

Parliament of Queensland and Other Acts Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Parliament of Queensland and Other Acts Amendment Bill 2015

Policy objectives and the reasons for them

The objectives of the Bill are to:

- restore autonomy to the position of Speaker by making the Speaker, rather than the Committee of the Legislative Assembly (CLA), responsible for the management of the Parliamentary Service, including its budget;
- provide the Speaker with a deliberative vote at CLA meetings on questions regarding all of the CLAs remaining responsibilities and a casting vote in the case of a tied vote;
- provide that the Speaker, rather than the Leader of the House, is responsible for calling CLA meetings and setting the agenda;
- allow a cross bench member to be included on the membership of the CLA;
- increase the quorum at a CLA meeting from four to five members;
- give the CLA responsibility for any matter referred to it by the Speaker;
- retrospectively overturn Determination 7/2015 of the Queensland Independent Remuneration Tribunal (the Tribunal) which grants a 2.58% salary increase to members of the Legislative Assembly (MPs) from 6 April 2015;
- allow the Clerk of the Parliament (the Clerk) to recover the salary overpayments to MPs that will accrue until such time as the Tribunal's determination is overturned;
- place a limit on the Tribunal so that it cannot determine percentage salary increases to MPs greater than percentage salary increases received by public servants; and
- provide that within 90 days of a public service salary increase being announced, the Tribunal must make a decision on the extent of any salary increase for MPs and that if an increase is determined by the Tribunal for MPs, it must take effect from the same date as the public service salary increase.

In 2011, the Parliament transferred decision making responsibility regarding the management of the Parliamentary Service from the position of Speaker to the Committee of the Legislative Assembly (CLA) and in some cases, to the Clerk of the Parliament (the Clerk).

During the election campaign, the Australian Labor Party released a policy document titled *Labor will ensure that integrity and accountability are restored in Queensland*, which included a commitment that the autonomy of the Speaker in Parliament would be restored.

To meet this election commitment, the Bill proposes to amend the *Parliamentary Service Act 1988* to return responsibility for the management of the Parliamentary Service from the CLA to the Speaker. However, the position of Clerk will remain as the employing authority for the Legislative Assembly, of Parliamentary Service officers and employees as has been the case since 2011.

The Bill proposes to amend the *Parliament of Queensland Act 2001* (the Act) to give the CLA responsibility for any matter referred to it by the Speaker. This will provide the Speaker with the opportunity to refer any matter to the CLA that the Speaker chooses, if the Speaker considers it desirable to consider a matter in a committee setting.

The CLA will also retain its other responsibilities under the Act, i.e. policy regarding the ethical conduct of MPs (except for the hearing of complaints); parliamentary powers, rights and immunities; Standing Orders; and monitoring and reviewing the business of the House and committees.

To further enhance the importance and autonomy of the position of Speaker within the Parliament, the Bill proposes to amend the Act to give the Speaker a deliberative vote on all questions at CLA meetings across all of its areas of responsibility together with a casting vote if a vote on a question is tied.

In a letter dated 5 February 2015 to the Member for Nicklin, Mr Peter Wellington MP, the Premier and Minister for the Arts, then as Leader of the Opposition, committed to amending the Act to ensure that the membership of the CLA includes a MP from the cross benches.

To meet this commitment, the Bill proposes to amend the Act to provide that if the Legislative Assembly contains one or more cross bench MPs (i.e. a MP not in a political party recognised as being in Government or Opposition), then the membership of the CLA is to include one cross bench member.

As the size of the CLA will increase from seven to eight MPs under the Bill, the Bill also proposes to increase the quorum at a CLA meeting from four to five MPs. This is in line with the quorum for the Parliament's portfolio committees when they comprise eight MPs.

On 5 March 2015, the Tribunal released Determination 7/2015, effective 6 April 2015, which increases the base salary of MPs and the additional salaries they receive as office holders by 2.58%.

Public sector employees are scheduled to receive a 2.2% salary increase from 1 December 2015 in accordance with Public Service Commission Directive 16/13.

During the election campaign, the Premier and Minister for the Arts, then as Leader of the Opposition, announced that under a Labor Government future salary increases for MPs would be linked to salary increases for public sector employees.

