Ministerial and Other Office Holder Staff Bill 2010

Explanatory Notes

Short title

The short title of the Bill is the Ministerial and Other Office Holder Staff Bill 2010.

Objectives of the Bill

The Ministerial and Other Office Holder Staff Bill 2010 will create a new stand-alone framework for the employment of staff members to support Ministers, the Leader of the Opposition and, where necessary, other non-Government Members of Parliament, separate to the *Public Service Act 2008*. In addition, the Bill amends the *Parliamentary Service Act 1988* to provide statutory recognition to electorate office staff as a distinct category of officer within the Parliamentary Service.

Reasons for the Bill

On 6 August 2009, the Government released the discussion paper, *Integrity and Accountability in Queensland* (the Discussion Paper) to prompt public discussion on integrity and accountability issues and seek public input on proposals for integrity reform. Following consideration of public submissions and the advice of a round table of experts, the Government released the *Response to Integrity and Accountability in Queensland* (the Integrity Response) on 10 November 2009.

The Integrity Response committed to a number of integrity and accountability reforms, including introducing new legislation governing the employment of Ministerial and electorate office staff similar to the Commonwealth *Members of Parliament (Staff) Act 1984*.

Ministerial and Opposition staff are currently employed under the *Public* Service Act 2008 through the employing authority of the Director-General of the Department of the Premier and Cabinet. Introducing new legislation will create a discrete framework for the employment of Ministerial staff distinct from the public service, thus reflecting the differing roles of Ministerial staff and public servants.

In January 2010, the Government made a submission to the Crime and Misconduct Commission's inquiry into the interactions between Ministers, Ministerial staff and public servants. This submission emphasised the Government's commitment to ensuring that appropriate frameworks are in place to guide the interactions between Ministerial staff and public service employees. A number of measures have been implemented in this respect, including amending standard employment contracts and issuing a communiqué setting out clearly that Ministerial staff do not have the power to direct public servants. Additional to these administrative measures, this Bill will create strong legislative parameters around the employment, powers and expectations of conduct of Ministerial staff.

In considering the framework for appointment of electorate office staff, the Government determined that it would be preferable to maintain the employment of these staff through the Parliamentary Service under the *Parliamentary Service Act 1988*. However, the Bill also amends this Act to more clearly identify these electorate office staff as a distinct category of officer within the Parliamentary Service.

Achievement of the Objectives

The Bill implements a stand alone framework for the employment of Ministerial staff, staff of the Leader of the Opposition and staff of other non-Government Members of Parliament (as determined to be necessary based on the composition of the Legislative Assembly). The employer for these staff members will be the Director-General of the Department of the Premier and Cabinet (the chief executive), who will make appointments upon recommendations from the Premier, the Leader of the Opposition or relevant Member of Parliament respectively.

The Bill includes a specific provision that Ministerial staff are not empowered to direct public servants in their own right, thus acknowledging the limitations on powers of Ministerial staff members. To ensure that appropriate ethical standards are clearly set and maintained, the Bill includes work performance obligations to supplement the requirements of the *Public Sector Ethics Act 1994* and which require that interactions with public service employees be undertaken collaboratively and with respect. The Bill also amends the *Public Service Act 2008* to ensure that reciprocal obligations apply to public service employees in their dealings with Ministerial staff.

The Bill allows the chief executive to issue directives or guidelines about employment matters such as standards of conduct, and to apply rulings made under the *Public Service Act 2008* to staff members employed under the Bill. This will ensure that the employment regime for staff members continues to reflect public service conditions. As a transitional arrangement, the Bill will carry over current public service rulings applying to general employees under the *Public Service Act 2008* to staff members for a period of three months.

Further matters dealt with in the Bill include codes of conduct and the provision of statements of interests by staff members, which continue current administrative practice as established under the *Ministerial Handbook* and *Opposition Handbook*. The Bill will also continue the existing jurisdiction of the Crime and Misconduct Commission and Ombudsman and amend the Criminal Code to ensure that corruption and abuse of office offences continue to apply to Ministerial and Opposition staff.

