunal to fulfil its functions under the Act, by giving the Tribunal the power to make determinations about the remuneration in connection with members and former members of the Legislative Assembly. The term ‘remuneration’ is defined in the dictionary, schedule 1, to mean the salary, allowances or entitlements in connection with a member or former member, other than accommodation services or other entitlements mentioned in clause 55.

The Tribunal may also make determinations about any remuneration (for example entitlements) that may apply to the spouses of members or former members as per the definition of spouse of a member and spouse of a former member that was in the Members’ Entitlements Handbook prior to the Tribunal’s first determination. The Tribunal may do this if it chooses, as provisions for these entitlements were included in that Handbook.

Clause 28 gives the Tribunal broad methods of inquiry and outlines procedures for making a determination. The Tribunal is not bound by the rules of evidence, must have regard to effective and efficient processes in carrying out its functions and may:

- inquire into, and inform itself of anything in the way it considers appropriate;
- seek and receive written and oral statements from any entity it considers appropriate;
- and

- act with as little formality as it considers appropriate.

Clause 29 lists the general principles the Tribunal may have regard to in making a determination as follows:

- the value to the community of a member of the Legislative Assembly carrying out the member's role, functions and responsibilities;
- the importance of a member of the Legislative Assembly being appropriately remunerated for carrying out the member's role, functions and responsibilities;
- relevant laws applying to members; and
- other matters the Tribunal considers appropriate such as the size of a member of the Legislative Assembly's electorate.

Different remuneration in connection with different members and former members of the Legislative Assembly may also be provided for in a determination of the Tribunal.

Clause 30 states the requirements for making a determination. In making a determination the Tribunal must:

- consult with and consider the views of the Clerk of the Parliament. This is recognition of the Clerk of the Parliament's role as accountable officer for the remuneration of members and former members;
- ensure that any allowances to be paid to a member of the Legislative Assembly reflect the amount of reasonable expenses incurred by a member in servicing the member's electorate;
- ensure that such allowances are not a substitute for other remuneration; and
- ensure that accommodation, services or other entitlements mentioned in clause 55 are not taken into account.

Clause 31 requires the Tribunal to make its first determination on or before 15 October 2013. The Tribunal may make as many determinations as it feels necessary, but the Tribunal is required to ensure that a determination is made within one year after the previous determination.

Clause 32 provides that a determination has effect on the day stated in the determination and may have effect on a day before it is made. This will allow for determinations to be backdated as considered appropriate, for example, to the commencement of the financial year on 1 July.

Clause 33 creates a legal entitlement to members or former members of the Legislative Assembly or their spouses to receive the remuneration decided by the Tribunal under a determination.

Clause 34 requires a copy of each determination and written notice of the reasons for the determination to be tabled in the Legislative Assembly. The chairman of the Tribunal is to give the Clerk of the Parliament these documents to table in the Legislative Assembly, immediately after receiving them.

Tabling the determinations in the Legislative Assembly ensures that determinations will be on the public record and those affected by the determinations and rulings (members and

former members of the Legislative Assembly) will be made aware of any resulting changes to their remuneration as soon as possible.

Clause 35 requires the chairman to make the determination and reasons for the determination publicly available as soon as practicable after a determination is made. In practice this will likely mean publishing the determination and reasons for the determination on the Tribunal's website.

Clause 36 enables the Clerk of the Parliament, as the relevant accountable officer responsible for implementing a determination to, by written notice, ask the Tribunal to give a ruling on the interpretation or application of a determination. The Tribunal must give the ruling to the Clerk of the Parliament as soon as practicable after the request is made, unless the request is withdrawn.

Clause 37 limits review and appeal of a Tribunal determination or ruling (decision). Unless the Supreme Court decides that a Tribunal decision is affected by jurisdictional error, the decision:

- is final and conclusive;
- cannot be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise; and
- is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, tribunal or another entity on any ground.

This clause reinforces the independence of the Tribunal and is in recognition of the need for Tribunal decisions to be legally binding on, and not brought into question by any person, including members and former members of the Legislative Assembly, affected by Tribunal decisions.

