

Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Leader of the House

Title of the Bill

Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018

Policy objectives and the reasons for them

Amendments to notification requirements on prosecuting authorities

The Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 (the Bill) includes provisions to require the Police Commissioner and the Director of Public Prosecutions (prosecution authorities) to:

- advise the Director-General of the Department of the Premier and Cabinet (the Director-General) if: a staff member employed under the *Ministerial and Other Office Holder Staff Act 2010* is charged with, or convicted of, an indictable offence or committed for trial; an appeal for a conviction of the staff member for an offence has been decided or otherwise ended; or a prosecution against the staff member has ended without the person being convicted; and
- advise the Clerk of the Parliament (the Clerk) if: a staff member employed under the *Parliamentary Service Act 1988* is charged with, or convicted of, an indictable offence or committed for trial; an appeal for a conviction of the staff member for an offence has been decided or otherwise ended; or a prosecution against the staff member has ended without the person being convicted.

The amendments to be moved during consideration in detail will amend the type of offences for which notification must be given by a prosecution authority and the information to be provided by a prosecution authority when a prosecution of a staff member ends without a person being convicted.

The amendments will bring the notification requirements for staff employed under the *Ministerial and Other Office Holder Staff Act 2010*, and the *Parliamentary Service Act 1988* in line with those under the *Public Service Act 2008* for public service employees. It also addresses a drafting issue identified by the Economic and Governance Committee in Report No. 9 titled Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018, which was tabled in the Parliament on 5 July 2018, and implements recommendation 2 of that report.

Additional staffing for cross bench members of Parliament

All members of Parliament are provided electoral staff by the Clerk in accordance with section 2.4.2.2 of the Members' Remuneration Handbook. Staffing allocations for Ministers and the Leader of the Opposition are determined by the Premier in accordance with The Queensland Ministerial and The Queensland Opposition Handbooks.

Additional staffing allocations for cross bench members are currently determined by the Premier under section 2.5.2 of the Members' Remuneration Handbook. The *Ministerial and Other Office Holder Staff Act 2010* also allows for the Director-General to employ a person as a staff member of a non-government member, other than the Leader of the Opposition.

On 22 October 2019, a Motion was agreed to by the House that called on the government to give the Queensland Independent Remuneration Tribunal (the Tribunal) the function of deciding the resources of non-government members.

Achievement of the Objectives

Amendments to notification requirements on prosecuting authorities

The objectives will be achieved by amending the Bill to require the prosecution authorities to advise the Director-General or the Clerk if an existing staff member employed under the relevant Acts is charged with a 'relevant offence', rather than an 'indictable offence'.

Under the *Public Service Act 2008*, the prosecution authorities are required to notify a chief executive if they are aware that a person who is a public service employee is charged with a 'relevant offence', committed for trial for a 'relevant offence', an appeal for a conviction for 'relevant offence' has been decided in relation to the person or otherwise ended, or a prosecution for a 'relevant offence' has ended without the person being convicted.

In drafting the replication of these provisions in the Bill, only 'indictable offences' were included rather than 'relevant offences' as are provided for in the *Public Service Act 2008*.

The meaning of 'relevant offence' is broader than the meaning of 'indictable offence' and includes both indictable offences and disqualifying offences under the *Working with Children (Risk Management and Screening) Act 2000*, which are not indictable offences.

The objectives will also be achieved by amending the Bill in relation to the information required to be provided by a prosecution authority to the Director-General or Clerk in circumstances when a staff member's prosecution for a relevant offence, has ended without conviction, in line with the information required to be provided under the *Public Service Act 2008*.

Additional information to be provided in this regard, will include:

- the court in which the prosecution process ended, if relevant;
- particulars of the offence; and
- the date the prosecution process ended.

Additional staffing for cross bench members of Parliament

The amendments to be moved during consideration in detail will amend the *Queensland Independent Remuneration Tribunal Act 2013* (QIRT Act) to give the Tribunal functions and powers to set staffing entitlements of cross bench members of Parliament, rather than the Premier.

Government and opposition members (that is members of the political party recognised as being in opposition) have access to support from established and resourced political parties to assist them in the performance of parliamentary functions such as the enacting and debating of proposed new legislation and participating in general debates and parliamentary business.

Ministers can draw upon the policy support provided by the public service and ministerial staff members. Similarly, the staff allocated under The Queensland Opposition Handbook to the Leader of the Opposition provide support to the Leader of the Opposition in fulfilling portfolio responsibilities. These staff members can inform the development of the opposition's policy positions on matters before the Parliament, which supports the shadow ministry in formulating and responding to debate on such matters.

