



Queensland

Constitutional and Other Legislation Amendment Bill 2005



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2005

A Bill

for

An Act to amend the Constitution of Queensland 2001, the Parliament of Queensland Act 2001 and the Commission for Children and Young People and Child Guardian Act 2000, and for other purposes

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	The Parliament of Queensland enacts—	1
	 Part 1 Preliminary	 2
Clause 1	Short title	3
	This Act may be cited as the <i>Constitutional and Other Legislation Amendment Act 2005</i> .	4 5
Clause 2	Commencement	6
	Sections 35 to 37 are taken to have commenced on 17 January 2005 immediately after the <i>Commission for Children and Young People and Child Guardian Amendment Act 2004</i> commenced.	7 8 9 10
	 Part 2 Amendment of Constitution of Queensland 2001	 11 12
Clause 3	Act amended in pt 2	13
	This part amends the <i>Constitution of Queensland 2001</i> .	14
Clause 4	Insertion of new s 14A	15
	Chapter 2, part 2—	16
	<i>insert—</i>	17
‘14A	When the Legislative Assembly must meet after an election	18 19
	‘(1) The Legislative Assembly must meet after a general election no later than the end of the longest of the following periods—	20 21
	(a) 60 days after the day of the general election;	22

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- (b) if the 60 day period mentioned in paragraph (a) includes all or part of the summer holidays—90 days after the day of the general election; 1
2
3
- (c) if a later date for the return of the writ for the general election has been substituted under the *Electoral Act 1992*, section 82—the period starting on the day of the general election and ending 1 week after the date of the return of the writ. 4
5
6
7
8

- ‘(2) In this section— 9
- general election* means an election for the members of the Legislative Assembly. 10
11
- State school* see the *Education (General Provisions) Act 1989*, section 2(1). 12
13
- summer holidays* means the days, that include Christmas Day, appointed under legislation for student vacations for State schools.’. 14
15
16

- Clause 5 Amendment of s 22 (No member to sit or vote without first taking oath or making affirmation)** 17
18
- Section 22(1), ‘of allegiance and of office’— 19
- omit, insert—* 20
- ‘of office, or of allegiance and of office,’. 21

- Clause 6 Amendment of s 25 (Functions of Parliamentary Secretary)** 22
23
- (1) Section 25, existing provision— 24
- renumber* as subsection (2). 25
- (2) Section 25— 26
- insert—* 27
- ‘(1) Subject to subsection (2), the main function of a Parliamentary Secretary is to help a Minister to perform the Minister’s functions.’. 28
29
30

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Clause 7	Insertion of new s 33A	1
	After section 33—	2
	<i>insert—</i>	3
	‘33A Power of Governor—information	4
	‘The Governor may ask the Premier or another Minister for	5
	information on any particular matter about the Government of	6
	the State that is relevant to the performance or exercise of the	7
	Governor’s functions or powers.’.	8
 Clause 8	 Amendment of s 34 (Power of Governor—Ministers)	 9
	Section 34, from ‘is not subject’—	10
	<i>omit, insert—</i>	11
	‘must, in accordance with constitutional conventions, act on	12
	the advice of the Premier.’.	13
 Clause 9	 Amendment of s 43 (Appointment of Ministers of the State)	 14 15
	(1) Section 43—	16
	<i>insert—</i>	17
	‘(1A) One of the offices declared under subsection (1) must be or	18
	include the office of the Premier.	19
	‘(1B) A reference in this Act to the Premier is a reference to the	20
	person appointed to the office mentioned in subsection (2).’.	21
	(2) Section 43(2), ‘a Minister’—	22
	<i>omit, insert—</i>	23
	‘the Premier or as another Minister’.	24
	(3) Section 43(5), ‘of allegiance and of office’—	25
	<i>omit, insert—</i>	26
	‘of office, or of allegiance and of office.’.	27
	(4) Section 43(1A) to (6)—	28
	<i>renumber</i> as section 43(2) to (8).	29

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Clause 10	Insertion of new ss 43A–43D	1
	After section 43—	2
	<i>insert—</i>	3
‘43A	Minister must be a member of the Legislative Assembly or a candidate	4
	‘(1) A person may be appointed as a Minister if the person is—	6
	(a) a member of the Legislative Assembly; or	7
	(b) a candidate for election as a member of the Legislative Assembly under the <i>Electoral Act 1992</i> .	8 9
	‘(2) If a person is appointed as a Minister under subsection (1)(b), the appointment ends 90 days after the appointment unless the person becomes a member of the Legislative Assembly.	10 11 12
	‘(3) For this section, a person becomes a member of the Legislative Assembly when the Electoral Commission of Queensland is notified of the person’s election under the <i>Electoral Act 1992</i> , section 122. ¹	13 14 15 16
	‘(4) This section does not apply to the appointment of a person as the Premier.	17 18
	<i>Note—</i>	19
	See section 43D for similar provisions applying to the Premier.	20
‘43B	Length of appointment of Ministers	21
	‘(1) The appointment of a person as a Minister ends on the happening of any of the following—	22 23
	(a) the acceptance by the Governor of the person’s resignation as a Minister;	24 25
	(b) the person’s removal as a Minister by the Governor in accordance with constitutional conventions relating to the exercise of the power;	26 27 28
	(c) section 43A(2) has effect in relation to the person’s appointment as a Minister.	29 30

¹ *Electoral Act 1992*, section 122 (Notifying the results of an election)

