

Service Delivery and Performance Commission Bill 2005

Explanatory Notes

General Outline

Objective of the Bill

The objective of the Bill is to establish a statutory authority known as the Service Delivery and Performance Commission to review and improve the performance of the public service to meet the service expectations of the Queensland community.

Reasons for the objective and how it will be achieved

The Bill will help to ensure that the community is continually provided with public services that are responsive, flexible, innovative, and efficient, by establishing the Service Delivery and Performance Commission.

As society grows and becomes more complex, people's needs evolve and the demand on governments to meet those needs increases. Responsive public services are provided by departments that understand the government's policy agenda, empathise with their clients, listen to and act on their needs, and are constantly seeking to improve their service delivery in a consultative and participative environment.

The Commission's role will be to review the way the government delivers services to the community, advise on best practice performance and risk management, and identify any cost savings, waste or inefficiencies, with the aim of ensuring that tax payers are getting good value for money. The Commission will also set new targets for the performance and outcomes of agencies and prepare an annual service delivery and performance report of departments against agreed key performance indicators.

A full-time Commissioner will be appointed to lead the Commission and will be assisted by at least two part-time Commissioners. The Public Service Commissioner and the Under Treasurer will also form part of the Commission.

The Commission will be established for a maximum of five years with a review to be conducted of its effectiveness after three years. The report on the review will be tabled in Parliament.

The Commission will report directly to the Minister and will primarily conduct reviews of matters referred to it from the Minister. It may also conduct reviews on its own initiative, but only with the approval of the Minister. The Minister will be able to specify what issues the Commission should look at and set minimum consultation requirements.

The Commission will principally rely on the cooperation of agencies to provide it with the information it requires to conduct a review. However, to ensure the Commission has access to the information it needs to perform its functions, the Commission will be able to require, by notice, that the chief executives of agencies provide that information. A notice to require the production of information will require the approval of all members of the Commission. Further, the Commission will not be able to access privileged information and there will be limits imposed on the types of information the Commission can require to ensure that only appropriate information is sought.

The Commission will provide the Minister with a report on each review it completes, and the Minister will table the report in the Legislative Assembly (subject to the confidentiality safeguards that one would expect for such reviews). The Commission's reviews will assist the Premier and Cabinet in deciding what changes need to be made to improve service delivery. In this sense, the Commission will be a key operational tool of government. The Commission will also improve the transparency and accountability of government in delivering services and ensure tax payers are informed on how public money is being spent.

Other activities that the Commission may conduct include developing standards or guidelines for agencies on how to best monitor and manage their own performance in delivering services in order to achieve optimal outcomes. In this way, the work of the Commission will lead to significant long term benefits by ensuring that departments possess the tools that they need to monitor and manage their performance.

The Commission will have its own staff to perform its functions who will be subject to the direction and control of the chairperson. The Commission will also be able to engage other experts brought in from outside from time to time, who will support the operations of the Commission in its reviews and in promoting performance and management excellence in the public sector.

Administrative cost to government for implementation

It is estimated that the cost of establishing the Commission and the Office of government Performance will be \$2.5 million to \$3 million per annum. The Commission is expected to assist the government achieve savings of \$20 million in 2007-08, rising to \$100 million per annum by 2010-11.

Consistency with fundamental legislative principles

The Bill is consistent with fundamental legislative principles.

Consultation

Consultation has taken place with Queensland Treasury, the Department of Justice and Attorney-General, the Public Service Commissioner and the Crown Solicitor.

NOTES ON PROVISIONS

Clause 1 states the short title of the Act.

Clause 2 inserts a dictionary in the schedule to define key terms in the Act.

Clause 3 defines that, in the Act, an ‘agency’ for the purposes of this Act means a public sector unit other than an excluded entity (as defined by the *Acts Interpretation Act 1954*); any other government entity other than an excluded entity (as defined in the *Public Service Act 1996*) that is prescribed by regulation; and the Queensland Police Service. The clause includes a specific reference to the Queensland Police Service because it is excluded from the definition of a public sector unit under the *Public Service Act 1996*.

“Excluded entity” is defined in sub-clause (2) and lists the following entities as being exempt from the operation of the Act: the Crime and Misconduct Commission; a government owned corporation; the integrity Commissioner; the Office of the Information Commissioner; the Office of the Ombudsman; the parliamentary crime and misconduct Commissioner; and the Queensland Audit Office.