Alternative Ways of Achieving Objectives

Submissions to the Discussion Paper identified the need for a clear and transparent employment framework for Ministerial staff instead of the current practice of employing these staff as 'general' or 'temporary' employees under the *Public Service Act 2008*. While this could have been achieved through amendment to the *Public Service Act 2008*, it is considered preferable to enact a discrete legislative framework which more accurately and transparently reflects the nature of the roles of Ministerial and Opposition staff as distinct from that of the general public service.

Estimated Cost for Government Implementation

Ministerial Services within the Department of the Premier and Cabinet currently provides administrative support for the employment of Ministerial and Opposition staff: this arrangement will continue. It is envisaged that implementation costs to Government to reflect the new legislative regime will be minimal and will be met from existing budgets and resources.

Consistency with Fundamental Legislative Principles

The Bill is consistent with fundamental legislative principles and no breaches of the principles have been identified.

Consultation

Over 200 submissions on the Discussion Paper were accepted by the Department of the Premier and Cabinet with non-confidential submissions published on the department's website. In addition to written submissions, the Government considered feedback from the community received at regional forums held in Toowoomba, the Sunshine Coast, Townsville, Cairns, Bundaberg, Mackay, Gold Coast, Rockhampton and Brisbane over the period 25 August 2009 to 15 September 2009.

The Government also established an Integrity and Accountability round table of experts, which considered summaries of the results of consultation and made recommendations to Government on reforms to the integrity and accountability framework. One of the key reforms announced by the Government in the Integrity Response released in November 2009 was to create a legislative framework for the employment of Ministerial staff.

The Crime and Misconduct Commission, Integrity Commissioner, Clerk of Parliament, members of the Integrity and Accountability round table and board of the Public Service Commission were consulted on the draft Bill. No significant issues were raised in relation to the proposed new legislative framework.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, however, approaches in other jurisdictions, in particular the *Members of Parliament (Staff) Act 1984* (Cth), were taken into consideration in the development of the Bill.

Notes on Provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Bill.

Clause 2 provides that the Act will commence on a day to be fixed by proclamation.

Clause 3 states that the dictionary in the schedule defines particular words used in the Bill.

Clause 4 establishes the main purposes of the Bill, which are to: provide for the employment of staff in the offices of particular Members of the Legislative Assembly; and to provide for the proper work performance and conduct of the staff members.

Part 2 Employment of staff members

Clause 5 provides that the functions of a staff member, defined in the schedule as a person employed under the Act, are to be established under contract of employment and by other directions given in accordance with the Bill. The functions of staff members are ultimately to be directed towards helping the employing Member effectively discharge their duties. The Bill provides a non-exhaustive list of some of the functions that staff members may perform, including:

- 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; and
- liaising with stakeholders.

The inclusion of such examples within the Bill provides statutory recognition of the distinct nature of the types of work undertaken by staff members, particularly in comparison with public service employees.

Clause 6 establishes the chief executive as the employer of staff members employed in Ministerial offices. In accordance with the *Acts Interpretation Act 1954*, the chief executive is the Director-General of the administering department, which will be the Department of the Premier and Cabinet. The chief executive may, on the Premier's recommendation, employ a person as a staff member in the office of a stated Minister. The dictionary in the schedule defines Minister to include Parliamentary Secretary; therefore, a person may be employed as a Ministerial staff member in accordance with this clause but allocated to work in the office of a Parliamentary Secretary.

Clause 7 establishes the chief executive as the employer of staff members employed in the office of the 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.

Clause 8 enables the employment of a staff member in the office of a non-government Member of the Legislative Assembly (other than the Leader of the Opposition) who is the leader of a political party, or an Independent Member. The chief executive may, on the recommendation of the Member, employ a person as a staff member in the Member's office. The employment of staff members under this clause will only occur as considered necessary to support any non-Government Members in the performance of their Parliamentary duties, as further detailed in clause 9.

