



Ministerial and Other Office Holder Staff Act 2010

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Queensland

Ministerial and Other Office Holder Staff Act 2010

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Ministerial and Other Office Holder Staff Act 2010

An Act to provide for the employment and conduct of staff of Ministers and other particular members of Parliament

Part 1 Preliminary

1 Short title

This Act may be cited as the *Ministerial and Other Office Holder Staff Act 2010*.

2 Commencement

This Act commences on a day to be fixed by proclamation.

3 Dictionary

The dictionary in the schedule defines particular words used in this Act.

4 Main purposes

The main purposes of this Act are—

- (a) to provide for the employment of staff in the offices of particular members of the Legislative Assembly; and
- (b) to provide for the proper work performance and conduct of the staff members.

Part 2 Employment of staff members

5 Functions of staff member

The functions of a staff member are the functions given to the staff member, under the staff member's contract of employment and by directions mentioned in section 14, to help the employing member to effectively discharge the employing member's duties.

Examples of functions that may be given to a staff member—

- providing advice
- providing administrative support
- developing policy proposals
- for a ministerial staff member, working with public sector units to implement government policies
- preparing communication materials
- liaising with stakeholders

6 Employment of ministerial staff member

The chief executive may, on the Premier's recommendation, employ a person as a staff member in the office of a stated Minister.

7 Employment of staff member of Leader of the Opposition

The chief executive may, on the recommendation of the Leader of the Opposition, employ a person as a staff member in the office of the Leader of the Opposition.

8 Employment of staff member of other non-government member

- (1) This section applies to a non-government member, other than the Leader of the Opposition, who is—
 - (a) the leader of a political party; or

- (b) an independent member.
- (2) The chief executive may, on the member's recommendation, employ a person as a staff member in the member's office.

9 No entitlement to staffing of office

Sections 6 to 8 do not confer an entitlement on any member of the Legislative Assembly to have a staff member, or any particular number of staff members, employed in the office of the member of the Legislative Assembly.

Notes—

- 1 Decisions about the employment of staff members depend on resources available to the chief executive for the purpose.
- 2 The level of need for the employment of a staff member for a non-government member mentioned in section 8 may be affected, among other matters, by whether the member has an increased workload because of the particular composition of the Legislative Assembly.

10 Basis of employment

- (1) The employment of a person as a staff member is on the terms and conditions stated in the person's contract of employment.
- (2) The contract may include terms and conditions about any of the following matters—
 - (a) remuneration;
 - (b) the term of employment;
 - (c) ending the employment before the end of the stated term;
 - (d) suspension from duty or other disciplinary action.
- (3) Subsection (2) does not limit the matters that may be dealt with in the stated terms and conditions.
- (4) The employment may be full-time or part-time.
- (5) The employment may be on a temporary or casual basis.

11 Nature of employment

A person employed as a staff member—

- (a) does not, only because of the employment, become a public service employee; and
- (b) is an employee for the *Industrial Relations Act 2016*; and
- (c) is an employee of the State.

Note for paragraph (c)—

A delegation may be made to a staff member under the *Financial Accountability Act 2009*, section 76.

12 Superannuation

For the *Superannuation (State Public Sector) Act 1990*, a staff member is taken to be an employee of the department.

13 Preservation of public service employee's rights

- (1) This section applies if, immediately before being employed as a staff member, a person was employed on tenure as a public service employee.
- (2) The person keeps all rights accrued or accruing to the person as a public service employee as if service as a staff member were a continuation of service as a public service employee.
- (3) If the person's contract of employment as a staff member ends other than by disciplinary action, or the contract expires and is not renewed or replaced by another contract of employment as a staff member—
 - (a) the person becomes a public service employee employed on tenure—
 - (i) at the classification level at which the person would have been employed if the person had continued in employment as a public service employee on tenure; and

- (ii) on the remuneration to which the person would have been entitled if the person had continued in employment as a public service employee on tenure; and
 - (iii) in the department in which the person was employed immediately before being employed as a staff member or, if the department has changed, the department that is the nearest practical equivalent; and
- (b) the person's service as a staff member is taken to be service as a public service employee for working out the person's rights as a public service employee.