Members of Parliament are well resourced through Parliamentary Services. However, there have been a few instances where the Premier of the day has in the past approved additional staffing resources for cross bench members, over and above those provided by the parliamentary service to all members, to cater for unique situations impacting on the workload and ability of the members to perform their parliamentary duties. The amendments will ensure the independent Tribunal has responsibility to determine additional staffing requirements for cross bench members in appropriate circumstances.

The amendments prescribe the matters the Tribunal may consider when making a determination about additional staffing entitlements for cross bench members - an additional staff member determination. This includes, for example: general staffing and other resources provided to all members of Parliament; the composition of the Parliament; the workload and duties on the cross bench members; and whether the cross bench members are members of a political party.

The amendments will enable an additional staff member determination to be made in relation to one or more cross bench members, or a class of cross bench members, such as all members of a particular political party.

The amendments enable the Tribunal to determine the frequency of making an additional staff member determination, but specifically requires that the Tribunal make an additional staff member determination within three months of the commencement of a new term of Parliament or when a person becomes or ceases to be a cross bench member.

The amendments provide that if the Tribunal makes an additional staff member determination in relation to a cross bench member, the Clerk must provide additional staff members to the member in accordance with the determination.

The amendments are drafted to enable flexibility in the way the resources are provided. For example, if an additional staff member determination provides for a cross bench member to be provided one additional full time equivalent electorate or research officer at a stated salary level, the Clerk could, at the request of the cross bench member, provide two part time officers equivalent to one full time equivalent officer.

Alternative Ways of Achieving Policy Objectives

Amendments to notification requirements on prosecuting authorities

The Director-General and Clerk put administrative procedures in place in December 2017 to conduct criminal history checks for staff employed under the relevant Acts. However, there is no alternative method of achieving the objective of these amendments, which is to expand the scope of offences required to be notified by a prosecution authority, the information required to be provided by a prosecution authority, and details required to be given when a prosecution ends.

The Bill provides certainty for the Director-General, the Clerk and the prosecution authorities about the scope of the power and certainty to prospective and existing staff about the use of the information. It also ensures appropriate safeguards regarding the use and disclosure of the sensitive information are maintained. The amendments ensure the requirements on prosecution authorities under the Bill align with similar requirements under the *Public Service Act 2008* relating to public servants.

Additional staffing for cross bench members of Parliament

There is also no alternative method of achieving the policy objective of transferring responsibility for deciding staffing entitlements for cross bench members from the Premier to the Tribunal. Making a determination regarding staffing entitlements of cross bench members of Parliament does not fall within the current legislative functions of the Tribunal. Accordingly, achievement of the policy objectives requires amendment of the QIRT Act.

Estimated Cost for Government Implementation

Amendments to notification requirements on prosecuting authorities

There are no additional administrative costs in implementing the amendments concerning notifications by prosecution authorities.

Additional staffing for cross bench members of Parliament

The Tribunal may require additional meetings to consider staffing allocations for cross bench members. Members are paid meetings fees in accordance with Adjudication and Determination Category, level 2 of the *Remuneration Procedures for Part-Time Chairs and Members of Queensland Government Bodies*. Any additional meeting costs will be met within the current budget.

Consistency with Fundamental Legislative Principles

The amendments have been drafted with due regard to the Fundamental Legislative Principles as outlined in the *Legislative Standards Act 1992*.

Amendments to notification requirements on prosecuting authorities

The Bill provides for the provision of criminal history information to the Director-General and Clerk. The amendments revise the requirements, including expanding the types of offences about which notification must be given.

The power to obtain a person's criminal history potentially breaches the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals, particularly the right to privacy with respect to personal information. However, this is considered necessary to ensure the suitability of individuals employed under the *Ministerial and Other Office Holder Staff Act 2010* and the *Parliamentary Service Act 1988*. The Bill includes appropriate safeguards to protect the interests of individuals whose criminal history is obtained through these provisions.

Further information regarding why the limit on the right to privacy imposed by the amendments is considered to be reasonable and justifiable is provided in the Statement of Compatibility.

Consultation

Amendments to notification requirements on prosecuting authorities

Consultation in relation to amendment to the notification requirements on prosecution authorities has been undertaken with the Queensland Police Service, the Director of Public Prosecutions and the Clerk. No issues were raised.

Additional staffing for cross bench members of Parliament

The Clerk and Chair of the Tribunal were consulted in relation to the provision of the additional functions. No issues were raised.