Clause 4 states that the Act binds all persons including the State. However, the State cannot be made liable for an offence under the Act.

Clause 5 states the main object of the Act is to help the government of the State to:

- meet the expectations of the community about the delivery of government services;
- reduce inefficiencies, duplication and waste in the delivery of government services;
- improve the accountability of agencies for their delivery of services;
- to improve the delivery of government services by ensuring that resources are used efficiently and best practice is adopted;
- encourage agencies to be proactive about managing and monitoring their own performance through effective and appropriate performance frameworks; and
- promote in agencies a culture of continuous improvement and performance management, including risk management.

Clause 6 formally establishes the Service Delivery and Performance Commission.

Clause 7 states that the Commission represents the State and ascribes to the Commission all the privileges and immunities of the State.

Clause 8 states that the membership of the Commission shall consist of a chairperson, and at least two other appointed Commissioners, nominated by the relevant Minister and appointed by the Governor in Council. The Commission will also consist of the chief executive of the treasury department (ex officio) and the public service Commissioner (ex officio).

Clause 9 clarifies that ‘information’ for the purposes of part 3 includes a document.

Clause 10 states that the Commission’s main function is to undertake reviews under part 4 and report to the Minister on the outcome of each review.

Clause 11 states the other functions of the Commission, that are to:

- prepare annual service delivery and performance reports and give them to the Minister;
- develop enhanced performance targets for particular agencies or services;

- educate agencies about managing and monitoring performance; and
- establish standards for internal government planning and reporting practices about service delivery across the public sector.

Clause 12 states that the Commission must have regard to the object of this Act in performing its functions.

Clause 13 clarifies that the Commission may make enquiries, gather information and otherwise engage in activities necessary to perform its functions. The Commission need not act in a formal way; may inform itself in any way it considers appropriate; may consult with anyone it considers appropriate; and may receive submissions and other information. The Commission will not hold hearings and will principally rely on information provided to it.

Clause 14 requires that, at the start of each financial year, the Commission must prepare a draft annual work program for the financial year and give it to the Minister for consideration. The Minister must, after considering the draft, establish the Commission's work program for the financial year. The work program may be varied before or during the financial year. The clause defines 'work program' as meaning all the activities that the Commission will undertake in the financial year and the times the activities will be undertaken.

Clause 15 provides that the functions of each agency includes cooperating with the Commission in the performance of its functions.

Clause 16 provides that for the purpose of preparing an annual service delivery and performance report, the commission may give a written notice to the chief executive of a department requiring that the chief executive give stated information to the commission by a stated day each year.

Clause 17 provides that, if it is reasonably necessary for the Commission to have stated information or a stated thing for the purpose of performing its functions, the Commission may give a written notice to an agency chief executive requiring production of the information or thing. The notice must state that it is given under this section.

Clause 18 clarifies that a person may give information to the Commission in compliance with a production requirement despite any other law that would otherwise prohibit or restrict the giving of the information. If a person, acting honestly, gives the information or thing to the Commission the person is not liable, civilly, criminally or under an administrative

process, for giving the information or thing. The person also cannot be held to have breached any code of professional etiquette or ethics or to have departed from accepted standards of professional conduct.

Sub-clause (5)(a) states that in a proceeding for defamation, a person has a defence of absolute privilege for publishing the information.

Sub-clause (5)(b) states that a person does not contravene an Act, oath or rule of law or practice by giving the information and is not liable to disciplinary action for giving the information.

Clause 19 states that a person is not required to give information or a thing that is protected by privilege.

Clause 20 states that a person is not required to give information if the chief executive reasonably considers that giving the information or thing could reasonably have the consequences listed in (a)(i) to (vii) or if it would not be in the public interest to give the information.

Clause 21 provides that the Minister may refer a matter to the Commission for review. The referral may be amended at any time.

Clause 22 sets out the matters that may be included in a referral by the Minister. These include asking the Commission to advise the Minister whether a review is warranted, giving terms of reference for the review, stating who the Commission must consult for the review, when the Commission must report to the Minister on the review, ask the Commission to give a draft report before the review and asking the Commission to make the recommendations about a stated matter. Clause 21(c) is not intended to allow the Minister to preclude consultation with any entity. Under the *Acts Interpretation Act 1954*, an entity includes a person.