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‘(2) This section does not apply to the Premier.	1
<i>Note—</i>	2
See section 43C(3) for similar provisions applying to the Premier.	3
‘43C The Premier	4
‘(1) The role of the Premier is to be chief Minister, chairperson of Cabinet and chief advisor to the Governor.	5 6
‘(2) In appointing a person as the Premier, the Governor must appoint someone who the Governor believes can form a Government that is most likely to command the confidence of a majority of the members of the Legislative Assembly.	7 8 9 10
‘(3) The appointment of a person as the Premier ends on the happening of any of the following—	11 12
(a) the acceptance by the Governor of the person’s resignation as Premier;	13 14
(b) the person’s removal as Premier by the Governor in accordance with constitutional conventions relating to the exercise of the power;	15 16 17
(c) section 43D(2) has effect in relation to the person’s appointment as Premier.	18 19
‘(4) Subsections (2) and (3) have no effect on the evolution of the constitutional conventions, including those relating to the exercise of the reserve powers.	20 21 22
‘(5) Also, subsections (2) and (3) do not make justiciable the exercise by the Governor of a power to appoint or remove a person as Premier if the exercise by the Governor of that power as a reserve power was not justiciable before the enactment of the subsections.	23 24 25 26 27
‘43D Premier must be a member of the Legislative Assembly or a candidate	28 29
‘(1) A person may be appointed as the Premier if the person is—	30
(a) a member of the Legislative Assembly; or	31

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- (b) a candidate for election as a member of the Legislative Assembly under the *Electoral Act 1992*. 1
2
- ‘(2) If a person is appointed as the Premier under subsection (1)(b), the appointment ends 90 days after the appointment unless the person becomes a member of the Legislative Assembly. 3
4
5
6
- ‘(3) For this section, a person becomes a member of the Legislative Assembly when the Electoral Commission of Queensland is notified of the person’s election under the *Electoral Act 1992*, section 122.². 7
8
9
10

Clause 11 Amendment of s 46 (Member may act for a Minister) 11

- (1) Section 46(3), ‘of allegiance and of office’— 12
omit, insert— 13
‘of office, or of allegiance and of office.’ 14
- (2) Section 46(6), ‘section 43(4)’— 15
omit, insert— 16
‘section 43(6)’. 17

Clause 12 Amendment of s 48 (Executive Council) 18

- (1) Section 48— 19
insert— 20
- ‘(1A) The main function of the Executive Council is to advise the Governor on the Government of the State, including by making recommendations to the Governor about the exercise of the powers of the Governor in Council.’. 21
22
23
24
- (2) Section 48(1A) to (4)— 25
renumber as section 48(2) to (5). 26

2 *Electoral Act 1992*, section 122 (Notifying the results of an election)

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Clause 13	Amendment of s 49 (Length of appointment as member of Executive Council)	1 2
	(1) Section 49, heading, ‘Council’—	3
	<i>omit, insert—</i>	4
	‘Council and a related matter’.	5
	(2) Section 49, from ‘only’—	6
	<i>omit, insert—</i>	7
	‘on the person’s removal as a member of Executive Council by the Governor in accordance with constitutional conventions relating to the exercise of the power.’.	8 9 10
	(3) Section 49—	11
	<i>insert—</i>	12
	‘(2) A member of the Executive Council may attend Executive Council meetings only while the member is a Minister.’.	13 14
Clause 14	Amendment of s 52 (Definitions for div 2)	15
	Section 52, definition <i>State</i> —	16
	<i>omit, insert—</i>	17
	‘ <i>State</i> includes a department of government of the State and part of a department of government of the State.’.	18 19
Clause 15	Amendment of s 59 (Appointment of judges)	20
	Section 59(2), ‘of allegiance and of office’—	21
	<i>omit, insert—</i>	22
	‘of loyalty and of office, or of allegiance and of office,’.	23
Clause 16	Amendment of s 60 (Length of judge’s appointment)	24
	(1) Section 60(2)—	25
	<i>omit, insert—</i>	26
	‘(2) A judge must retire on reaching 70 years of age.	27

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- ‘(2A) Despite subsection (2), a judge who, before retiring, whether or not because of subsection (2), starts the hearing of a proceeding remains a judge for the purposes of finishing the proceeding.’. 1
2
3
4
- (2) Section 60(2A) and (3)— 5
renumber as section 60(3) and (4). 6
- Clause 17 Amendment of s 61 (Removal from office for misbehaviour or incapacity)** 7
8
- (1) Section 61(3) and (4)— 9
omit, insert— 10
- ‘(3) For subsection (2)(a), there is proved misbehaviour justifying removal from the office only if— 11
12
- (a) a tribunal states in a report under section 61C— 13
- (i) a finding that some or all the allegations of misbehaviour referred to the tribunal are proved on the balance of probabilities; and 14
15
16
- (ii) that the proved misbehaviour is capable in law of justifying removal from the office; and 17
18
- (b) the Legislative Assembly— 19
- (i) accepts the finding of the tribunal; and 20
- (ii) decides that the judge should be removed from the office. 21
22
- ‘(4) For subsection (2)(b), there is proved incapacity to perform the duties of the office only if— 23
24
- (a) a tribunal states in a report under section 61C a finding that incapacity to perform the duties of the office is proved on the balance of probabilities; and 25
26
27
- (b) the Legislative Assembly— 28
- (i) accepts the finding of the tribunal; and 29
- (ii) decides that the judge should be removed from the office.’. 30
31

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- (2) Section 61(5), ‘The tribunal’— 1
 omit, insert— 2
 ‘A tribunal mentioned in section 61’. 3
 (3) Section 61(5) to (10)— 4
 renumber and relocate as section 61A(1) to (6). 5

- Clause 18 Insertion of new s 61A hdg** 6
 After section 61— 7
 insert— 8
‘61A Establishment of a tribunal’. 9

- Clause 19 Insertion of new ss 61B and 61C** 10
 After section 61A— 11
 insert— 12
‘61B Referral of allegations to, and jurisdiction of, tribunal 13
 ‘(1) For section 61, the Legislative Assembly must refer to the 14
 tribunal established under section 61A specific allegations 15
 of— 16
 (a) misbehaviour; or 17
 (b) incapacity to perform the duties of the office concerned. 18
 ‘(2) The jurisdiction of the tribunal is limited to the specific 19
 allegations. 20
 ‘(3) The Legislative Assembly may refer further specific 21
 allegations to the tribunal and, if it does so, the jurisdiction of 22
 the tribunal is extended to those allegations. 23
 ‘(4) The Legislative Assembly may act under subsection (3) on its 24
 own initiative or after receiving an interim report from the 25
 tribunal asking for a referral of further specific allegations to 26
 the tribunal. 27
 ‘(5) The Legislative Assembly may only refer an allegation to the 28
 tribunal under subsection (1) or (3) if it is a matter that is to 29
 constitute the jurisdiction of the tribunal. 30