Consistency with legislation of other jurisdictions

The amendments are specific to the State of Queensland and are not uniform with, or complementary to legislation of other jurisdictions.

Notes on provisions

Amendment 1 - Clause 3 (Insertion of new pt 2A)

Amendment 1 replaces ‘an indictable’ offence with ‘a relevant’ offence to provide alignment between the requirement on the prosecution authorities under section 170(1) of the *Public Service Act 2008* and the requirement on them under proposed new section 13I(1) of the *Ministerial and Other Office Holder Staff Act 2010*.

The meaning of ‘relevant offence’ is broader than the meaning of ‘indictable offence’ by also including disqualifying offences under the *Working with Children (Risk Management and Screening) Act 2000*, that are not indictable offences. This is consistent with the *Public Service Act 2008*.

Amendment 2 - Clause 3 (Insertion of new pt 2A)

Amendment 2 replaces ‘indictable’ offence with ‘relevant’ offence, to provide alignment between the requirement on the prosecution authorities under sections 170(2) and 170(3) of the *Public Service Act 2008* and the requirement on them under proposed new section 13I(2) of the *Ministerial and Other Office Holder Staff Act 2010*.

Amendment 3 - Clause 3 (Insertion of new pt 2A)

Amendment 3 replaces ‘indictable’ offence with ‘relevant’ offence, to provide alignment between the requirement on the prosecution authorities under sections 170(2) and 170(3) of the *Public Service Act 2008* and the requirement on them under proposed new section 13I(3) of the *Ministerial and Other Office Holder Staff Act 2010*.

Amendment 4 - Clause 3 (Insertion of new pt 2A)

Amendment 4 replaces ‘prosecution for the indictable’ offence with ‘prosecution process for the relevant’ offence to provide alignment between the requirement on the prosecution authorities under section 170(5) of the *Public Service Act 2008* and the requirement on them under proposed new section 13I(5) of the *Ministerial and Other Office Holder Staff Act 2010*.

Amendment 5 - Clause 3 (Insertion of new pt 2A)

Amendment 5 amends proposed new section 13I(5) of the *Ministerial and Other Office Holder Staff Act 2010* to provide alignment between the requirement on the prosecution authorities to provide certain information about a prosecution and the requirement under section 170(5) of the *Public Service Act 2008*. The amendment ensures that when a prosecution has ended without conviction, prosecution authorities also provide the Director-General the following information:

- the court in which the prosecution process ended, if relevant;
- particulars of the offence; and
- the date the prosecution process ended.

Amendment 6 - Clause 3 (Insertion of new pt 2A)

Amendment 6 inserts a new definition of ‘disqualifying offence’ and ‘relevant offence’ into the proposed new section 13I of the *Ministerial and Other Office Holder Staff Act 2010*.

Amendment 7 - Clause 10 (Insertion of new pt 5A)

Amendment 7 replaces ‘an indictable’ offence with ‘a relevant’ offence to provide alignment between the requirement on the prosecution authorities under section 170(1) of the *Public Service Act 2008* and the requirement on them under proposed new section 47G of the *Parliamentary Service Act 1988*.

Amendment 8 - Clause 10 (Insertion of new pt 5A)

Amendment 8 replaces ‘indictable’ offence with ‘relevant’ offence on page 18, line 1, to provide alignment between the requirement on the prosecution authorities under sections 170(2) and 170(3) of the *Public Service Act 2008* and the requirement on them under proposed new section 47G(2) of the *Parliamentary Service Act 1988*.

Amendment 9 - Clause 10 (Insertion of new pt 5A)

Amendment 9 replaces ‘indictable’ offence with ‘relevant’ offence, to provide alignment between the requirement on the prosecution authorities under sections 170(2) and 170(3) of the *Public Service Act 2008* and the requirement on them under proposed new section 47G(2) of the *Parliamentary Service Act 1988*.

Amendment 10 - Clause 10 (Insertion of new pt 5A)

Amendment 10 replaces ‘prosecution for the indictable’ offence with ‘prosecution process for the relevant’ offence to provide alignment between the requirement on the prosecution authorities under section 170(5) of the *Public Service Act 2008* and the requirement on them under proposed new section 47G(5) of the *Parliamentary Service Act 1988*.