Part 4 Members' remuneration

This part amends and essentially reproduces, where necessary, chapter 7 (Members' salaries and allowances) of the *Parliament of Queensland Act 2001*. Chapter 7 of the *Parliament of Queensland Act 2001* will be repealed from 9 August 2013.

Clause 38 provides the definitions for Part 4 for 'annual salary', 'committee, member', and 'recognised political party'.

Clause 39 defines a recognised political party in the Legislative Assembly. Clause 39 is essentially a reproduction of sections 112(3) to 112(8) of the *Parliament of Queensland Act 2001*.

Clause 40 states that the purpose of Part 4 is to provide for particular matters about the annual salary, and any additional salary or allowances in connection with members of the Legislative Assembly.

Clause 41 provides that a member of the Legislative Assembly is entitled to an annual salary decided by the Tribunal under a determination.

Clause 42 lists the offices that may be entitled under a determination, to be paid salary in addition to the annual salary the member of the Legislative Assembly is entitled to receive under clause 41. Another office approved by resolution of the Legislative Assembly may also be entitled to be paid an additional salary.

The Clause also provides that a determination about additional salary may provide for different additional salaries for different Ministers having regard to the responsibilities of the Minister.

Clause 43 provides that the amount of additional salary for a member of the Legislative Assembly under clause 42 is to be decided by the Tribunal under a determination. A member of the Legislative Assembly is entitled to be paid only one additional salary, being the higher or highest of the additional salaries, if the member is entitled to be paid more than one additional salary.

Clause 44 provides that if the Deputy Speaker acts as Speaker for a continuous period of 30 days or more, and the Speaker is entitled to an additional salary under clause 42, for the whole period the Deputy Speaker acts, the Deputy Speaker is to be paid an additional salary at the rate for the time being applicable to the office of the Speaker, instead of any additional salary payable to the person as the Deputy Speaker. Clause 44 is essentially a reproduction of section 116 of the *Parliament of Queensland Act 2001*.

Clause 45 provides that if a temporary Deputy Speaker acts in the office of the Deputy Speaker for a continuous period of 30 days or more, and the Deputy Speaker is entitled to an additional salary under Clause 42, for the whole of the period that the temporary Deputy Speaker acts, the temporary Deputy Speaker is to be paid an additional salary at the rate for the time being applicable to the office of the Deputy Speaker. Clause 45 is essentially a reproduction of section 117 of the *Parliament of Queensland Act 2001*.

Clause 46 provides that if a member acts as a Minister for a continuous period of 30 days or more, for the whole of the period the member acts, the member is to be paid any additional salary at the rate for the time being applicable to the office of the Minister. If a Minister (the first Minister) acts in another Minister's office for a continuous period of 30 days or more, and a higher additional salary under clause 42 is payable for the other Minister's office, for the whole period the first Minister acts, the first Minister is to be paid the higher additional salary at the rate for the time being applicable to the other Minister's office. Clause 46 is essentially a reproduction of section 118 of the *Parliament of Queensland Act 2001*.

Clause 47 provides that division 3 only applies for the purpose of deciding the period for which an annual salary or additional salary for a member of the Legislative Assembly is payable. Clause 47 is essentially a reproduction of section 119 of the *Parliament of Queensland Act 2001*.

Clause 48 sets out when a member's entitlement to be paid a salary as a member starts and ends. Clause 48 is essentially a reproduction of section 120 of the *Parliament of Queensland Act 2001*.

Clause 49 sets out when a member's entitlement to be paid an additional salary under clause 42 starts and ends. Clause 49 is essentially a reproduction of section 121 of the *Parliament of Queensland Act 2001*.

Clause 50 provides for a member's salary to be withheld if it appears to the Speaker, or if the member concerned is the Speaker, the Deputy Speaker, that the member's seat has become vacant when the Assembly is not sitting. *Clause 50* is essentially a reproduction of section 122 of the *Parliament of Queensland Act 2001*.