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‘61C Report by tribunal	1
‘(1) The tribunal must report in writing to the Legislative Assembly—	2 3
(a) if the allegations are of misbehaviour—	4
(i) whether some or all the allegations referred to the tribunal are proved on the balance of probabilities; and	5 6 7
(ii) whether the proved misbehaviour is capable in law of justifying removal from the office; or	8 9
(b) if the allegations are of incapacity to perform the duties of the office, whether incapacity to perform the duties of the office is proved on the balance of probabilities.	10 11 12
‘(2) Despite subsection (1), it is not necessary for the tribunal to report anything to the Legislative Assembly that it considers immaterial to the exercise by the Legislative Assembly of its power under section 61.	13 14 15 16
<i>Examples—</i>	17
A tribunal investigating allegations of misbehaviour by a judge finds that none of the allegations are proved on the balance of probabilities. The tribunal need only report this finding to the Legislative Assembly.	18 19 20
A tribunal investigating allegations of misbehaviour by a judge finds that the misbehaviour, even if proved on the balance of probabilities, is not capable in law of justifying removal from the office. The tribunal need only report this finding to the Legislative Assembly.’.	21 22 23 24
 Clause 20 Insertion of new ch 9, pt 1 hdg	 25
Chapter 9, before section 81—	26
<i>insert—</i>	27
 ‘Part 1 Act No. 80 of 2001’.	 28
 Clause 21 Insertion of new ch 9, pt 2	 29
Chapter 9, after section 93—	30
<i>insert—</i>	31

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	‘Part 2	1
	Constitutional and Other Legislation Amendment Act 2005	2 3
	‘94 Appointment of a Minister or the Premier	4
	‘The enactment of section 43A or 43C ³ has no effect on the appointment of a Minister or the Premier of the State holding any office immediately before the commencement of the section.’.	5 6 7 8
Clause 22	Amendment of sch 1 (Oaths and affirmations)	9
	(1) Schedule 1, before the Oath or affirmation of allegiance and of office—member of the Legislative Assembly—	10 11
	<i>insert—</i>	12
	‘Oath or affirmation of office—member of the Legislative Assembly	13
	I, ..(<i>name</i>).., do sincerely promise and swear (<i>or, for an affirmation—do sincerely promise and affirm</i>) that	14 15
	I will well and truly serve the people of Queensland and faithfully perform the duties and responsibilities of a member of the Legislative Assembly to the best of my ability and according to law.	16 17 18
	So help me God! (<i>or omitted for an affirmation</i>).’.	19
	(2) Schedule 1, before the Oath or affirmation of allegiance and of office—Minister of the State and acting Minister of the State—	20 21 22
	<i>insert—</i>	23
	‘Oath or affirmation of office—Minister of the State and acting Minister of the State	24 25
	I, ..(<i>name</i>).., do sincerely promise and swear (<i>or, for an affirmation—do sincerely promise and affirm</i>) that	26 27

³ Section 43A (Minister must be a member of the Legislative Assembly or a candidate) or 43C (The Premier)

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I will well and truly serve the people of Queensland in the office of (<i>portfolio title</i>) (<i>or, for an acting Minister of the State—acting in the office of (portfolio title)</i>).	1 2 3
So help me God! (<i>or omitted for an affirmation</i>).’.	4
(3) Schedule 1, before the Oath or affirmation of allegiance and of office—Judge— <i>insert—</i>	5 6 7
‘Oath or affirmation of loyalty and of office—Judge	8
I, ..(<i>name</i>).., do sincerely promise and swear (<i>or, for an affirmation—do sincerely promise and affirm</i>) that	9 10
As a judge of the Supreme Court of Queensland (<i>or District Court of Queensland</i>) (<i>and/or as (title of other office, for example, Chief Justice of Queensland)</i>), I will faithfully serve the people and the State of Queensland and I will at all times and in all things do equal justice to all persons and discharge the duties and responsibilities of the office according to law to the best of my knowledge and ability without fear favour or affection.	11 12 13 14 15 16
So help me God! (<i>or omitted for an affirmation</i>).’.	17

Part 3	Amendment of Parliament of Queensland Act 2001	18 19
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Clause	23	Act amended in pt 3	20
		<i>This part amends the Parliament of Queensland Act 2001.</i>	21
Clause	24	Amendment of s 9 (Meaning of <i>proceedings in the Assembly</i>)	22 23
		(1) Section 9(3)— <i>omit.</i>	24 25
		(2) Section 9(4) and (5)— <i>renumber</i> as section 9(3) and (4).	26 27

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Clause 25	Insertion of new s 59A	1
	Chapter 3, part 4, after section 59—	2
	<i>insert—</i>	3
	‘59A References to when the Assembly is not sitting	4
	‘(1) Subsection (2) applies if an Act or the standing rules and orders refer to something being done, or state the effect of something done, in relation to a document when the Assembly is not sitting.	5 6 7 8
	‘(2) The reference to the Assembly not sitting is taken to include the Assembly being expired, prorogued or dissolved.	9 10
	‘(3) If a document is taken to have been tabled in the Assembly because of subsection (2) when the Assembly—	11 12
	(a) has expired or is dissolved; or	13
	(b) is prorogued and the Assembly expires or is dissolved before its next session;	14 15
	the document is taken to be a document of the next Assembly.	16
	‘(4) If a document is taken to have been tabled in the Assembly because of subsection (2) when the Assembly is prorogued and the Assembly does not expire and is not dissolved before its next session, the document is taken to be a document of the next session of the Assembly.’.	17 18 19 20 21
 Clause 26	 Amendment of s 70 (Meaning of <i>transacts business</i>)	 22
	(1) Section 70(1)(a), after ‘State’—	23
	<i>insert—</i>	24
	‘for the supply of goods to the entity to be used in the service of the public’.	25 26
	(2) Section 70(2)(a), ‘for a contract’—	27
	<i>omit, insert—</i>	28
	‘for subsection (1)(a)’.	29
	(3) Section 70(2)(a)(ii) and (iii)—	30
	<i>omit.</i>	31