Given the quantum of the salary increase determined for MPs by the Tribunal in Determination 7/2015, and the quantum of the next scheduled salary increase for public sector employees, the Government has decided that Tribunal Determination 7/2015 should be retrospectively overturned. This requires an Act of Parliament to implement, thus the Bill proposes a necessary amendment to the *Queensland Independent Remuneration Tribunal Act 2013*.

For future determinations by the Tribunal about the salary entitlements for MPs, the Bill provides that within 90 days of decisions being made to increase the salaries of public sector employees, either by directives or industrial instruments under the *Public Service Act 2008*, the Tribunal must make a determination outlining the extent of any increase that may apply to the base salary and additional salaries of MPs.

In making the determination, the Bill provides that the Tribunal cannot increase the base salary or additional salaries of MPs by more than the percentage amount of the salary increase that public sector employees have been granted.

The Bill also provides that if the Tribunal determines that an increase to the base salary or additional salaries of MPs is to apply, then the increase must have the same commencement date as the increase that public sector employees have been granted.

Achievement of policy objectives

The Bill:

- restores autonomy to the position of Speaker by making the Speaker, rather than the Committee of the Legislative Assembly (CLA), responsible for the management of the Parliamentary Service, including its budget;
- provides the Speaker with a deliberative vote at CLA meetings on questions regarding all of the CLAs remaining responsibilities and a casting vote in the case of a tied vote;
- provides that the Speaker, rather than the Leader of the House, is responsible for calling CLA meetings and setting the agenda;
- allows a cross bench member to be included on the membership of the CLA;
- increases the quorum at a CLA meeting from four to five members (MPs);
- gives the CLA responsibility for any matter referred to it by the Speaker;
- retrospectively overturns Determination 7/2015 of the Queensland Independent Remuneration Tribunal (the Tribunal) which grants a 2.58% salary increase to MPs from 6 April 2015;

- allows the Clerk of the Parliament (the Clerk) to recover the salary overpayments to MPs that will accrue until such time as the Tribunal's determination is overturned;
- places a limit on the Tribunal so that it cannot determine percentage salary increases to MPs greater than percentage salary increases received by public servants; and
- provides that within 90 days of a public service salary increase being announced, the Tribunal must make a decision on the extent of any salary increase for MPs and that if an increase is determined by the Tribunal for MPs, it must take effect from the same date as the public service increase.

To achieve these objectives, the Bill amends the *Financial Accountability Act 2009*, the *Parliament of Queensland Act 2001*, the *Parliamentary Service Act 1988* and the *Queensland Independent Remuneration Tribunal Act 2013*.

Alternative ways of achieving policy objectives

There is no alternative method of achieving the policy objectives as each objective requires the amendment of existing legislation.

Estimated cost for government implementation

The Bill will result in relatively minor cost, if at all, given the potential for an additional salary to have to be paid to the cross bench member appointed to the CLA.

If necessary, the funding matter will be dealt with as part of the 2015-16 Budget process.

Consistency with fundamental legislative principles

The Bill is considered to be consistent with the fundamental legislative principles set out in the *Legislative Standards Act 1992*.

Consultation

The Clerk of the Parliament, QSuper, the Queensland Independent Remuneration Tribunal and Queensland Treasury have been consulted during the drafting of the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland.

Notes on provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Bill.

Part 2 Amendment of Financial Accountability Act 2009

Clause 2 provides that Part 2 amends the *Financial Accountability Act 2009*.

Clause 3 amends section 66 of the *Financial Accountability Act 2009* by omitting reference to ‘the Committee of the Legislative Assembly under the *Parliamentary Service Act 1988*’ as the Committee of the Legislative Assembly (CLA) will no longer have administrative powers under the *Parliamentary Service Act 1988*, thus rendering mention in this section redundant.

Part 3 Amendment of Parliamentary Service Act 1988

Clause 4 provides that Part 3 amends the *Parliamentary Service Act 1988*.

Clause 5 amends section 4 of the *Parliamentary Service Act 1988* to omit definitions for ‘CLA’ and ‘Office of the Speaker’. These definitions are no longer required as the Speaker, rather than the CLA, will be responsible for the management of the Parliamentary Service.

Clause 6 omits sections 4A and 4B of the *Parliamentary Service Act 1988*. These definitions are no longer required as the Speaker, rather than the CLA, will be responsible for the management of the Parliamentary Service.