Clause 23 states that the Commission may also conduct a review of its own initiative, with the Minister's approval.

Clause 24 states that the Minister may withdraw a referral of a matter for review or revoke an approval for a particular review if the Minister considers it appropriate for any reason.

Clause 25 states that a referral, amendment, approval, withdrawal or revocation by the Minister under this division must be in writing.

Clause 26 clarifies that the purpose of a review is to help the Minister to further the object of the Act.

Clause 27 states that a review may be a single review or a periodic review; may relate to the delivery of services or initiatives by a particular agency or

agencies; or may relate to a particular aspect of the delivery of services by the whole or part of the public sector.

Clause 28 sets out what a review may involve including, among other things, measuring the delivery of services, developing benchmarks, identifying ways of reducing waste and duplication, assessing appropriate funding adjustments to achieve optimal service delivery.

Clause 29 states that the Commission must give a written notice to affected agencies about a proposed review before conducting a review of the delivery of services by or initiatives of a particular agency or agencies.

Clause 30 states that the Commission must prepare a report for each review it completes and give the report to the Minister. The Minister must table the report in the Legislative Assembly after receiving the report.

Clause 31 requires that if the Commission conducts a review of a particular agency or agencies, the Commission must prepare a draft report for the review, give copies of the draft report to the agency/agencies, give the agency/agencies a reasonable opportunity to respond to the draft report and have regard to any response before giving the final report to the Minister. In its response, an agency may ask the Commission to include a particular statement in the Commission's final report.

Clause 32 specifies what must be in a report, including a variety of viewpoints and options representing alternative ways of addressing the issues covered by the report; details of consultation undertaken during the review; responses to the draft report received under clause 30 and any statement that the Commission is asked to include in the report by the agency or chief executive of the agency.

Clause 33 clarifies that the Commission need not include sensitive information in a draft or final report. If the report is a final report, the Commission may include the sensitive information in a separate document given to the Minister. This clause does not preclude the Commission from giving sensitive information to the Minister at other times when it is not providing a final report (eg a quarterly report on its activities). 'Sensitive information' is defined in sub clause (4).

Clause 34 provides that the Minister must establish key performance indicators for measuring the service delivery and performance of departments.

Clause 35 states that by 31 each year, the commission must prepare and give to the Minister a report the service delivery and performance of

departments during the previous financial year. The Minister must table the report within 14 sitting days of receiving the report.

Clause 36 states that the chairperson is the Commission's chief executive officer and is responsible for the administration of the Commission, including the management of the staff members of the Commission and the proper performance of the Commission's functions. The clause also provides that a document of the Commission that is required to be authenticated is sufficiently authenticated if it is signed by the chairperson. The clause also clarifies that the chairperson may delegate his or her powers relating to the administration of the commission to an appropriately qualified staff member of the Commission.

Clause 37 provides that an eligible person may be appointed to act as chairperson by the Governor in Council during a vacancy in the office or any period when the chairperson is absent.

Clause 38 allows the Commission to delegate its powers under the Act to another Commissioner.

Clause 39 states that the Commission may conduct its business, including its meetings, in the way it considers appropriate.

Clause 40 states that Commission meetings are to be held at the times and places decided by the chairperson or if the chairperson is asked to do so in writing by at least four Commissioners. Meetings must be held at least quarterly.

Clause 41 provides that a quorum for a Commission meeting is four Commissioners.

Clause 42 allows the chief executive of the treasury department or the public service Commission to appoint, by signed writing, a public service officer as his or her deputy. The deputy is to be counted in deciding if there is a quorum for the meeting.

Clause 43 states that the chairperson is to preside at all Commission meetings at which the chairperson is present. If the chairperson is absent, the acting chairperson is to preside. If the chairperson and acting chairperson are absent, the Commissioners present may choose a Commissioner to preside.

Clause 44 sets out the processes for the conduct of meetings.

Clause 45 states that a decision made by the Commission outside meetings is valid if it is made with the written agreement of at least 4 Commissioners

and a notice of the proposed decision is given under procedures approved by the Commission.

Clause 46 states that the Commission must keep minutes of its meetings and a record of any resolutions made by the Commission.

Clause 47 states that the Commission may employ the officers and employees the Commission considers necessary for the Commission. The staff of the Commission are to be employed under the *Public Service Act 1996*.