Part 2A Assessing suitability to be a staff member

Division 1 Preliminary

13A Definitions for part

In this part—

criminal history see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

criminal history report means a report given under section 13D.

Division 2 Obtaining criminal histories

13B Chief executive may ask for consent to obtain criminal history

- (1) If the chief executive proposes to employ a person as a staff member, the chief executive may ask the person for written

consent for the chief executive to obtain the person's criminal history.

- (2) Subsection (1) applies even if the person is employed as a staff member when the chief executive proposes to employ the person.

13C Refusing consent

- (1) This section applies if the person does not consent, or withdraws the person's consent, to the chief executive obtaining the person's criminal history.
- (2) If the person is not employed as a staff member, the chief executive may decide not to consider the person for employment as a staff member.
- (3) If the person is a staff member, the person's employing member or, if the person is a ministerial staff member, the Premier, may prevent the person from performing any further relevant duties.
- (4) For subsection (3), duties are *relevant duties* if, because of the nature of the duties, the employing member or Premier considers it may be necessary to have regard to the criminal history of a person who is or will be performing the duties.

13D Obtaining criminal history with consent

- (1) This section applies if the person gives the chief executive written consent to the chief executive obtaining the person's criminal history.
- (2) The chief executive may ask the police commissioner for—
 - (a) a written report about the person's criminal history; and
 - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (3) The request may include the following—
 - (a) the person's name and any other name the chief executive believes the person may use or may have used;

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- (b) the person's date and place of birth, gender and address.
 - (4) The police commissioner must comply with the request.
 - (5) However, the duty to comply applies only to information in the police commissioner's possession or to which the police commissioner has access.

13E Criminal history no longer required to be obtained

- (1) This section applies if—
 - (a) the chief executive has, under section 13D, asked the police commissioner to give the chief executive a written report about a person's criminal history; and
 - (b) the chief executive decides the criminal history is no longer required.
- (2) The chief executive must, by written notice, tell the police commissioner that the requested report is no longer required.
- (3) If the police commissioner is notified as mentioned in subsection (2) before the police commissioner has given the requested report to the chief executive, the police commissioner must not give it to the chief executive.

Division 3 Use of criminal histories and related matters

13F Assessment of suitability

If the chief executive obtains a person's criminal history under this part, the chief executive must—

- (a) give a copy of the criminal history to—
 - (i) if the person is proposed to be employed as a ministerial staff member—the Premier; or
 - (ii) otherwise—the person's proposed employing member; and

- (b) consider the criminal history, in consultation with the member to whom a copy of the criminal history is given, in making an assessment about the person's suitability for employment as a staff member.

13G Destruction of reports and notices

- (1) This section applies if—
 - (a) a criminal history report about a person is no longer required to be kept for the purpose for which it was requested under this part; or
 - (b) a notice given to the chief executive under section 13I is no longer required to be kept for assessing a person's suitability to perform relevant duties within the meaning of section 13C.
- (2) The chief executive must destroy the report, the notice and any other document containing information contained in the report or notice.

13H Police commissioner must not use information given under this part

- (1) Information given to the police commissioner by the chief executive under section 13D(3) must not be accessed, disclosed or used for any purpose, other than a purpose under this part or any other purpose relevant to law enforcement.
- (2) However, subsection (1) does not apply to information obtained by the police commissioner before the chief executive gave the information under section 13D(3).

