

# Queensland Productivity Commission Bill 2015

## Explanatory Notes

### Short title

The short title of the Bill is the Queensland Productivity Commission Bill 2015 (the Bill).

### Policy objectives and the reasons for them

During the 2015 State General Election, the Queensland Government announced its intention to establish a Queensland Productivity Commission (the Commission) as an independent economic advisory body, with the broad aims of lifting productivity, improving living standards and driving economic growth.

To help facilitate the foregoing policy objectives, the Bill provides for the establishment of the Commission as a statutory body, formalising its operational independence from Government. The Bill enumerates the functions of the Commission, and provides it with the necessary powers to perform its functions effectively. The Bill also sets the corporate governance framework for the Commission, including provision for the appointment of the principal commissioner and up to two additional commissioners to the board by the Governor in Council.

The core business of the Commission is to conduct formal public inquiries, reviews and investigations into complex economic and policy issues as referred to it by direction of the Treasurer, as the responsible Minister. Inquiries will be conducted via a public process involving in-depth stakeholder consultation to ensure all views are taken into account and properly tested.

The resulting recommendations will be independent in character, of high quality, and have the capacity to contribute significantly to the policy development process.

Outside of its formal inquiry role, the Minister will be able to request advice or research from the Commission on matters without the need for a public inquiry process. In undertaking these functions, the Commission will nonetheless be required to operate and report independently.

The Commission will also have the mandate to initiate its own general research and analysis of matters relating to Queensland productivity, economic development and industry.

Finally, the Commission will undertake the State's regulatory advice and guidance and competitive neutrality functions, which have hitherto been fulfilled by the Queensland Competition Authority (QCA).

In all of its functions, the Commission's role is advisory only. It will have no decision-making capacity. Any policy action arising from the recommendations of the Commission will ultimately be a matter for Government.

## **Achievement of policy objectives**

To achieve the policy objectives, the Bill will establish the Commission and define its powers and functions. The Commission will assist the Queensland Government in improving the productivity and economic performance of the economy by providing independent, expert policy advice on issues relating to productivity. This advice will further inform Government policy decision-making.

The Bill achieves the Government's policy objectives by allowing the Commission to:

- generally facilitate, encourage and promote productivity in Queensland;
- hold public inquiries about matters relating to productivity, economic development and industry in Queensland, as directed by the Minister; and
- advise the Minister about matters relating to productivity, economic development and industry in Queensland.

In performing its functions, the Bill states that the Commission should have regard to the benefits from improved productivity and efficiency of the Queensland economy, as well as the impact on living standards, employment, real wages, industry development, regional development and environment sustainability.

### Competitive Neutrality

The Bill will achieve the Government's policy objective of competitive neutrality compliance by ensuring that private sector competitors of Government agencies are not disadvantaged by requiring that significant business activities of Government agencies are subject to the payment of debt guarantee fees and tax equivalents, and the same procedural and regulatory requirements as their private sector competitors. This role is consistent with Clause 3 (4) (b) of the *Competition Principles Agreement*, to which all Australian Governments are a signatory.

### Regulatory Advice and Guidance

Finally the Bill will achieve the policy objective of reducing the regulatory burden in Queensland by giving the Commission the responsibility to administer the Queensland Government's regulatory impact analysis requirements. This will include providing independent support and information on the quality of regulatory proposals of government agencies including regulatory impact statements.

## **Alternative ways of achieving policy objectives**

The establishment of the Commission is a key election commitment. Legislation is required to formally establish the commission as an independent statutory body. There are no alternative ways of achieving this policy.

## **Estimated cost for government implementation**

The Commission will be funded through a combination of base funding (in part through the re-allocation of existing Government resources and associated funding) and industry and other contributions for specific inquiries, as appropriate.

As part of the 2015-16 Budget, the Government allocated funding of \$300,000 in 2015-16 and \$2.5 million per annum from 2016-17 for the establishment and operation of the Queensland Productivity Commission.

## **Consistency with fundamental legislative principles**

The Bill has been drafted with regard to the Fundamental Legislative Principles as defined in section 4 of the *Legislative Standards Act 1992* (Qld).

## **Consultation**

### **Community**

No community consultation has occurred on the Bill as the Bill implements a clear election commitment.

Extensive consultation will be undertaken by the Commission as part of each public inquiry.

### **Government**

The Bill has been prepared in consultation with the Office of the Queensland Parliamentary Counsel and Government agencies. Government agencies are generally supportive of the approach and policy direction of the Bill.

Exposure drafts of the Bill were released for targeted agency consultation in August 2015.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland. However, it has been generally modelled on the Australian Productivity Commission, established under the *Productivity Commission Act 1998* (Cth).

# Notes on provisions

## Part 1 Preliminary

### Clause 1 Short title

*Clause 1* states that the Act will be cited as the *Queensland Productivity Commission Act 2015*.

### Clause 2 Purpose of Act

*Clause 2* states the main purpose of the Act is to establish a Queensland Productivity Commission (the commission) to provide independent economic and policy advice to the State with the aim of increasing productivity, improving living standards and driving economic growth in Queensland

### Clause 3 Act binds all persons

*Clause 3* states that all persons are bound by the Act. Nothing in the Act makes the State liable to be prosecuted for an offence.