Clause 48 provides that the staff of the Commission are subject to the direction of the chairperson in relation to the performance of the Commission's functions.

Clause 49 provides that the Commission may engage suitably qualified persons to provide it with services on terms and conditions decided by the Commission, to meet temporary circumstances.

Clause 50 provides that the chairperson and the other appointed Commissioners are to be appointed by the Governor in Council, for a stated period. The appointment is to be made under this Act and not under the *Public Service Act 1996*.

Clause 51 states that each appointed commissioner must enter into a written contract of employment with the Minister. The contract of employment must include the conditions of employment, including remuneration and allowances to which the Commissioner is entitled.

Clause 52 states that the chairperson is to be appointed on a full-time basis and the other appointed Commissioners are appointed on a part-time basis.

Clause 53 provides that each commissioner may take leave of absence as authorised under his or her contract of employment.

Clause 54 lists the persons who are not eligible for appointment as an appointed Commissioner.

Clause 55 allows the Minister to ask the police Commissioner for a written report about the criminal history of a person in deciding whether a person is suitable for nomination for appointment as an appointed Commissioner. The request for the criminal history must be limited to indictable offences. The Minister must first seek the person's written consent and the Minister must destroy the report as soon as practicable after it is no longer needed.

Clause 56 states that a Commissioner may resign by giving a signed notice of resignation to the Minister.

Clause 57 provides that if a public service officer is appointed as a Commissioner, the person retains all rights that have accrued to the person and will continue to accrue all rights that would have accrued to the person because of their employment as a public service officer. The person's service as a Commissioner will also be regarded as service of a similar kind in the public service for the purpose of determining the person's rights as a public service officer.

Clause 58 requires that the Commission must give quarterly reports to the Minister on its operations.

Clause 59 provides that the *Crime and Misconduct Act 2001*, the *Financial Administration and Audit Act 1977* and the *Statutory Bodies Financial Arrangements Act 1982* apply to the Commission.

Clause 60 makes it clear that neither a person nor the Commission can be held liable for defamation for any statement made to the Commission or in a report to the Commission if it is in good faith and is made for this Act.

Clause 61 provides protection from liability to a Commissioner, staff member of the Commission, agent of the Commission or another employee of the State for an act done or omission made honestly and without negligence under this Act. Civil liability will instead attach to the State.

Clause 62 specifies confidentiality obligations for a person who is or has been a Commissioner, staff member, agent or other employee of the State where those persons acquire protected information or have access to or custody of a document containing protected information. 'Protected information' means information obtained by a person to whom the section applies in relation to a review under this Act and not publicly available.

Clause 63 sets out the offences under the Act, including:

- failing to comply with a production requirement without a reasonable excuse;
- making a false or misleading statement to the Commission; and
- providing, in response to a production requirement, a document containing information that the person know is false or misleading in a material particular.

An offence against the Act is a summary offence.

Section 204 of the *Criminal Code* does not apply to any of the offences under this Act.

Clause 64 provides for the chairperson to approve forms for use under the Act.

Clause 65 provides that the Governor in Council may make regulations under the Act.

Clause 66 provides that the Minister must review the Commission's performance of its functions during the third year of the Commission's establishment and table a report in the Legislative Assembly on the outcome of the review.

Clause 67 provides that the Act expires 5 years after the section commences.

Clause 68 is a transitional provision that states that the Commission's first annual program must start on the day clause 14 (establishing the Commission's work program) commences and ends on 30 June 2007. The Commission is not required to prepare a draft annual program for consideration by the Minister for its first annual work program.

Clause 69 is a transition provision that states that the first annual service delivery and performance report is due by 31 October 2007 and relates to the period starting on the day clause 35 commences and ending on 30 June 2007.

Clause 70 is a transitional provision that states that the Commission's first quarterly report about its operations for the quarter is due after the end of the first full quarter after the day the Act commences.

Clause 71 states that Part 9 of the Bill amends the *Freedom of Information Act 1992*.

Clause 72 provides that reviews by the Commission are exempt matter under the *Freedom of Information Act 1992* in a similar manner to audits by the Auditor-General. That is, information cannot be required to be disclosed under the *Freedom of Information Act 1992* if it could reasonably be expected to prejudice the conduct of a review by the Commission. Further, information is also exempt if it is information which the Commission has obtained in the course of exercising its review function or the annual service delivery and performance report function.