Clause 9 clarifies that clauses 6 to 8 do not confer an entitlement for the employment of staff members, or any particular number of staff members, in the office of a Member of the Legislative Assembly. The numbers of staff employed will be based on budgetary constraints and allocation of resources or, in the case of non-Government Members, may be only be determined to be necessary where the Member has an increased workload because of the composition of the Parliament.

Clause 10 provides that a staff member is employed on the terms and conditions stated in the person's contract of employment. The contracts of employment for staff members may include terms and conditions about any of the following matters:

- remuneration;
- the term of employment;

- ending the employment before the end of the stated term; and
- suspension from duty or other disciplinary action.

However this list does not limit the matters that may be dealt with in the stated terms and conditions. The employment of a staff member may be full-time or part-time and may be employed on a temporary or casual basis.

Clause 11 clarifies the nature of a staff member's employment by providing that a person employed as a staff member does not, only because of the employment, become a public service employee. However, a staff member is an employee for the *Industrial Relations Act 1999* and is an employee of the State.

Clause 12 stipulates that for the purposes of the *Superannuation (State Public Sector) Act 1990*, a staff member is taken to be an employee of the department. In accordance with the *Acts Interpretation Act 1954*, the department would be the Department of the Premier and Cabinet.

Clause 13 ensures preservation and continuity of rights (such as leave accruals) where a public service employee is employed as a staff member. If a tenured public servant is employed as a staff member, the person keeps all rights accrued as a public service employee as if service as a staff member were a continuation of service as a public service employee.

Further, 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, the person retains a right to return to public service employment on tenure. Any position to which the person returns would be at their previous classification and remuneration level, and in the department in which the person previously held public service appointment. The Bill also ensures that in these circumstances, the person's service as a staff member is counted towards service as a public service employee and that all rights accrued are therefore retained.

Part 3 Work performance and conduct of staff members

Division 1 Directions

Clause 14 provides that a Ministerial staff member is subject to the direction of his or her employing Member and the Premier. A staff member other than a Ministerial staff member is subject to the direction of his or her employing Member. In addition, staff members may also be subject to the direction of other persons in accordance with the employment arrangements (for example, a more senior staff member).

Clause 15 states that public service employees are not subject to the direction of a staff member. However, this does not prevent a staff member from giving a direction to a public service employee on behalf of another person who may lawfully give the direction. The primary mechanism through which this would occur would be a direction from a Minister to the chief executive of their department under the *Public Service Act 2008*.

This clause is not intended to preclude communications between Ministerial staff and public service employees that would usually occur in the course of normal day-to-day interactions necessary for the administration of government business. Ministerial staff perform a critical role in facilitating communication of Ministerial priorities to departments and acting as a conduit between Ministers and public service employees, including communicating Ministerial views and decisions or requesting advice or other work to be undertaken to assist the Minister in the performance of their duties and responsibilities. For example, it would be appropriate for Ministerial staff to request that briefing notes be prepared on particular issues or by specific timeframes, but not appropriate to give directions on matters that could affect the giving of objective and accurate advice, such as the nature of the content or recommendations in the advice.

Clause 15 reiterates the commitment outlined in the Government's response to the Crime and Misconduct Commission's inquiry into the issue of interactions between Ministers, Ministerial staff and public servants. Consistent with this response, the Premier issued a communiqué on 2 August 2010 setting out expected standards of conduct in interactions between Ministers, Ministerial staff and public service employees. Contracts of employment have also been amended to clearly stipulate that

Ministerial staff do not have the power or authority to direct public service officers. This clause ensures that the Government's commitment is enshrined in legislation as well as being contained in individual contracts.

Division 2 Guiding principles and values

Clause 16 sets out standards of work performance and personal conduct that are expected from staff members. A staff member's work performance and personal conduct must be directed towards:

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

These principles are based on the current principles which apply to public service employees under the *Public Service Act 2008*. However, additional recognition of the need for respect, collaboration and integrity in interactions between staff members and public servants is included. The Bill also amends the *Public Service Act 2008* to ensure that reciprocal obligations are placed on public service employees in their interactions with staff members.