Division 4 Other matters

13I **Prosecuting authority to notify chief executive about committal, conviction etc.**

- (1) This section applies if the police commissioner or the director of public prosecutions (each a *prosecuting authority*) is aware that a person is employed as a staff member and, after the commencement of this section, the person is charged with a relevant offence.
- (2) If the person is committed by a court for trial for the relevant offence, the prosecuting authority must, within 7 days after the committal, give notice to the chief executive of the following—
 - (a) the person's name;
 - (b) the court;
 - (c) particulars of the offence;
 - (d) the date of the committal;
 - (e) the court to which the person was committed.
- (3) If the person is convicted before a court of the relevant offence, the prosecuting authority must, within 7 days after the conviction, give notice to the chief executive of the following—
 - (a) the person's name;
 - (b) the court;
 - (c) particulars of the offence;
 - (d) the date of the conviction;
 - (e) the sentence imposed by the court.
- (4) If the person has appealed against the conviction mentioned in subsection (3) and the appeal is finally decided or has otherwise ended, the prosecuting authority must, within 7 days after the decision or the day the appeal otherwise ends, give notice to the chief executive of the following—

- (a) the person's name;
 - (b) particulars of the offence;
 - (c) the date of the decision or other ending of the appeal;
 - (d) if the appeal was decided—
 - (i) the court in which it was decided; and
 - (ii) particulars of the decision.
- (5) If the prosecution process for the relevant offence ends without the person being convicted of the offence, the prosecuting authority must, within 7 days after the prosecution process ends, give notice to the chief executive of the following—
- (a) the person's name;
 - (b) if relevant, the court in which the prosecution process ended;
 - (c) particulars of the offence;
 - (d) the date the prosecution process ended.
- (6) For subsection (5), the prosecution process ends if—
- (a) an indictment was presented against the person but a nolle prosequi is entered on the indictment or the person is acquitted; or
 - (b) the prosecution process otherwise ends.
- (7) In this section—
- disqualifying offence*** see the *Working with Children (Risk Management and Screening) Act 2000*, section 168.
- relevant offence*** means—
- (a) an indictable offence; or
 - (b) a disqualifying offence that is not an indictable offence.

13J False or misleading statements in consent

A person must not give the chief executive a consent mentioned in section 13B, or another document for this part, that the person knows contains information that is false or misleading in a material particular.

Maximum penalty—100 penalty units.

13K Confidentiality

- (1) If a person obtains criminal history information in carrying out functions or performing duties as the chief executive, a Minister, the Leader of the Opposition, a non-government member or a staff member, the person must not disclose the criminal history information to any other person unless the disclosure is permitted under subsection (2).

Maximum penalty—100 penalty units.

- (2) A person is permitted to disclose criminal history information about an individual to another person—
- (a) if the other person is the chief executive, a Minister, the Leader of the Opposition, a non-government member or a staff member, for the purpose of assessing the individual's suitability for employment as a staff member; or
 - (b) with the individual's consent; or
 - (c) if the disclosure is otherwise required or permitted under an Act.
- (3) In this section—

criminal history information means information contained in the following—

- (a) a criminal history report;
- (b) a notice given to the chief executive under section 13I.

Part 3 **Work performance and conduct of staff members**

Division 1 **Directions**

14 **Staff members subject to direction**

- (1) A ministerial staff member is subject to the direction of his or her employing member and the Premier.
- (2) A staff member other than a ministerial staff member is subject to the direction of his or her employing member.
- (3) A staff member may also be subject to the direction of other persons under the staff member's contract of employment (for example, a more senior staff member).

15 **Staff members not empowered to direct public service employees**

- (1) A public service employee is not subject to the direction of a staff member.
- (2) Subsection (1) does not prevent a staff member giving a direction to a public service employee on behalf of a person who may lawfully give the direction.

Example of a person who may lawfully give a direction to a public service employee—

The Minister administering a department may give a direction to the chief executive of the department under the *Public Service Act 2008*, section 100.

Division 2 **Guiding principles and values**

16 **Work performance and personal conduct principles**

A staff member's work performance and personal conduct must be directed towards—

- (a) acting honestly, fairly and in the public interest; and
- (b) ensuring the effective, efficient and appropriate use of public resources; and
- (c) interacting with public service employees respectfully, collaboratively and with integrity; and
- (d) observing all laws relevant to the staff member's employment; and
- (e) ensuring the staff member's personal conduct does not reflect adversely on the reputation of his or her employing member; and
- (f) complying with any code of conduct that applies to the staff member under division 3.