Clause 51 provides for salary sacrifice arrangements for Members of the Legislative Assembly. *Clause 51* provides that a member may elect that the annual salary and any additional salary of the member be provided in part by the payment of salary to the member and in part by the payment of superannuation contributions to the superannuation fund of the member, or an amount under an arrangement about salary packaging that is the same as an arrangement about salary packaging applying to a public service employee.

A member may also elect for their annual salary and any additional salary to be provided entirely by the payment of superannuation contributions to the superannuation fund of the member

If a member elects that part or all of the members' annual salary and any additional salary is to be provided by payment of superannuation contributions the election must be made by written notice given to the Clerk.

If a member chooses to salary sacrifice in accordance with *clause 51*, the member is taken to have received the annual salary and any additional salary the member is entitled to.

This clause essentially reproduces and expands section 123B of the *Parliament of Queensland Act 2001* to provide that Members of the Legislative Assembly may salary sacrifice in circumstances other than superannuation contributions. However, those circumstances are limited and a member must follow the same arrangements about salary packaging that apply to a public service employee as if the member was a public sector employee.

Clause 52 allows a member to vary or revoke an election about superannuation contributions by written notice given to the Clerk. *Clause 52* is essentially a reproduction of section 123C of the *Parliament of Queensland Act 2001*.

Clause 53 defines 'prescribed rate of interest' as interest at the Reserve Bank of Australia cash rate plus 50 basis points, calculated daily. The cash rate is published on the Reserve Bank of Australia website at <www.rba.gov.au>.

Clause 54 provides that a member is entitled to the allowances and entitlements decided by the Tribunal under a determination.

Clause 55 provides that the Act does not prevent a person from receiving other entitlements as set out in the clause. Examples of accommodation and services for paragraph (b) of *Clause 55* do not include minor office equipment or stationery/consumables as outlined in section 2.5 of the *Members' Office Support Handbook* as in force before 9 August 2013.

Clause 56 provides that former members of the Legislative Assembly are liable to repay the pro rata amount of any overpaid advance allowance. The overpaid amount will be subject to interest if it remains unpaid at the end of six months from the date the person stops being a

member. The Clerk is able to recover any outstanding debts to the State through a court of competent jurisdiction, with the approval of the Premier. Clause 56 is essentially a reproduction of section 123E of the *Parliament of Queensland Act 2001*.

Clause 57 provides that a member is liable to repay an overpayment of an allowance paid on condition that the member accounts for the member's expenditure of the allowance to the Clerk. If the Clerk considers the member has not satisfactorily accounted for the expenditure of the allowance or part of the allowance, the Clerk is able to deduct the overpayment from any further allowance to which the member is entitled.

If any part of the overpayment has not been deducted by the Clerk from any further allowance to which the member is entitled, or is unpaid after the end of six months after the day the member stops being a member, interest is payable on the unpaid amount. The overpayment, together with any interest payable is a debt owing to the State and may be recovered by the Clerk, with the approval of the Premier, in a court of competent jurisdiction.

Clause 58 authorises the Clerk to issue certificates about any overpayments still owing to the State including associated accrued interest. The certificates may be used in court proceedings.

Clause 59 provides that any amounts payable to a member under this part that the member has not drawn by the end of seven days after 1 July in each year, become part of the consolidated fund and the member is no longer entitled to payment of the amounts. Clause 59 is essentially a reproduction of section 123 of the *Parliament of Queensland Act 2001*.

Part 5 Other matters

Clause 60 requires the Clerk of the Parliament to keep a document titled the *Members' Remuneration Handbook*.

Clause 61 gives the Governor in Council the power to make regulations under the Act.

Part 6 Transitional provisions

Clause 62 provides a definition of *Member's Entitlements Handbook* for part 6.

Clause 63 sets out the purpose of division 2.

Clause 64 sets out the remuneration that a person who was a member of the Legislative Assembly in the relevant period (1 September 2009 to 30 June 2013) is taken to have been entitled to. The effect of this clause is to validate the salary rates approved by the Governor in Council during this period. By extension, this would also validate the flow on adjustments made under the *Superannuation (State Public Sector) Deed 1990*.