Clause 17 provides that the ethics values stated in the *Public Sector Ethics Act 1994* apply to staff members as if a reference in the division to a public official included a staff member. However, the Bill recognises that the application of ethics values to staff members may vary from public service employees, in accordance with their differing roles and responsibilities. For example, a fundamental characteristic of the work of staff members is that, in contrast to public service employees, they are often required to provide advice that takes account of political considerations. Additionally, Opposition staff are not obliged to give effect to the policies of the

Government. Accordingly, the Bill allows for the application of the ethics values to staff members subject to their fundamental duty to honestly and properly carry out their functions of helping their employing Member to effectively discharge their duties.

Clause 18 states that the principles and values applying to staff members under clauses 16 and 17 are intended to guide staff members in their work performance and personal conduct and are not of themselves legally enforceable. The chief executive may have regard to the principles and values when making a decision under the Bill relating to the work performance or personal conduct of staff members.

Division 3 Codes of conduct

Clause 19 provides that the chief executive may approve a code of conduct applying to a Ministerial staff member, staff members employed in the office of the Leader of the Opposition or other staff members to support other non-Government Members. 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.

Clause 20 provides that the purpose of a code of conduct is to provide standards of conduct for the staff members to whom it applies.

Clause 21 provides that the chief executive must consult with either the Premier, the Leader of the Opposition or the relevant employing Member before approving a code of conduct. The clause also provides that the chief executive must review a code of conduct if requested by the Premier, the Leader of the Opposition or the relevant employing Member, for example, where there has been a change in leadership of a political party.

Clause 22 states that a staff member must comply with an approved code of conduct that applies to the staff member. Further, 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

Clause 23 provides that a reference to an interest or to a conflict of interest is to be given its ordinary meaning under the general law, and that the definition of 'interest' in the *Acts Interpretation Act 1954*, section 36, does not apply. This ensures that both pecuniary and non-pecuniary interests must be declared.

Clause 24 requires staff members to give to their employing Member a statement about their interests:

- within one month of starting employment; and
- 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
- during June in each year.

The statement must include the information required under a directive of the chief executive. When there is a change to a staff member's interests that must be declared, as required under the directive, a statement must be given as soon as practicable after the relevant facts come to the staff member's knowledge. The Bill also includes transitional arrangements which provide that where a complying statement has already been provided, and there has been no material change in the person's interests, there is no requirement to provide an additional statement.

Clause 25 requires staff members to declare any actual or possible conflicts of interest to their employing Member as soon as practicable after becoming aware of the conflict. Staff members must not take any action or further action relating to the conflict unless authorised by their employing Member, who is also able to direct the staff member to resolve the conflict or possible conflict.

This division applies consistent requirements to staff members as those which apply, or may be applied, to public service employees under the *Public Service Act 2008*.

Part 4 Miscellaneous

Division 1 Rulings

Clause 26 provides that the chief executive may make a directive by gazette notice about matters relating to the employment of staff members, including a directive about standards of conduct. Directives will be binding upon staff members.

Directives may apply, adopt or incorporate the provisions of a public service directive made under the *Public Service Act 2008* with any changes or modifications necessary to apply the directive to staff members. This will ensure that the employment regime for staff members continues to reflect public service conditions. As a transitional arrangement, the Bill also carries over current public service rulings (directives and guidelines) applying to general employees under the *Public Service Act 2008* to staff members for a period of three months.

Clause 27 states that if a directive is inconsistent with an Act or subordinate legislation, the Act or subordinate legislation prevails to the extent of the inconsistency.

Clause 28 sets out the relationship between directives and industrial instruments. This clause applies if a directive deals with a matter all or part of which is dealt with under an industrial instrument of the Industrial Relations Commission as established under the *Industrial Relations Act* 1999.

This clause provides that the directive prevails over the industrial instrument, unless a regulation provides otherwise. For this clause, 'directive' is defined to include a decision made in the exercise of a discretion under a directive. This clause is based on section 52 of the *Public Service Act 2008* and ensures that the status of directives made under this Bill are equivalent to directives made under the *Public Service Act 2008*.