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- (4) Section 70(2)(a)(iv)— 1
renumber as section 70(2)(a)(ii). 2
- (5) Section 70(2)(b), ‘for a duty or service’— 3
omit, insert— 4
‘for subsection (1)(b)’. 5
- (6) Section 70(2)(b)(ii), ‘service or duty’— 6
omit, insert— 7
‘duty or service’. 8
- (7) Section 70(5)— 9
insert— 10
‘**duty or service** includes a duty or service constituted by the 11
act of transacting any business for the State entity concerned. 12
‘**entity**, of the State, does not include a local government.’. 13

**Clause 27 Amendment of s 71 (Restrictions on member transacting
business with an entity of the State)** 14
15

- (1) Section 71(7)— 16
omit. 17
- (2) Section 71(8)— 18
insert— 19
‘**entity**, of the State, does not include a local government.’. 20
- (3) Section 71(8)— 21
renumber as section 71(7). 22

**Clause 28 Amendment of s 78 (Main object of ch 5 and its
achievement)** 23
24

- (1) Section 78, heading— 25
omit, insert— 26

‘78 Main objects of ch 5 and their achievement’. 27

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	(2) Section 78(1)—	1
	<i>omit, insert</i> —	2
	‘(1) The main objects of this chapter are to—	3
	(a) enhance the transparency and accountability of public administration in Queensland; and	4 5
	(b) extend democratic government in Queensland.’	6
	(3) Section 78(2), ‘main object is’—	7
	<i>omit, insert</i> —	8
	‘main objects are’.	9
Clause 29	Amendment of s 87 (Constitutional reform)	10
	Section 87, after ‘impliedly’—	11
	<i>insert</i> —	12
	‘amending or’.	13
Clause 30	Amendment of s 89 (Legal reform)	14
	(1) Section 89, before paragraph (a)—	15
	<i>insert</i> —	16
	‘(aa) considering whether Queensland law has sufficient regard to Aboriginal tradition and Island custom; and	17 18
	(ab) the particular effect any Queensland law has on Aboriginal people and Torres Strait Islanders; and’.	19 20
	(2) Section 89(aa) to (b)—	21
	<i>renumber</i> as section 89(a) to (d).	22
Clause 31	Insertion of new ch 7, pt 4	23
	Chapter 7—	24
	<i>insert</i> —	25

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‘Part 4	Salary sacrifice	1
‘123A Application of pt 4		2
	‘This part applies to a member if the <i>Parliamentary Contributory Superannuation Act 1970</i> does not apply to the member.	3 4 5
‘123B Member may salary sacrifice		6
	‘(1) A member may, by written notice given to the Clerk, elect that the annual salary and any additional salary of the member be provided—	7 8 9
	(a) in part by the payment of salary to the member; and	10
	(b) in part by the payment of employer superannuation contributions to the State Public Sector Superannuation Fund under the <i>Superannuation (State Public Sector) Act 1990</i> .	11 12 13 14
	‘(2) The payment under subsection (1)(b) can not be more than—	15
	(a) for the member’s annual salary—50% of that salary; and	16
	(b) for any additional salary of the member—50% of that salary.	17 18
	‘(3) Despite part of the annual salary or any additional salary of the member being paid to the State Public Sector Superannuation Fund under the election, the member is taken to have received the annual salary and any additional salary the member is entitled to.	19 20 21 22 23
	‘(4) In this section—	24
	<i>additional salary</i> , of a member, means salary the member is entitled to under part 2.	25 26
	<i>annual salary</i> , of a member, means the annual salary the member is entitled to under part 1.	27 28

*Constitutional and Other Legislation Amendment
Bill 2005*

‘123C	Variation or revocation of election	1
‘(1)	A member may vary or revoke an election made under section 123B by written notice given to the Clerk.	2 3
‘(2)	The variation is subject to section 123B(2).’.	4
Clause 32	Insertion of new ch 10, pt 1 and pt 2 hdgs	5
(1)	Before section 162—	6
	<i>insert—</i>	7
‘Part 1	Parliament of Queensland Amendment Act 2003’.	8 9
(2)	Before section 163—	10
	<i>insert—</i>	11
‘Part 2	Parliament of Queensland Amendment Act 2004’.	12 13
Clause 33	Insertion of new ch 10, pt 3	14
	Chapter 10, after section 163—	15
	<i>insert—</i>	16
‘Part 3	Constitutional and Other Legislation Amendment Act 2005	17 18 19
‘164	Documents to which s 9(3) of the pre-amended Act applied	20 21
‘(1)	Section 8 ⁴ does not apply to a previous document if it did not apply to the document immediately before the commencement under section 9(3) of the pre-amended Act.	22 23 24
‘(2)	In this section—	25

4 Section 8 (Assembly proceedings can not be impeached or questioned)

*Constitutional and Other Legislation Amendment
Bill 2005*

<i>commencement</i> means the commencement of this section.	1
<i>pre-amended Act</i> means this Act as in force before the commencement of the <i>Constitutional and Other Legislation Amendment Act 2005</i> , part 3. ⁵	2 3 4
<i>previous document</i> means a document tabled in, or presented or submitted to, the Assembly, a committee or an inquiry before the commencement.	5 6 7
‘165 Provision for amendments to ss 70 and 71	8
‘(1) During the transitional period, section 71(1) and (2) ⁶ are taken always to have applied in relation to a contract or the performance of a duty or service as if sections 70 ⁷ and 71 as amended by the amendment had commenced on 6 June 2002.	9 10 11 12
‘(2) For deciding whether a member has contravened section 71(1) during the transitional period, section 72(1)(h) ⁸ is taken to apply as if sections 70 and 71 as amended by the amendment had commenced on 6 June 2002.	13 14 15 16
‘(3) Section 159(6) ⁹ has effect as if sections 70 and 71 as amended by the amendment had commenced on 6 June 2002.	17 18
‘(4) In this section—	19
<i>amendment</i> means the <i>Constitutional and Other Legislation Amendment Act 2005</i> , sections 26 and 27.	20 21
<i>transitional period</i> means the period starting at the beginning of 6 June 2002 and ending at the end of the day before the commencement of the amendment.’.	22 23 24