Clause 65 provides how the *Parliamentary Members' Salary Notice (No. 1) 2013* made by the Governor in Council on 4 July 2013 has no effect and is taken never to have had effect.

Clause 66 sets out how certain remuneration is to be provided to members of the Legislative Assembly for the period starting on 9 August 2013 and ending on the day the tribunal makes its first determination for members of the Assembly. The effect of this clause is to return

members' salaries to the rates that existed as at 30 June 2013, pending the issuing of the Tribunal's first determination.

Clause 67 provides that despite clause 32 (when a Tribunal determination has effect) the first determination in connection with members and former members of the Legislative Assembly has effect on 1 July 2013.

Clause 68 provides that a person who was a member of the Legislative Assembly on 1 July 2013 is liable to repay an overpayment received by the member. The Clerk is empowered to recover the overpayment by deducting the amount, or the amount in instalments, from the fortnightly salary payable to the member.

If a member stops being a member after 1 July 2013 and any part of the overpayment is unpaid after the end of six months after the day the member stops being a member, interest is payable on the unpaid amount. The overpayment together with any interest payable is a debt owing to the State and may be recovered by the Clerk, with the approval of the Premier, in a court of competent jurisdiction.

The Clerk may issue certificates about any overpayments still owing to the State including associated accrued interest. The certificates may be used in court proceedings.

Clause 69 provides that the Members' Entitlements Handbook and Members' Office Support Handbook as in effect immediately before 9 August 2013 are taken to be the Members' Remuneration Handbook.

Clause 70 applies despite clause 12(1) which provides that members of the Tribunal are to be appointed for a term of three years. The Premier appointed the first Tribunal members on 16 July 2013 and their three year term is to commence from this date. This clause therefore provides that the term of the first Tribunal members appointed under clause 12 ends three years after 16 July 2013, being 15 July 2016.

Clause 71 provides a transitional regulation-making power. A regulation (transitional regulation) may make provision of a saving or transitional nature about a matter that is necessary to make provision to assist in the administration of or to achieve the purposes of, the Act; and the Act does not make provision or sufficient provision.

A transitional regulation may have retrospective operation to a day that is not earlier than 9 August 2013 and must declare it is a transitional regulation.

This clause and any transitional regulation expire on 9 August 2014.

Part 7 Amendments and repeal of legislation

Clause 72 states that this division amends this Act.

Clause 73 amends the long title of the Act to omit 'Assembly, to amend' and insert 'Assembly'.

Clause 74 states that this division amends the *Constitution of Queensland 2001*.

Clause 75 amends section 20 (separate appropriation for Legislative Assembly) of the *Constitution of Queensland 2001*, to omit ‘*Parliament of Queensland Act 2001*’ and insert ‘*Queensland Independent Remuneration Tribunal Act 2013*’.

Clause 76 states that this division amends the *Crime and Misconduct Act 2001*.

Clause 77 amends section 300 (membership of parliamentary committee) of the *Crime and Misconduct Act 2001* to omit ‘Manager of Government Business’ and insert ‘Leader of the House’.

Clause 78 amends schedule 2 (dictionary) of the *Crime and Misconduct Act 2001* to omit the definition of ‘Manager of Government Business’ and insert the definition of ‘Leader of the House’.

Clause 79 states that this division amends the *Local Government Act 2009*.

Clause 80 amends section 183 (establishing the tribunal) of the *Local Government Act 2009* to omit section 183 (2)(c) and insert ‘deciding the maximum amount of remuneration that is payable to the councillors in each of the categories; and’

Clause 81 amends section 270 (regulation-making power) of the *Local Government Act 2009* to omit section 270(2)(a) and insert ‘the processes of the tribunal; or’.

Clause 82 inserts a new chapter 9, part 6 ‘Transitional provision for Queensland Independent Remuneration Tribunal Act 2013’ in the *Local Government Act 2009* to provide that the amendment of the *Local Government Regulation 2012* by the *Queensland Independent Remuneration Tribunal Act 2013* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

Clause 83 states that this division amends the *Local Government Regulation 2012*.