Clause 29 provides that the chief executive may make a guideline in the way the chief executive considers appropriate about a matter relating to the employment of staff members. Guidelines are non-binding and are intended to operate for the purposes of providing guidance only for staff members.

Guidelines may apply, adopt or incorporate the provisions of a public service guideline made under the *Public Service Act 2008* with any changes or modifications necessary to apply the guideline to staff members.

Clause 30 applies if a directive or guideline made under sections 26(2) or 29(3) provides for a matter by applying, adopting or incorporating the provisions of a public service ruling. For this clause, a 'public service ruling' is defined to mean a public service directive or guideline made under the *Public Service Act 2008*.

The directive or guideline may provide that, if a 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 with reference to the replacement ruling. This will ensure continuity in the application of rulings to staff members where new rulings are made under the *Public Service Act 2008*.

Division 2 Application of Acts

Clause 31 provides that for the *Crime and Misconduct Act 2001* a staff member is taken to hold appointment in the department. As Ministerial and Opposition staff are currently employed by the Director-General of the Department of the Premier and Cabinet under the *Public Service Act 2008*, this amendment maintains the current jurisdiction of the Crime and Misconduct Commission.

Clause 32 provides that for the *Ombudsman Act 2001* a staff member is taken to be an officer of the department. As for clause 31, this clause maintains the current jurisdiction of the Ombudsman.

Division 3 Other matters

Clause 33 provides that the chief executive may establish advisory committees to advise the Premier on issues relevant to this Bill. Appropriately qualified people may be appointed as members of an advisory committee by the chief executive, and may be entitled to remuneration and allowances if stated in the member's terms of appointment.

The chief executive is responsible for deciding matters about how a committee is to operate such as the conduct of meetings or provision of reports to the Premier.

Clause 34 requires the chief executive to prepare an annual report on the operation of the Bill. The annual report may be included in the Department of the Premier and Cabinet's annual report. If the report is not included within the department's annual report it must be tabled in the Legislative Assembly within three months of the end of each financial year. The report is to include non-identifying details of the staff members employed under the Bill over the course of the financial year.

Clause 35 allows the Premier to delegate functions under section 6 to an appropriately qualified Ministerial staff member. The clause also allows the chief executive to delegate functions under the Bill to an appropriately qualified public service employee. This clause will allow recruitment and selection decisions to be undertaken by suitably qualified Ministerial staff members or public service employees in accordance with established human resources practices.

Clause 36 provides that this Act will bind the State subject to the exception in subclause (3). Subclause 36(3) states that 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 Bill.

This clause also provides that the chief executive employs persons under this Bill as the authorised agent of the State.

This clause reflects section 219 of the Public Service Act 2008.

Clause 37 establishes regulation-making powers for the Governor in Council under the Bill.

Part 5 Transitional

Clause 38 defines 'commencement' for this part to mean the commencement of the provision in which the term appears.

Clause 39 sets out the position for current Ministerial and Opposition staff appointed under section 147 or 148 of the *Public Service Act 2008*. The clause transitions these staff from public service employment, to

employment as a staff member under this Bill. This will maintain the appointments and entitlements of currently appointed staff.

Clause 40 deals with the requirements for the provision of statements of interest under clause 24 and provides that currently appointed staff members must provide statements within one month of commencement of the Bill. However, where a complying statement for the current period has already been provided to the employing Member, and there has been no material change in the person's interests, there is no requirement to provide an additional statement.

A 'complying statement' is defined to mean a statement, given before the commencement, that included all information of the type required to be included in a statement under clause 24 given immediately after the commencement. A 'material change' is defined to mean a change of the type mentioned in section 24(1)(b) as in force immediately after the commencement.

Clause 41 continues current codes of conduct in effect at the commencement, as if it were approved under the Bill. A 'current code of conduct' is defined to mean a code of conduct that is expressed to apply to persons employed in Ministerial offices or persons employed in the office of the Leader of the Opposition that has been approved by the Premier and is currently in force through administrative arrangements.