5 *Constitutional and Other Legislation Amendment Act 2005*, part 3 (Amendment of Parliament of Queensland Act 2001)

6 Section 71 (Restrictions on member transacting business with an entity of the State)

7 Section 70 (Meaning of *transacts business*)

8 Section 72 (Vacating seats of members in particular circumstances)

9 Section 159 (Transitional provisions relating to chapter 4)

*Constitutional and Other Legislation Amendment
Bill 2005*

Clause 34	Amendment of schedule (Dictionary)	1
	Schedule—	2
	<i>insert</i> —	3
	‘ <i>transacts business</i> see section 70(1).’.	4
Part 4	Amendment of Commission for Children and Young People and Child Guardian Act 2000	5 6 7
Clause 35	Act amended in pt 4	8
	This part amends the <i>Commission for Children and Young People and Child Guardian Act 2000</i> .	9 10
Clause 36	Amendment of s 121 (Person may apply for review of decision)	11 12
	(1) Section 121(1)—	13
	<i>omit, insert</i> —	14
	‘(1) A person may apply to the Children Services Tribunal for a review of either of the following decisions of the commissioner—	15 16 17
	(a) a decision as to whether or not there is an exceptional case as mentioned in section 102(4) or (7), 119B(2) or 119D(3) if, because of the decision, the commissioner issued a negative notice, or refused to cancel a negative notice, about the person;	18 19 20 21 22
	(b) a decision that the person had been charged with an excluding offence if, because of the decision, the positive notice held by the person was suspended under section 119C(1).’.	23 24 25 26

*Constitutional and Other Legislation Amendment
Bill 2005*

	(2) Section 121(1)—	1
	<i>insert—</i>	2
	‘(1A) An application to review a decision mentioned in subsection (1)(b) may only be made if the person claims he or she has not been charged with the relevant excluding offence.’	3 4 5
Clause 37	Amendment of s 122A (Notice of change in police information about a person)	6 7
	(1) Section 122A(1)—	8
	<i>omit, insert—</i>	9
	‘(1) This section applies if, for a person in relation to whom either of the following happens, the police commissioner reasonably suspects the person is a person mentioned in section 122(1)(a) to (c)—	10 11 12 13
	(a) the person’s criminal history changes;	14
	(b) the police commissioner decides, under section 121A, that information about the person is investigative information (regardless of when the act or omission relevant to the investigative information happened or is alleged to have happened).	15 16 17 18 19
	‘(1A) The police commissioner may notify the commissioner that—	20
	(a) the person’s criminal history has changed; or	21
	(b) the police commissioner has decided that information about the person is investigative information.’	22 23
	(2) Section 122A(2)(c)—	24
	<i>omit, insert—</i>	25
	‘(c) a brief description of the conviction or charge to which the change relates, or of the investigative information.’	26 27
	(3) Section 122A(4), ‘subsection (1)’—	28
	<i>omit, insert—</i>	29
	‘subsection (1A)’.	30

*Constitutional and Other Legislation Amendment
Bill 2005*

Clause 38	Amendment of s 126 (Use of information obtained under this part about a person)	1 2
	Section 126, after ‘for this part’—	3
	<i>insert—</i>	4
	‘or a report under section 163’.	5
 Clause 39	 Amendment of s 152 (Confidentiality of information about criminal history)	 6 7
	(1) Section 152—	8
	<i>insert—</i>	9
	‘(2A) This section also applies to a person who is or has been—	10
	(a) the Minister and in that capacity received a verbal report, or a written report (a <i>document</i>), under section 163 ¹⁰ that included information mentioned in subsection (1)(b); or	11 12 13 14
	(b) a person mentioned in subsection (4)(c) or (d) and in that capacity acquired the information, or gained access to the document in so far as it relates to the information.’.	15 16 17 18
	(2) Section 152(4)—	19
	<i>insert—</i>	20
	‘(ba) if subsection (2A)(a) applies—to a public service officer of the department, the commissioner, a staff member or a member of the Minister’s staff for the purpose of obtaining advice relating to the information; or	21 22 23 24
	(bb) if subsection (2A)(b) applies— to the Minister, a public service officer of the department, the commissioner, a staff member or a member of the Minister’s staff for the purpose of providing advice to the Minister relating to the information; or’.	25 26 27 28 29

10 Section 163 (Other reports by the commissioner)

*Constitutional and Other Legislation Amendment
Bill 2005*

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|-----|--|---|
| (3) | Section 152(4)(d), after ‘Act’— | 1 |
| | <i>insert—</i> | 2 |
| | ‘or is authorised under section 163’. | 3 |
| (4) | Section 152(4)(ba) to (d)— | 4 |
| | <i>renumber</i> as section 152(4)(c) to (f). | 5 |

- | | | |
|------------------|--|--|
| Clause 40 | Amendment of s 153 (Confidentiality of other information) | 6
7 |
| (1) | Section 153(3), before paragraph (a)— | 8 |
| | <i>insert—</i> | 9 |
| | ‘(aa) the Minister or a member of the Minister’s staff; or’. | 10 |
| (2) | Section 153(3)— | 11 |
| | <i>insert—</i> | 12 |
| | ‘(ba) a public service officer of the department; or’. | 13 |
| (3) | Section 153(3)(aa) to (d)— | 14 |
| | <i>renumber</i> as section 153(3)(a) to (f). | 15 |
| (4) | Section 153— | 16 |
| | <i>insert—</i> | 17 |
| ‘(5) | Without limiting subsection (4)(a), a person makes a record of confidential information or discloses it to someone else for this Act in the following circumstances— | 18
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20 |
| | (a) if the person is the Minister—the Minister makes the record, or discloses the information to the commissioner, a member of the commission’s staff, a public service officer of the department or a member of the Minister’s staff, (the <i>relevant person</i>) for the purpose of obtaining advice relating to a report given to the Minister under section 163; | 21
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| | (b) if the person is a relevant person—the person makes the record, or discloses the information to the Minister or another relevant person, for the purpose of providing advice to the Minister relating to the report.’. | 28
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*Constitutional and Other Legislation Amendment
Bill 2005*