Clause 84 amends section 241 (establishing categories of local governments) of the *Local Government Regulation 2012* to omit section 241 (2) and insert ‘the purpose of establishing categories of local governments is to enable the tribunal to decide the maximum amounts of remuneration that are payable to mayors and other councillors in each of the categories.’

Clause 85 amends section 244 (deciding remuneration) of the *Local Government Regulation 2012*. The heading of section 244 is amended to include ‘maximum amount of’ after ‘deciding’.

Section 244 (1) is omitted and ‘the tribunal must, before 1 December of each year, and for each category of local government, decide the maximum amount of remuneration payable from 1 July of the following year to a councillor, mayor or deputy mayor of a local government in each category’ is inserted.

Subsections 244 (3) and (6) are omitted and the section is renumbered accordingly.

In section 244 (5) ‘subsection (4)(b)’ is omitted and ‘subsection (3)(b)’ is inserted.

Clause 86 omits section 245 (varying remuneration) of the *Local Government Regulation 2012*.

Clause 87 amends section 246 (remuneration schedule) of the *Local Government Regulation 2012* to omit section 246(1) and insert ‘the tribunal must prepare a remuneration schedule after the tribunal makes a decision about maximum amounts of remuneration under section 244’.

Before the word ‘remuneration’ in section 246(2)(c) the words ‘maximum amount of’ have been inserted.

Clause 88 omits sections 247 and 248 of the *Local Government Regulation 2012* and replaces them with the following:

- Section 247 provides that a local government must pay remuneration to each councillor of the local government. The maximum amount of remuneration payable to a councillor under the remuneration schedule will apply unless the local government, by resolution, decides it is not to apply. If the local government decides the maximum amount of remuneration is not to apply, it must, by resolution, decide the amount of remuneration to be paid to each councillor. That amount cannot exceed the maximum remuneration amount determined by the Tribunal under the remuneration schedule. The amount of remuneration for each councillor, other than a mayor or deputy mayor, must be the same subject to section 248. If the local government seeks to apply an amount other than the maximum amount determined by the Tribunal, it must resolve to do so within 90 days of gazettal of the remuneration schedule;
- Section 248 applies if a local government considers that, having regard to exceptional circumstances, a councillor of its local government is entitled to an amount of remuneration that is more than the maximum amount of remuneration payable to the councillor under the remuneration schedule. The local government may make a submission to the tribunal for approval to pay the councillor an amount of remuneration of more than the maximum amount (a higher amount). The tribunal may, but is not required to, consider the submission. If the tribunal is satisfied that, having regard to the exceptional circumstances, the councillor is entitled to be paid any higher amount the tribunal may approve payment of that amount.

Clause 89 inserts a new Chapter 12, ‘Transitional provisions for Queensland Independent Remuneration Tribunal Act 2013’ in the *Local Government Regulation 2012*. The purpose of the new chapter is to stop any variation of a councillor’s salary during the period starting on 1 July 2013 and ending on 30 June 2014. This chapter also clarifies that for the period starting on 1 January 2014 and ending on 30 June 2014, a councillor of a new local government is entitled only to the remuneration payable to the person under a decision of the tribunal taken to be made under previous section 246. A new local government means Douglas Shire Council, Livingstone Shire Council, Noosa Shire Council and Mareeba Shire Council, all to come into existence on 1 January 2014.

Clause 90 states that this division amends the *Parliamentary Service Act 1988*.

Clause 91 amends section 8 (delegations) of the *Parliamentary Service Act 1988* to omit ‘the chairperson of committees’.

Clause 92 states that this division amends the *Parliament of Queensland Act 2001*.

Clause 93 amends section 13 (voting) subsection (b) of the *Parliament of Queensland Act 2001* to omit 'Chairperson of Committees' and insert 'Deputy Speaker'.

Clause 94 amends section 16 (Deputy Speaker in particular circumstances) of the *Parliament of Queensland Act 2001* to omit 'Chairperson of Committees' in section 16 (3), (4) and (5) and insert 'Deputy Speaker'. For Section 16 (5) 'Chairperson of Committees' is omitted and 'Deputy Speaker' inserted.