Amendment 11 - Clause 10 (Insertion of new pt 5A)

Amendment 11 amends proposed new section 47G(5) of the *Parliamentary Service Act 1988* to provide alignment between the requirement on the prosecution authorities to provide certain information about a prosecution and the requirement under section 170(5) of the *Public Service Act 2008*. The amendment ensures that when a prosecution has ended without conviction, prosecution authorities also provide the Clerk the following information:

- the court in which the prosecution process ended, if relevant;
- particulars of the offence; and
- the date the prosecution process ended.

Amendment 12 - Clause 10 (Insertion of new pt 5A)

Amendment 12 inserts a new definition of ‘disqualifying offence’ and ‘relevant offence’ in proposed new section 47G of the *Parliamentary Service Act 1988*.

Amendment 13 - After clause 10

Amendment 13 inserts a new 'Part 5 Amendment of the Queensland Independent Remuneration Tribunal Act 2013' into the Bill.

Part 5 Amendment of the Queensland Independent Remuneration Tribunal Act 2013

Clause 11 – Act amended

Clause 11 provides that Part 5 of the Bill amends the QIRT Act.

Clause 12 – Amendment of Long Title

Clause 12 amends the long title of the QIRT Act.

Clause 13 – Amendment of s 3 (Main purpose of Act)

Clause 13 amends section 3 of the QIRT Act to include decisions about cross bench member entitlement to additional staff members as a purpose for the establishment of the Tribunal.

Clause 14 – Amendment of s 7 (Functions)

Clause 14 amends section 7 of the QIRT Act to provide the Tribunal with additional functions to review and make determinations about entitlements of cross bench members to additional staff members.

Clause 15 – Insertion of new pt 3, div 1, sdiv 1, hdg

Clause 15 inserts a new 'Subdivision 1 General' heading under part 3, division 1 of the QIRT Act to provide for a new subdivision for general provisions applicable to all determinations made by the Tribunal.

Clause 16 – Amendment of s 27 (Power to make determination)

Clause 16 amends section 27 into the QIRT Act to provide the Tribunal with an additional power to made determinations about entitlements of cross bench members to additional staff members (additional staff member determinations).

Clause 17 – Insertion of new pt 3, div 1, sdiv 2, hdg and s28A

Clause 17 inserts a new 'Subdivision 2 Determinations about remuneration' heading under part 3, division 1 of the QIRT Act.

The purpose of this subdivision is to separate the provisions applicable to remuneration determinations from those applicable to additional staff member determinations.

Section 28A provides that this subdivision applies in relation to a determination of the Tribunal about remuneration in connection with members and former members of the Assembly (a remuneration determination).

Clause 18 – Amendment of s 29 (General principles for making determination)

Clause 18 amends section 29 of the QIRT Act so that the section only applies to remuneration determinations.

Clause 19 – Amendment of s 30 (Requirements for making determination)

Clause 19 amends section 30 of the QIRT Act so that the section only applies to remuneration determinations and omits a reference to s 55 and replaces it with s 59D to account for changed section numbering as a result of proposed amendments.

Clause 20 – Amendment of s 31 (When determination to be made)

Clause 20 amends section 31 of the QIRT Act so that the section only applies to remuneration determinations.

Clause 21 – Amendment of s 31A (Determinations about salary entitlements following public service salary decisions)

Clause 21 amends section 31A of the QIRT Act so that the section only applies to remuneration determinations.

Clause 22 – Amendment of s 31B (Particular determinations about additional salary entitlements)

Clause 22 amends section 31B of the QIRT Act so that the section only applies to remuneration determinations.

Clause 23 – Insertion of new pt 3, div 1, sdiv 3

Clause 23 inserts a new subdivision titled ‘Subdivision 3 Determinations about entitlements of cross bench members to additional staff members’ under part 3, division 1 of the QIRT Act.

The purpose of this subdivision is to separate the provisions applicable to additional staff member determinations from those applicable to remuneration determinations.

Clause 23 inserts section 31C into the QIRT Act to provide that subdivision 3 applies in relation to an additional staff member determination.

Clause 23 inserts section 31D into the QIRT Act to prescribe general matters about additional staff member determinations.

Section 31D prescribes that an additional staff member determination may provide for different levels of staffing allocations for different cross bench members or stated classes of cross bench members.

Section 31D gives the Tribunal flexibility when making an additional staff member determination. The determination may provide for the same number of additional staff members for all cross

bench members, or classes of cross bench members, and may provide for a different number of additional staff numbers for cross bench members or classes of cross bench members.

The section further establishes that an additional staff member determination may prescribe the role of the staff member, the classification and salary level of the staff member and the location where the staff member is to perform their functions (for example, the member's electorate office, or in Parliamentary Services).