Clause 41	Amendment of s 161 (Protection from liability)	1
	(1) Section 161(3), definition <i>official</i> , before paragraph (a)—	2
	<i>insert</i> —	3
	‘(aa) the Minister or a member of the Minister’s staff; or’.	4
	(2) Section 161(3), definition <i>official</i> —	5
	<i>insert</i> —	6
	‘(ba) a public service officer of the department; or’.	7
	(3) Section 161(3), definition <i>official</i> , paragraph (c), ‘(a) or (b)’—	8
	<i>omit, insert</i> —	9
	‘(b) or (c)’.	10
	(4) Section 161(3), definition <i>official</i> , paragraphs (aa) to (d)—	11
	<i>renumber</i> as paragraphs (a) to (f).	12
 Clause 42	 Replacement of s 163 (Other reports relating to commissioner’s functions)	 13 14
	Section 163—	15
	<i>omit, insert</i> —	16
‘163	Other reports by commissioner	17
	‘(1) The commissioner may provide the Minister with a report relating to the administration of this Act, including the performance and exercise of the commissioner’s functions and powers under this Act.	18 19 20 21
	‘(2) The commissioner must provide the Minister with a report of a type mentioned in subsection (1) if the Minister asks for it.	22 23
	‘(3) A report under this section—	24
	(a) may relate to matters generally or to a particular matter; or	25 26
	(b) may include confidential information about a person obtained under part 6 including confidential information	27 28

*Constitutional and Other Legislation Amendment
Bill 2005*

	to which section 126 or 153 applies or that is mentioned in 152(1)(b). ¹¹ .	1 2
Clause 43	Amendment of s 163A (Annual report by commission) Section 163A— <i>insert—</i> '(c) information about the number of times the Minister asked the commissioner for a report under section 163 during the year.'	3 4 5 6 7 8
Clause 44	Insertion of new pt 9, div 8 After section 195— <i>insert—</i>	9 10 11
'Division 8	Further transitional provisions for the Commission for Children and Young People and Child Guardian Amendment Act 2004	12 13 14 15
'196	Definitions for div 8 'In this division— <i>commencement</i> means commencement of this section. <i>post-amended Act</i> means the <i>Commission for Children and Young People and Child Guardian Act 2000</i> as in force from time to time on and after 17 January 2005 and before the commencement. <i>pre-amended Act</i> means the <i>Commission for Children and Young People and Child Guardian Act 2000</i> as in force immediately before 17 January 2005.	16 17 18 19 20 21 22 23 24 25

11 Sections 126 (Use of information obtained under this part about a person), 152 (Confidentiality of information about criminal history) and 153 (Confidentiality of other information)

*Constitutional and Other Legislation Amendment
Bill 2005*

<i>relevant applicant</i> , in relation to a relevant application, means the person in relation to whom the relevant application is made.	1 2 3
<i>relevant application</i> means an application under section 100 or 101 ¹² of the pre-amended Act that was received by the commissioner before 17 January 2005.	4 5 6
<i>suitability notice</i> means a suitability notice under the pre-amended Act.	7 8
‘197 Main purpose of div 8	9
‘The main purpose of this division is to clarify and declare the law applying, in particular circumstances, to relevant applications and to suitability notices.	10 11 12
‘198 Circumstances, after commencement, in which pre-amended Act applies to outstanding relevant application	13 14 15
‘(1) This section applies to a relevant application and the relevant applicant if—	16 17
(a) a decision under section 102(1) ¹³ of the pre-amended Act about the relevant application had not been made before 17 January 2005; and	18 19 20
(b) before the commencement, the commissioner had not issued a prescribed notice to the relevant applicant; and	21 22
(c) on or after 17 January 2005, no police information and no disciplinary information about the relevant applicant was received by the commissioner.	23 24 25
‘(2) The pre-amended Act applies to the relevant application and the relevant applicant for the purpose of making a decision about the relevant application.	26 27 28

12 Section 100 (Application for notice—regulated employment) or 101 (Application for notice—regulated business) of the pre-amended Act

13 Section 102 (Decision on application) of the pre-amended Act

*Constitutional and Other Legislation Amendment
Bill 2005*

- ‘(3) If the decision, by application of the pre-amended Act, involves declaring the relevant applicant to be a suitable person for child-related employment, the relevant applicant is to be issued, under section 102(2)(a) of this Act, with a positive notice. 1
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- ‘(4) If the decision, by application of the pre-amended Act, involves declaring the relevant applicant to be an unsuitable person for child-related employment, the relevant applicant is to be issued, under section 102(2)(b) of this Act, with a negative notice. 6
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- ‘(5) On the issuing of a positive notice as mentioned in subsection (3), or a negative notice as mentioned in subsection (4), this Act, and not the pre-amended Act, applies. 11
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- ‘(6) Despite subsection (5), if a negative notice is issued— 14
- (a) the relevant applicant may only apply under section 121 of the pre-amended Act for a review of the decision under section 102 of the pre-amended Act; and 15
16
17
- (b) the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review. 18
19
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- ‘199 Circumstances, after commencement, in which this Act applies to outstanding relevant application 21
22**
- ‘This Act, and not the pre-amended Act, applies to all matters relating to a relevant application, and any decision relating to the relevant application, if— 23
24
25
- (a) a decision under section 102(1) of the pre-amended Act about the relevant application had not been made before 17 January 2005; and 26
27
28
- (b) before the commencement, the commissioner had not issued a prescribed notice to the relevant applicant; and 29
30
- (c) on or after 17 January 2005, police information or disciplinary information about the relevant applicant was received by the commissioner. 31
32
33