Clause 95 replaces the heading of chapter 2, part 4 'Chairperson of Committees' of the *Parliament of Queensland Act 2001* and inserts 'Part 4 Deputy Speaker'.

Clause 96 amends section 17 (Chairperson of Committees) and section 17(4) of the *Parliament of Queensland Act 2001* to omit 'Chairperson of Committees' and insert 'Deputy Speaker'.

Clause 97 amends section 18 (Chairperson of Committees continues to hold office on Assembly's expiry or dissolution) of the *Parliament of Queensland Act 2001* to omit 'Chairperson of Committees' and insert 'Deputy Speaker'.

Clause 98 amends section 20 (how the proxy votes) of the *Parliament of Queensland Act 2001* to omit 'Chairperson of Committees' and insert 'Deputy Speaker'.

Clause 99 amends section 65 (meaning of paid public appointment and related appointment) of the *Parliament of Queensland Act 2001*. In section 65(3)(b), after 'Act', 'or resolution of the Assembly' is inserted. This is a consequential amendment given clause 42. In Section 65(6), the definition *reward* in paragraph (a), 'chapter 7' is omitted and the *Queensland Independent Remuneration Tribunal Act 2013* is inserted. This is a consequential amendment given clause 42.

Clause 100 amends section 70 (meaning of *transacts business*) of the *Parliament of Queensland Act 2001* by omitting the definition of *reward* in Section 70(5), paragraph (a), 'chapter 7' and insert the *Queensland Independent Remuneration Tribunal Act 2013*.

Clause 101 amends section 81 (membership) of the *Parliament of Queensland Act 2001* to omit 'Manager of Government Business' and insert 'Leader of the House'.

Clause 102 amends section 83 (meetings) of the *Parliament of Queensland Act 2001* to omit 'Manager of Government Business' and insert 'Leader of the House'.

Clause 103 amends section 91 (membership and operation-less than 15% non-government membership of Assembly) of the *Parliament of Queensland Act 2001* to omit 'Manager of Government Business' and insert 'Leader of the House'.

Clause 104 amends section 91A (membership and operation-at least 15% but less than 25% non-government membership of Assembly) of the *Parliament of Queensland Act 2001* to omit 'Manager of Government Business' and insert 'Leader of the House'.

Clause 105 amends section 91B (membership and operation-at least 25% but less than 50% non-government membership of Assembly) of the *Parliament of Queensland Act 2001* to omit ‘Manager of Government Business’ and insert ‘Leader of the House’.

Clause 106 amends section 91C (membership and operation – at least 50% non-government membership of Assembly) of the *Parliament of Queensland Act 2001* to omit ‘Manager of Government Business’ and insert ‘Leader of the House’.

Clause 107 amends section 103 (membership) of the *Parliament of Queensland Act 2001* to omit ‘Manager of Government Business’ and insert ‘Leader of the House’.

Clause 108 amends section 104 (chairperson) of the *Parliament of Queensland Act 2001* to omit ‘Manager of Government Business’ and insert ‘Leader of the House’.

Clause 109 omits chapter 7 (members’ salaries and allowances) of the *Parliament of Queensland Act 2001*.

Clause 110 inserts a new chapter 10, part 7 ‘Queensland Independent Remuneration Tribunal Act 2013’ into the *Parliament of Queensland Act 2001*.

Clause 111 amends the schedule (dictionary) of the *Parliament of Queensland Act 2001* to omit the definitions of ‘Chairperson of Committees’, ‘Manager of Government Business’ and ‘Temporary Chairperson of Committees’ and insert definitions of ‘Deputy Speaker’ and ‘Leader of the House’. A reference to ‘Chairperson of Committees’ is also replaced with a reference to ‘Deputy Speaker’ within the definition of ‘temporary Chairperson of Committees’.

Clause 112 repeals the Parliament of Queensland Regulation 2012, SL No. 142.

Schedule 1 Dictionary

Schedule 1 contains the definitions of words used in this Act.