Clause 7 inserts a new Part 2 of the *Parliamentary Service Act 1988* to reflect the administrative functions of the Speaker under the Act and to also reflect that the CLA will no longer have administrative functions under the Act.

Clause 8 amends section 18 of the *Parliamentary Service Act 1988* to reflect that the CLA will not need to be consulted regarding the appointment of the Clerk of the Parliament (the Clerk) as the CLA will no longer have administrative functions under the Act.

Clause 9 amends section 20 of the *Parliamentary Service Act 1988* to reflect that the Speaker, rather than the CLA, has administrative functions under the Act.

Clause 10 omits section 20A of the *Parliamentary Service Act 1988* to reflect that the Speaker, rather than the Clerk, has control of the parliamentary precinct and accommodation supplied elsewhere by the Legislative Assembly for its members. This provides the Speaker with the same power as was in force before the *Parliamentary Service and Other Acts Amendment Act 2011*.

Clause 11 amends section 22 of the *Parliamentary Service Act 1988* to provide that the Speaker, rather than the CLA, can in certain circumstances appoint an officer to perform the functions of the Clerk in the Clerk’s absence.

Clause 12 amends section 24 of the *Parliamentary Service Act 1988* to provide that the Speaker, rather than the CLA, can determine the functions of the Parliamentary Service.

Clause 13 amends section 27(3) of the *Parliamentary Service Act 1988* to provide that the Speaker, rather than the CLA, may declare any office or class of office, other than that of the Clerk, to be an office to which appointment shall be made upon a contract basis.

Clause 14 amends section 29 of the *Parliamentary Service Act 1988* to provide that the Speaker, rather than the CLA, determines the salaries and conditions of employment of the Clerk.

The Clause also amends section 29 to provide that the Speaker, rather than the CLA, must ensure that the salaries and conditions of employment of the Clerk are comparable to those of State officers and employees who have similar duties.

Clause 15 amends section 32 of the *Parliamentary Service Act 1988* to provide that the Speaker, rather than the CLA, makes the rules which prescribe an office or class of office as being one to which a vacancy need not be advertised.

Clause 16 amends section 38 of the *Parliamentary Service Act 1988* to provide that the Speaker, rather than the CLA, makes rules regarding the mode of resignation or retirement of an officer or employee in the Parliamentary Service.

Clause 17 amends section 43 of the *Parliamentary Service Act 1988* to provide that the Speaker, rather than the CLA, has functions regarding appeals against promotional appointments and disciplinary action.

Clause 18 amends section 44 of the *Parliamentary Service Act 1988* to provide that the Speaker, rather than the CLA, has functions regarding the reinstatement of a person following dismissal from the Parliamentary Service.

Clause 19 amends section 55 of the *Parliamentary Service Act 1988* to provide that the Speaker, rather than the CLA, may make rules under the *Parliamentary Service Act 1988*.

Clause 20 inserts a new Part 7, Division 4 into the *Parliamentary Service Act 1988* to provide transitional provisions for the *Parliament of Queensland and Other Acts Amendment Act 2015*.

Part 4 Amendment of Parliament of Queensland Act 2001

Clause 21 provides that Part 4 amends the *Parliament of Queensland Act 2001*.

Clause 22 amends section 5 of the *Parliament of Queensland Act 2001* by omitting a reference to the CLA as it will no longer have administrative powers under the *Parliamentary Service Act 1988*.

Clause 23 amends section 79 of the *Parliament of Queensland Act 2001* to insert certain definitions into the Act.

Clause 24 amends section 81 of the *Parliament of Queensland Act 2001* to allow a cross bench member to be included in the membership of the CLA. If there are two or more cross bench members, the cross bench member for appointment by the Legislative Assembly will be the member nominated by the Leader of the House.

The cross bench member appointed to the CLA will be able to nominate another cross bench member to be that member's alternate on the CLA.

Clause 25 amends section 83 of the *Parliament of Queensland Act 2001* to provide how meetings of the CLA take place.

Clause 26 amends section 84 of the *Parliament of Queensland Act 2001* to insert a new responsibility for the CLA for any matter referred to it by the Speaker.

The Clause also omits a note regarding the *Parliamentary Service Act 1988* as the CLA will no longer have functions under that Act.