17 Ethics values

- (1) The ethics values stated in the *Public Sector Ethics Act 1994*, part 3, division 2 apply to staff members as if a reference in the division to a public official included a staff member.
- (2) However, ethics values about providing advice, or acting in relation to policies, apply to staff members subject to the way they may reasonably be expected to honestly and properly carry out their functions helping Ministers, the Leader of the Opposition or other non-government members.

Examples—

- 1 A staff member's function may include providing advice that is not apolitical.
 - 2 The functions of a staff member employed in the office of a non-government member may not be directed towards developing or giving effect to policies of the government.
- (3) In this section—
policies includes priorities and decisions.

18 Purpose and application of principles and values

- (1) The principles and values applying to staff members under sections 16 and 17 are intended to guide staff members in their work performance and personal conduct and are not of themselves legally enforceable.
- (2) The chief executive may have regard to the principles and values when making a decision under this Act relating to the work performance or personal conduct of staff members.

Example of a decision for subsection (2)—

a decision about including a particular condition in a staff member's contract of employment

Division 3 Codes of conduct

19 Codes of conduct

- (1) The chief executive may approve a code of conduct applying to—
 - (a) ministerial staff members; or
 - (b) staff members employed in the office of the Leader of the Opposition; or
 - (c) staff members employed under section 8.
- (2) In deciding whether to approve a code of conduct, the chief executive must have regard to the principles and ethics values applying to staff members under division 2.
- (3) Subsection (1) applies subject to section 21(2).

20 Purpose of codes

The purpose of a code of conduct is to provide standards of conduct for the staff members to whom it applies.

21 Consultation about, and review of, codes

- (1) For this section, the *relevant person* for a code of conduct is—
 - (a) for a code applying to ministerial staff members—the Premier; or
 - (b) for a code applying to staff members employed in the office of the Leader of the Opposition—the Leader of the Opposition; or
 - (c) for a code applying to staff members employed under section 8—each person who is an employing member for a staff member employed under section 8.
- (2) The chief executive must consult with the relevant person, or each relevant person, for a code of conduct before approving the code under section 19.
- (3) The chief executive must review a code of conduct if requested by a person who is, at the time of the request, a relevant person for the code.

22 Compliance with codes

- (1) A staff member must comply with an approved code of conduct that applies to the staff member.
- (2) Contravention of an approved code of conduct by a staff member may give rise to disciplinary action under the staff member's contract of employment.

Division 4 Declaration of interests and dealing with conflicts

23 References to interest or conflict of interest

A reference in this division to an interest or to a conflict of interest is a reference to those matters within their ordinary meaning under the general law, and, in relation to an interest,

the definition in the *Acts Interpretation Act 1954*, schedule 1, does not apply.

24 Declaration of interests

- (1) A staff member must give his or her employing member a statement about the staff member's interests—
 - (a) within 1 month after starting employment; and
 - (b) whenever there is a change to the staff member's interests that is of a type prescribed under a directive of the chief executive; and
 - (c) during June in each year.
- (2) The statement must include the information required under a directive of the chief executive.
- (3) The statement required under subsection (1)(b) must be given as soon as practicable after the relevant facts about the change come to the staff member's knowledge.

25 Conflicts of interest

- (1) If a staff member has an interest that conflicts or may conflict with the discharge of the staff member's responsibilities, the staff member—
 - (a) must disclose the nature of the interest and conflict to his or her employing member as soon as practicable after the relevant facts come to the staff member's knowledge; and
 - (b) must not take action or further action concerning a matter that is, or may be, affected by the conflict unless authorised by his or her employing member.
- (2) The employing member for a staff member may direct the staff member to resolve a conflict or possible conflict between an interest of the staff member and the staff member's responsibilities.

Part 4 Miscellaneous

Division 1 Rulings

26 **Chief executive may make directives**

- (1) The chief executive may, by gazette notice, make a directive about a matter relating to the employment of staff members, including, for example, a directive about standards of conduct applying to staff members.
- (2) A directive may provide for a matter by applying, adopting or incorporating the provisions of a public service directive, as in force at a particular time or from time to time, with any necessary changes to apply the public service directive in relation to staff members, and with or without any other modification.
- (3) A directive binds the persons to whom it applies.
- (4) In this section—

public service directive means a directive made under the *Public Service Act 2008*.