*Constitutional and Other Legislation Amendment
Bill 2005*

'200	Relevant applications dealt with before commencement	1 2
'(1)	This section applies to a relevant application if a decision in relation to the relevant application was made on or after 17 January 2005 and before the commencement.	3 4 5
'(2)	If the commissioner dealt with the relevant application by applying the pre-amended Act, it is declared that—	6 7
(a)	the relevant application has been validly dealt with by applying the pre-amended Act; and	8 9
(b)	a decision of the commissioner in relation to the relevant application is not invalid only because the decision involved the application of the pre-amended Act; and	10 11 12
(c)	this Act, and not the pre-amended Act, applies to all matters relating to the decision after the decision is made.	13 14 15
'(3)	Despite subsection (2)(c), if the decision is to issue a negative notice—	16 17
(a)	the relevant applicant may only apply under section 121 of the pre-amended Act for a review of the decision under section 102 of the pre-amended Act; and	18 19 20
(b)	the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.	21 22 23
'(4)	If the commissioner dealt with the relevant application by applying the post-amended Act, it is declared that—	24 25
(a)	the relevant application has been validly dealt with by applying the post-amended Act; and	26 27
(b)	a decision of the commissioner in relation to the relevant application is not invalid only because the decision involved the application of the post-amended Act; and	28 29 30
(c)	this Act, and not the pre-amended Act, applies to all matters relating to the decision.	31 32

*Constitutional and Other Legislation Amendment
Bill 2005*

'201	Application of ss 122 and 122A in particular circumstances	1 2
'(1)	For the application of sections 122 and 122A ¹⁴ to a relevant application and the relevant applicant, the relevant application is taken to be an application for a prescribed notice that has not been withdrawn and the relevant applicant is taken not to have withdrawn his or her consent to employment screening under part 6. ¹⁵	3 4 5 6 7 8
'(2)	Subsection (1) does not prevent a relevant application from being withdrawn before the commissioner decides the relevant application.	9 10 11
 '202	 Circumstances, after commencement, relating to ss 118 and 119 of pre-amended Act	 12 13
'(1)	This section applies if—	14
(a)	before 17 January 2005, the commissioner—	15
(i)	had received an application under section 118(2) of the pre-amended Act to cancel a negative notice (a <i>previous section 118 application</i>); or	16 17 18
(ii)	had received or otherwise become aware of information that may have allowed the commissioner to exercise a power as mentioned in section 119(1) or (1A) of the pre-amended Act (the <i>previous section 119 power</i>) in relation to a suitability notice; and	19 20 21 22 23 24
(b)	before the commencement, the commissioner had not decided whether or not to grant the previous section 118 application or to exercise the previous section 119 power.	25 26 27 28
(2)	The pre-amended Act applies in relation to the previous section 118 application or the exercise of the previous section 119 power and, subject to subsection (6), the commissioner	29 30 31

14 Sections 122 (Commissioner may obtain information from police commissioner) and 122A (Notice of change in police information about a person)

15 Part 6 (Screening for regulated employment and regulated businesses)

*Constitutional and Other Legislation Amendment
Bill 2005*

may grant or refuse the previous section 118 application or exercise or not exercise the previous section 119 power.	1 2
‘(3) After a decision is made about whether or not to grant the previous section 118 application, or to exercise the previous section 119 power, this Act, and not the pre-amended Act, applies.	3 4 5 6
‘(4) However, if the decision under subsection (2) is a decision to issue a negative notice to a person, or a decision refusing a person’s application to cancel a negative notice—	7 8 9
(a) the person may only apply under section 121 of the pre-amended Act for a review of the decision; and	10 11
(b) the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.	12 13 14
‘(5) Despite subsections (1) to (4), subsection (6) applies if, on or after 17 January 2005, the commissioner received or receives information that allowed or allows the commissioner to exercise a power as mentioned in section 119(1) or (2) of this Act in relation to a suitability notice—	15 16 17 18 19
(a) that is the subject of a previous section 118 application; or	20 21
(b) to which a previous section 119 power may be exercised.	22 23
‘(6) This Act, and not the pre-amended Act, applies to all matters relating to the suitability notice mentioned in subsection (5).	24 25
‘203 Circumstances, before commencement, relating to ss 118 and 119 of pre-amended Act	26 27
‘(1) If, on or after 17 January 2005 and before the commencement, the commissioner cancelled or refused to cancel a suitability notice, whether under section 118 or 119 of the pre-amended Act or post-amended Act, the cancellation or refusal is declared to have been validly dealt with by applying the pre-amended Act or post-amended Act.	28 29 30 31 32 33
‘(2) If the cancellation or refusal has been dealt with by applying the pre-amended Act, the cancellation or refusal may only be	34 35

*Constitutional and Other Legislation Amendment
Bill 2005*

reviewed on an application for review under section 121 of the pre-amended Act and the pre-amended Act applies to the application for review, the review and any appeal relating to the decision on review.	1 2 3 4
‘(3) Subject to subsection (2), this Act, and not the pre-amended Act, applies to all matters relating to the cancellation or refusal.	5 6 7
‘204 Circumstances where pre-amended Act applies to application for review made before commencement	8 9
‘(1) If, before the commencement, there was no final decision in relation to a previous application for review, the pre-amended Act applies to the previous application for review, the review and any appeal relating to the decision on review.	10 11 12 13
‘(2) If, before the commencement, the tribunal had started to hear a previous application for review but had not made a final decision, the tribunal may, for the purposes of subsection (1), exercise its powers under the <i>Children Services Tribunal Act 2000</i> and issue directions in relation to the previous application for review and the hearing.	14 15 16 17 18 19
‘(3) If, before the commencement, a final decision in relation to a previous application for review had been made, the pre-amended Act applies to the following—	20 21 22
(a) if, under the <i>Children Services Tribunal Act 2000</i> , section 38(1)(c), ¹⁶ the tribunal had set aside the commissioner’s decision that was the subject of the previous application for review and returned it to the commissioner for reconsideration—the reconsideration;	23 24 25 26 27
(b) otherwise—any appeal relating to the final decision.	28
‘(4) In this section—	29
<i>final decision</i> means a decision of the tribunal under the <i>Children Services Tribunal Act 2000</i> , section 38.	30 31
<i>previous application for review</i> means an application to the tribunal for a review of a decision made before 17 January	32 33