Clause 27 omits section 90 of the *Parliament of Queensland Act 2001* as the definitions contained in section 90 will now appear in section 79 of the Act.

Clause 28 amends the schedule (Dictionary) of the *Parliament of Queensland Act 2001* to insert definitions for 'cross bench member' and 'opposition member' and to also make minor amendments to the references for the definitions of 'government member' and 'non-government member'.

Part 5 Amendment of the Queensland Independent Remuneration Tribunal Act 2013

Clause 29 provides that Part 5 amends the *Queensland Independent Remuneration Tribunal Act 2013*.

Clause 30 amends section 31 of the *Queensland Independent Remuneration Tribunal Act 2013* to clarify that subsection (2) does not apply to determinations about a member's salary entitlement. The timing of these determinations will now be covered in new section 31A as provided for in Clause 31.

Clause 31 inserts a new section 31A into the *Queensland Independent Remuneration Tribunal Act 2013* to specify how the Queensland Independent Remuneration Tribunal (the Tribunal) is to make determinations about the salary entitlements of members.

The definition of departmental employee in subsection (6) references a public service employee employed to work in the administrative stream in the department. In accordance with section 33 of the *Acts Interpretation Act 1954*, 'the department' means the Department of the Premier and Cabinet (DPC).

Reference to DPC is included as it is deemed that DPC and the public service employees employed in DPC in the administrative stream would be part of a directive or industrial instrument as outlined under the *Public Service Act 2008*, that covers what is generally regarded in the public service as being the ‘core public service’ or the ‘core public service agreement’.

A past example of the core public service agreement is the State Government Departments Certified Agreement 2009, and it is the equivalent agreements to this agreement, which include DPC, to which new section 31A should be read.

If the public service salary decision under section 31A includes more than one salary increase over one or more years for the departmental employee under the public service salary decision and also contains multiple commencement dates, then the Tribunal is to consider each salary increase in its one determination to be made under new Section 31A.

Clause 31 also inserts a new section 31B into the *Queensland Independent Remuneration Tribunal Act 2013* to provide that the Tribunal may make determinations about the additional salary entitlement for an office if it is the first determination about the entitlement since the office was approved by resolution of the Assembly to be an office to which section 42 of the *Queensland Independent Remuneration Tribunal Act 2013* applies or if the Tribunal is satisfied there has been a change to the role, functions or responsibilities of an office.

In relation to new section 31B(1)(b)(ii) the current additional salary relativities are outlined by the Tribunal at page 70 of Determination 3/2014.

Clause 32 amends section 68 of the *Queensland Independent Remuneration Tribunal Act 2013* to omit the definition of ‘prescribed rate of interest’ as this definition will now appear in the dictionary at Schedule 1 of the Act.

Clause 33 inserts a new division 4 into Part 6 of the *Queensland Independent Remuneration Tribunal Act 2013* to provide for the revocation and transitional provisions for the *Parliament of Queensland and Other Acts Amendment Act 2015*.

New section 72 provides for the retrospective revocation of Determination 7/2015 of the Tribunal, made by the Tribunal on 5 March 2015.

New section 73 allows the Clerk to recover from members any overpayments of salary that are made from 6 April 2015 until the day the Bill commences and Determination 7/2015 is retrospectively revoked. This new section is similar to section 68 of the *Queensland Independent Remuneration Tribunal Act 2013*, which allowed the Clerk to recovery overpayments to members that occurred in 2013.

New section 74 provides for how the Tribunal must make a determination if a public service salary decision is made on or after the day the Bill is introduced into the Legislative Assembly and before the day of the commencement of the *Parliament of Queensland and Other Acts Amendment Act 2015*.

New section 75 outlines how the Tribunal is to make a determination about salary entitlements for members if Directive 16/13 made under the *Public Service Act 2008* and published in the *Queensland Government Gazette* on 13 December 2013 is still in effect on 1 December 2015. In accordance with Directive 16/13, public sector employees in various entities, including the administrative stream of DPC, are entitled to a salary increase of 2.2% from 1 December 2015.

Clause 34 amends Schedule 1 (Dictionary) of the *Queensland Independent Remuneration Tribunal Act 2013* to make a minor amendment in the reference to the definition of ‘prescribed rate of interest’ and inserts a definition for ‘salary entitlement’.

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