27 **Relationship with legislation**

If a directive is inconsistent with an Act or subordinate legislation, the Act or subordinate legislation prevails to the extent of the inconsistency.

28 **Relationship between directives and industrial instruments**

- (1) This section applies if a directive deals with a matter all or part of which is dealt with under an industrial instrument of the IRC.
- (2) The directive prevails over the industrial instrument, unless a regulation provides otherwise.

- (3) In this section—

directive includes a decision made in the exercise of a discretion under a directive.

IRC means the Industrial Relations Commission under the *Industrial Relations Act 2016*.

29 Chief executive may make guidelines

- (1) The chief executive may make a guideline about a matter relating to the employment of staff members.
- (2) A guideline may be made in the way the chief executive considers appropriate.
- (3) A guideline may provide for a matter by applying, adopting or incorporating the provisions of a public service guideline, as in force at a particular time or from time to time, with any necessary changes to apply the public service guideline in relation to staff members, and with or without any other modification.
- (4) A guideline is for the guidance only of the persons to whom it applies.
- (5) In this section—

public service guideline means a guideline made under the *Public Service Act 2008*.

30 Replaced public service rulings

- (1) This section applies if, under section 26(2) or 29(3), a directive or guideline provides for a matter by applying, adopting or incorporating the provisions of a public service ruling (the *first public service ruling*).
- (2) The directive or guideline may provide that, if the first public service ruling is repealed and a new public service ruling dealing with substantially the same subject matter is made to replace it, the directive or guideline continues to operate as if a reference in it to the first public service ruling were a reference to the new public service ruling.

(3) In this section—

public service ruling means a public service directive or public service guideline made under the *Public Service Act 2008*.

Division 2 Application of Acts

31 Application of Crime and Corruption Act 2001

For the *Crime and Corruption Act 2001*, a staff member is taken to hold an appointment in the department.

32 Application of Ombudsman Act 2001

For the *Ombudsman Act 2001*, a staff member is taken to be an officer of the department.

Division 3 Other matters

33 Advisory committees

- (1) The chief executive may establish advisory committees to advise the Premier on issues relevant to this Act.
- (2) The chief executive may appoint a person as a member of an advisory committee if the chief executive is satisfied the person has skills or experience appropriate to the committee's terms of reference or functions.
- (3) A member of an advisory committee is entitled to the remuneration and allowances, if any, stated in the member's terms of appointment.
- (4) The chief executive may decide matters about an advisory committee that are not provided for under this section including, for example, the way a committee must conduct meetings or report to the Premier.

34 Annual report

- (1) At the end of each financial year, the chief executive must prepare and give to the Premier a report about the operation of this Act during the financial year.
- (2) The report must include details of the staff members employed under this Act for all or part of the financial year.
- (3) The chief executive must give the report to the Premier by an agreed date that allows the Premier to table the report under this section.
- (4) The report may be included in the department's annual report for the financial year.

Note—

The *Financial Accountability Act 2009*, section 63 states the requirement for tabling the department's annual report.

- (5) If the report is not included in the department's annual report for the financial year, the Premier must table the report in the Legislative Assembly within 3 months after the end of the financial year.

35 Delegations

- (1) The Premier may delegate the Premier's functions under section 6 to an appropriately qualified ministerial staff member.
- (2) The chief executive may delegate the chief executive's functions under this Act to an appropriately qualified public service employee.
- (3) In this section—

appropriately qualified includes having the qualifications, experience or standing appropriate for the function.

Example of standing for a public service employee—

the employee's classification or level in a department

functions includes powers.

36 Effect of Act on the State

- (1) Subject to subsection (3), this Act binds the State.
- (2) The chief executive employs persons under this Act as the authorised agent of the State.
- (3) The right or power of the State recognised at common law to dispense with the services of a person employed by the State is not abrogated or restricted by any provision of this Act.