16 *Children Services Tribunal Act 2000*, section 38 (Powers of tribunal on review)

*Constitutional and Other Legislation Amendment
Bill 2005*

2005 to issue a negative notice or to refuse to cancel a
negative notice. 1
2

tribunal means the Children Services Tribunal. 3

**'205 Circumstances where this Act applies to notices
issued before the commencement** 4
5

'(1) This section applies to each of the following notices— 6

(a) a suitability notice issued under the pre-amended Act
and in force immediately before 17 January 2005; 7
8

(b) a prescribed notice issued on or after 17 January 2005
and before the commencement. 9
10

'(2) It is declared that this Act applies in relation to the notice
unless— 11
12

(a) a provision of this division provides that the
pre-amended Act applies; or 13
14

(b) division 7 otherwise provides. 15

'206 References to prescribed notice 16

'It is declared that in an Act or document, a reference to a
prescribed notice may, if the context permits, be taken to
include a reference to a suitability notice.' 17
18
19

**Part 5 Amendments of other
legislation** 20
21

Clause 45 Minor and consequential amendments 22

The schedule amends the Acts and regulation mentioned in it. 23

Schedule	Minor and consequential amendments	1 2
	section 45	3
	Anti-Discrimination Act 1991	4
1	Section 106A—	5
	<i>insert—</i>	6
	‘(3A) Despite subsection (2), this Act has no effect on the imposition of a compulsory retirement age on a Supreme Court judge or a District Court judge under the <i>Constitution of Queensland 2001</i> , section 60.’.	7 8 9 10
2	Section 106A(3A) and (4)—	11
	<i>renumber</i> as section 106A(4) and (5).	12
	Crime and Misconduct Act 2001	13
1	Section 70(1), ‘section 61’—	14
	<i>omit, insert—</i>	15
	‘section 61A’.	16

Schedule (continued)

	District Court of Queensland Act 1967	1
1	Section 14(1) and (2)—	2
	<i>omit, insert—</i>	3
	‘The <i>Constitution of Queensland 2001</i> , section 60, provides for the retirement of judges.’.	4 5
Justices of the Peace and Commissioners for Declarations Act 1991		6 7
1	Section 20(1), before paragraph (a)—	8
	<i>insert—</i>	9
	‘(aa) take an oath of loyalty and of office in the following form—	10 11
	“I, _____, do swear that I will faithfully serve the people and the State of Queensland and I will do right to all manner of people according to law without fear or favour, affection or ill-will.	12 13 14 15
	SO HELP ME GOD!”; or’.	16
2	Section 20(1)(a), ‘and office’—	17
	<i>omit, insert—</i>	18
	‘and of office’.	19

Schedule (continued)

3	Section 20(1), after paragraph (a)—	1
	<i>insert—</i>	2
	‘(ab) make an affirmation of loyalty and of office in the following form—	3 4
	“I, _____, do solemnly, sincerely, declare and affirm that I will faithfully serve the people and the State of Queensland and I will do right to all manner of people according to law without fear or favour, affection or ill-will.”; or’.	5 6 7 8 9
4	Section 20(1)(b), ‘and office’—	10
	<i>omit, insert—</i>	11
	‘and of office’.	12
5	Section 20(1)(aa) to (b)—	13
	<i>renumber</i> as section 20(1)(a) to (d).	14
6	Section 20(4), ‘affirmation of’—	15
	<i>omit, insert—</i>	16
	‘affirmation of loyalty,’.	17
Magistrates Act 1991		18
1	Section 11(4), ‘, other than subsections (9) and (10),’—	19
	<i>omit.</i>	20

Schedule (continued)

2	After section 61— <i>insert—</i>	1 2
‘Division 5	Transitional provision for Constitutional and Other Legislation Amendment Act 2005	3 4 5
‘62	Regulation-making power unaffected ‘The amendment of the <i>Magistrates Regulation 2003</i> by the <i>Constitutional and Other Legislation Amendment Act 2005</i> does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.	6 7 8 9 10
Magistrates Regulation 2003		11
1	Section 3, ‘section 8’— <i>omit, insert—</i> ‘section 9’.	12 13 14
2	Section 3(a), ‘as follows—’— <i>omit, insert—</i> ‘either of the following— Oath of loyalty and of office I, _____, swear that I will faithfully serve the people and the State of Queensland in the office of magistrate and that I will treat everyone fairly and without bias according to law—SO HELP ME GOD! Oath of allegiance and of office’.	15 16 17 18 19 20 21 22 23

Schedule (continued)

3	Section 3(b), ‘as follows—’—	1
	<i>omit, insert—</i>	2
	‘either of the following—	3
	Affirmation of loyalty and of office	4
	I, _____, solemnly affirm that I will faithfully serve the people and the State of Queensland in the office of magistrate and that I will treat everyone fairly and without bias according to law.	5 6 7 8
	Affirmation of allegiance and of office’.	9
Oaths Act 1867		10
1	Part 2, after section 5A—	11
	<i>insert—</i>	12
‘5B	Oath of loyalty may be taken instead of oath of allegiance	13
	‘(1) If a person is required to or may, whether under an Act or otherwise, take an oath of allegiance, there may be substituted for the oath of allegiance under section 5A an oath of loyalty in the following form—	14 15 16 17
	I, _____, do sincerely promise and swear that I will faithfully serve the people and the State of Queensland.	18 19
	So help me God!’.	20
	‘(2) If under an Act a person is required to or may take an oath of loyalty and the Act does not state the form of the oath, the form is that stated in subsection (1).’	21 22 23

Schedule (continued)

Supreme Court of Queensland Act 1991	1
1 Section 23(1) and (2)—	2
<i>omit, insert—</i>	3
‘The <i>Constitution of Queensland 2001</i> , section 60, provides for the retirement of judges.’.	4 5