Clause 23 inserts section 31E into the QIRT Act to prescribe the general principles for the Tribunal when making additional staff member determinations. These include the factors the Tribunal may have regard to in making its additional staff member determination and include:

- parliamentary resources provided to members of Parliament;
- the composition of the Assembly and how this composition affects cross bench members;
- the workload and duties of cross bench members;
- whether cross bench members are members of political parties;
- relevant laws applying to members of Parliament; and
- other matters the Tribunal considers appropriate.

Section 31E(2) defines 'composition of the Assembly' and 'parliamentary resources', which are terms used in the new section. Parliamentary resources relates to the services and support provided to a member, in the parliamentary precinct or elsewhere, to help them to carry out their duties. It includes general staff members, that is, staff generally allocated to members under the *Parliamentary Service Act 1988*, as articulated in the Members' Remuneration Handbook (section 2.4.2.2). 'General staff members' is defined in Clause 31.

Clause 23 inserts section 31F into the QIRT Act to require the Tribunal to consult with, and consider the views of, the Clerk when making an additional staff member determination.

Clause 23 also inserts section 31G into the QIRT Act, which prescribes when additional staff member determinations can and must be made.

Under section 31G(1), the Tribunal may determine the frequency of an additional staff member determination. Section 31G(2) provides for specific instances when an additional staff member determination is required to be made. Under the section, the Tribunal must make an additional staff member determination within three months of the commencement of a new term of Parliament or when a person becomes or ceases to be a cross bench member during a term of Parliament.

Clause 24 – Replacement of s 33 (Determination creates entitlement to remuneration)

Clause 24 replaces section 33 of the QIRT Act with a new section that provides entitlements under a remuneration determination and additional staff member determination.

Clause 25 – Amendment of s 41 (Annual salary entitlement of member)

Clause 25 amends section 41 of the QIRT Act so that the section only applies to remuneration determinations.

Clause 26 – Amendment of s 42 (Additional salary entitlement of some members)

Clause 26 amends section 42 of the QIRT Act to clarify that potential salary entitlements of specified office holders only arise under remuneration determinations.

Clause 27 – Amendment of s 43 (Amount of additional salary)

Clause 27 amends section 43 of the QIRT Act to clarify that potential salary entitlements of specified office holders only arise under remuneration determinations.

Clause 28 – Amendment of s 54 (Member’s allowances and entitlements)

Clause 28 amends section 54 of the QIRT Act to clarify that members’ allowances and entitlements referred to in s 54 only arise under remuneration determinations.

Clause 29 – Relocation and renumbering of s 55 (Act does not affect other entitlements)

Clause 29 relocates and renumbers section 55 to part 5 of the QIRT Act (renumbered as s 59D).

Clause 30 – Insertion of new pt 4A

Clause 30 inserts new part 4A (Additional staff members for cross bench members) into the QIRT Act.

Clause 30 inserts section 59A into the QIRT Act, which prescribes that the purpose of part 4A is to provide for particular matters about additional staff members for cross bench members.

Clause 30 inserts section 59B into the QIRT Act to provide how the entitlement to additional staff members is given effect. Section 59B prescribes that a cross bench member may request the Clerk to provide the additional staff members to the cross bench member in accordance with the additional staff member determination.

Section 59B further establishes that the Clerk must give effect to a cross bench member’s request in a way that the Clerk considers appropriate and that ensures the member’s request is fulfilled to the greatest practicable extent, without exceeding the member’s entitlement under the additional staff member determination. This provides flexibility in the way the resources are provided.

Clause 30 also inserts section 59C into the QIRT Act to provide when a cross bench member’s entitlement to additional staff members ceases.

Clause 31 – Amendment of sch 1 (Dictionary)

Clause 31 omits the existing definition of ‘remuneration’ in the QIRT Act and replaces it with a new definition that clarifies that a cross bench member’s entitlement to additional staff members under an additional staff member determination is not considered remuneration for the purpose of remuneration determinations under the Act.

Clause 31 inserts definitions for the terms ‘additional staff members’, ‘cross bench member’ and ‘general staff members’ into schedule 1 of the QIRT Act. Additional staff members are those staff provided to cross bench members outside of the usual staffing arrangements under the *Parliamentary Service Act* 1988, which is articulated under section 2.4.2.2 of the Members’ Remuneration Handbook.

Amendment 14

Amendment 14 amends the long title of the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 to reflect the amendments made to the QIRT Act.

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