37 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 5 Transitional

38 Meaning of commencement

In this part—

commencement means the commencement of the provision in which the term appears.

39 Currently appointed staff members

- (1) This section applies to a person who, immediately before the commencement, was employed by the chief executive under a contract of employment under the *Public Service Act 2008*, section 147 or 148 in the office of a Minister or the office of the Leader of the Opposition.
- (2) The person is not, only because of that employment, a public service employee.
- (3) While the person continues to be employed under the contract of employment—
 - (a) the person is a staff member; and

- (b) this Act applies to the person as if the contract of employment had been entered into under this Act.

40 Declaration of interests of currently appointed staff members

- (1) A staff member mentioned in section 39 must give his or her employing member a statement complying with section 24 within 1 month after the commencement.
- (2) However, subsection (1) does not apply if—
 - (a) the staff member gave a complying statement to his or her employing member on or after 1 June last occurring before the commencement; and
 - (b) there has been no material change to the staff member's interests since the last complying statement given to the employing member.

- (3) In this section—

complying statement means a statement, given before the commencement, that included all information of the type required to be included in a statement under section 24 given immediately after the commencement.

material change means a change of the type mentioned in section 24(1)(b) as in force immediately after the commencement.

41 Codes of conduct

- (1) A current code of conduct has effect, from the commencement until it is revoked under this Act, as if it were approved under part 3, division 3.
- (2) In this section—

current code of conduct means a code of conduct that—

 - (a) is expressed to apply to—
 - (i) persons employed in ministerial offices; or

- (ii) persons employed in the office of the Leader of the Opposition; and
- (b) was approved by the Premier before the commencement; and
- (c) was in force immediately before the commencement under administrative arrangements.

42 Rulings

- (1) This section applies to a ruling (a *current ruling*) that—
 - (a) was made under the *Public Service Act 2008* before the commencement; and
 - (b) immediately before the commencement, applied to a person employed by the chief executive under a contract of employment under the *Public Service Act 2008*, section 147 or 148 in the office of a Minister or the office of the Leader of the Opposition.
- (2) Subject to subsection (3), the current ruling applies in relation to staff members, during the transitional period, as if a reference in it to a public service employee included a staff member and with any other necessary changes.
- (3) The current ruling stops applying in relation to staff members under subsection (2) if—
 - (a) the current ruling is revoked under the *Public Service Act 2008*; or
 - (b) the chief executive makes a directive under section 26 or guideline under section 29, whichever is relevant, ending the application of the current ruling in relation to staff members.
- (4) This section does not affect the chief executive's power to make a directive under section 26 or guideline under section 29 applying a current ruling in relation to staff members during or after the transitional period.

[s 42]

- (5) A reference in this Act to a directive of the chief executive includes a directive under the *Public Service Act 2008* applying in relation to a staff member under this section.
- (6) In this section—
transitional period means the period of 3 months starting on the commencement.

Schedule Dictionary

section 3

Assistant Minister means a member of the Legislative Assembly appointed as an Assistant Minister under the *Constitution of Queensland 2001*, section 24.

commencement, for part 5, see section 38.

criminal history, for part 2A, see section 13A.

criminal history report, for part 2A, see section 13A.

directive, of the chief executive, includes a public service directive to the extent it applies in relation to a staff member under section 26(2).

employing member, for a staff member, means the Minister or other member of the Legislative Assembly in whose office the staff member is employed.

independent member means a non-government member who is not a member of the political party to which the Leader of the Opposition belongs.

Leader of the Opposition means the member of the Legislative Assembly recognised in the Legislative Assembly as the Leader of the Opposition.

Minister includes an Assistant Minister.

ministerial staff member means a person employed under this Act as a staff member in the office of a Minister.

non-government member means a member of the Legislative Assembly who is not a member of a political party recognised in the Legislative Assembly as being in government.

police commissioner means the commissioner of the police service under the *Police Service Administration Act 1990*.

remuneration includes salary.

staff member means a person employed under this Act as a staff member in the office of a Minister, the Leader of the Opposition or another non-government member.