Clause 42 continues the current application of rulings made under the *Public Service Act 2008* to staff members employed under the Bill. Currently staff members employed in Ministerial offices and the office of the Leader of the Opposition are engaged under section 147 or 148 of the *Public Service Act 2008*. Therefore, any public service rulings applying to such public service employees apply to those persons becoming staff members under the Bill.

The clause continues the application of these rulings to staff members for a transitional period of three months. However, current rulings cease to apply if the ruling is revoked under the *Public Service Act 2008* or a directive or guideline is made under this Bill which ends the application of the ruling in relation to staff members. The clause does not affect the chief executive's power to make a directive or guideline in accordance with the Bill during or after the transitional period.

The clause also provides that a reference in the Bill to a directive of the chief executive includes a directive under the *Public Service Act 2008*

which applies to staff members in accordance with the transitional arrangements under this clause.

Part 6 Amendments

Division 1 Amendment of Criminal Code

Clause 43 provides that this division amends the Criminal Code.

Clause 44 amends the definition of 'person employed in the public service' in section 1 of the Criminal Code to include staff members as defined under this Bill.

Clause 45 amends section 89 of the Criminal Code (Public officers interested in contracts) to provide that a reference to a person employed in the public service includes a Ministerial staff member as defined under this Bill. As this section refers to the department in which a person is employed, the amendment clarifies the relationship of Ministerial staff members to particular departments. For this purpose:

- Ministerial staff members employed in Ministerial offices are taken to be employed in the department or departments administered by the Minister; and
- Ministerial staff members employed in the Parliamentary Secretary offices are taken to be employed in the department or departments for which the Parliamentary Secretary is given responsibility.

Division 2 Amendment of Industrial Relations Act 1999

Clause 46 provides that this division amends the *Industrial Relations Act 1999*. These amendments maintain the current status of staff members and directives under the Bill as currently applies under the *Public Service Act 2008*.

Clause 47 amends section 686 of the *Industrial Relations Act 1999* (Application of Act to State) to provide that subsections (2) and (3) apply as if reference to a public service employee included a staff member as defined under this Bill; and a reference to a ruling included a directive as defined under this Bill.

Clause 48 amends section 687 of the *Industrial Relations Act 1999* (Conflict between industrial instruments etc. and statutory decision) to insert reference to directives subject to a regulation under clause 28(2) of the Bill, in addition to existing references to directives made under the *Public Service Act 2008*. Clause 28(2) of the Bill allows a regulation to declare that an industrial instrument prevails over a directive made under the Bill.

Division 3 Amendment of Integrity Act 2009

Clause 49 provides that this division amends the Integrity Act 2009.

Clause 50 amends the definitions of 'ministerial staff member' and 'parliamentary secretary staff member' in schedule 2 of the *Integrity Act 2009* to insert reference to staff members employed under this Bill.

Division 4 Amendment of Parliamentary Service Act 1998

Clause 51 provides that this division amends the *Parliamentary Service Act* 1998.

Clause 52 amends section 26 of the *Parliamentary Service Act 1998* to insert a new section 26AA dealing with electorate office staff. The new section provides that, on the recommendation of a Member of the Legislative Assembly, the Speaker may appoint a person under section 26(1) as an officer in the Member's electorate office to help the Member effectively discharge their duties.

This amendment gives statutory recognition to electorate officers as a different category of officer, with unique roles and responsibilities, within the Parliamentary Service, without diminishing or changing existing processes of appointment or employment rights.

Division 5 Amendment of Public Service Act 2008

Clause 53 provides that this division amends the Public Service Act 2008.

Clause 54 amends section 26 of the *Public Service Act 2008* to include additional work performance and personal conduct principles consistent with those which apply to staff members under the Bill. The new principles which will apply are requirements to act honestly, fairly and in the public interest, and to interact with staff members respectfully, collaboratively and with integrity.

Schedule Dictionary

The Schedule provides a dictionary which defines key terms used in the Bill.

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