### Clause 4 Extraterritorial operation

*Clause 4* provides that the Act applies as far as possible beyond the limits of Queensland.

### Clause 5 Definitions

*Clause 5* references the dictionary in schedule 1.

## Part 2 Queensland Productivity Commission

### Division 1 Establishment of Queensland Productivity Commission

#### Clause 6 Establishment

*Clause 6* states the Queensland Productivity Commission is established.

#### Clause 7 Legal Status

*Clause 7* sets the legal status of the commission as a body corporate that can sue and be sued in its name.

#### Clause 8 Relationship with State

*Clause 8* states that the commission represents the State and has the status, privileges and immunities of the State.

## **Division 2 Functions**

### **Clause 9 Functions**

*Clause 9* lists the main functions of the commission.

### **Clause 10 General policy guidelines**

*Clause 10* provides that when performing its functions, the commission may have regard to the benefits to be gained from improved productivity and efficiency of the Queensland economy. The commission may also have regard to the impact on living standards, employment, real wages, industry development, regional development, environmental and fiscal sustainability, and the public interest

### **Clause 11 Committees**

*Clause 11* provides that the commission may establish committees.

### **Clause 12 Ministerial direction about performance of functions**

Clause 12 states that the Minister may give a written direction to the commission. While the commission must comply with a Ministerial direction, the direction may not be about the particular content of advice or a report prepared by the commission or the conduct of a competitive neutrality investigation

## **Division 3 Powers**

### **Clause 13 Powers**

*Clause 13* provides that the commission has all the powers of an individual; other powers given to it under this Act or another Act; and that the commission may exercise its powers inside and outside of Queensland, including outside Australia.

## **Division 4 Board**

### **Clause 14 Establishment**

*Clause 14* establishes the board as the governing body of the commission.

### **Clause 15 Functions**

*Clause 15* states that the board's functions are to manage the commission and to ensure the commission performs its functions with independence, rigour, responsiveness, transparency, equity, efficiency and effectiveness.

### **Clause 16 Membership**

*Clause 16* states that the board is to consist of the principal commissioner and up to two other commissioners (i.e. maximum of three commissioners). Appointments are made by the Governor in Council under the provisions of this Act.

### **Clause 17 Disqualification as commissioner**

*Clause 17* provides for conditions where a future or current commissioner member may be disqualified. Paragraphs (a) to (c) are standard provisions and paragraph (d) ensures commissioners are not also employees or contractors of the commission.

### **Clause 18 Term of appointment**

*Clause 8* states that the term of appointment for commissioners is as stated in the instrument of appointment, but must not be longer than three years. A commissioner can be reappointed at the end of their three year term.

### **Clause 19 Conditions of appointment**

*Clause 19* provides that the conditions and terms of appointment for commissioners are decided by the Governor in Council.

### **Clause 20 Resignation**

*Clause 20* states that a commissioner may resign by signed notice to the Minister.

### **Clause 21 Disclosure of interests**

*Clause 21* states that a commissioner must notify the Minister of any conflict of interest that may arise in the commissioner's duties. Unless the Minister directs otherwise, the commissioner must then remove themselves from involvement in the matter.

Non-disclosure under this section does not automatically invalidate a Board decision.

This clause seeks to maintain the integrity and openness of the board's decisions.

## **Division 5 Staff**

### **Clause 22 Staff of commission**

*Clause 22* states that the commission may employ staff under this Act.

## **Part 3 Inquiries by commission**

### **Division 1 Direction to undertake Inquiry**

#### **Clause 23 Minister may direct commission to undertake inquiry**

*Clause 23* states the Minister may direct the commission to undertake an inquiry on any matter relating to productivity, economic development or industry in Queensland and report back to the Minister.

While the inquiry is to be undertaken independently by the commission, the direction may require the commission to, for example, have regard to particular matters; undertake a particular type of public consultation; publish a preliminary report on the inquiry; report back to the Minister within a stated period; and include recommendations about the matter in the report back to the Minister.

The commission must comply with the direction, and pursuant to s 24AA of the *Acts Interpretation Act 1954*, the Minister may withdraw or amend the direction at any time before the Minister receives the report.

## **Division 2 Notice of inquiry and public consultation**

### **Clause 24 Notice of inquiry**

*Clause 24* provides that the commission must publish the Ministerial direction it receives on its website as soon as practicable.

### **Clause 5 Public consultation**

*Clause 25* states that some type of public consultation must occur for an inquiry. The Ministerial direction may specify the particular type of public consultation to be undertaken.

## **Division 3 Report on inquiry**

### **Clause 26 Commission to prepare report**

*Clause 26* states that after undertaking the inquiry, the commission must prepare a written report on the inquiry and give it to the Minister. If specified in the direction, a preliminary report may also be prepared and given to the Minister.

### **Clause 27 Minister's response to report**

*Clause 27* states that the Minister must give the commission a written response to the report within 6 months of receiving it.

### **Clause 28 Public availability of report**

*Clause 28* provides that, as soon as practicable after receiving the Minister's response to the report, the commission must publish the report on its website.

## **Part 4 Advice and research**

### **Division 1 Requests for advice**

#### **Clause 29 Minister may ask for advice**

*Clause 29* states that the Minister may ask the commission's advice on any matter relating to productivity, economic development or industry in Queensland. The Minister may require the advice within a certain timeframe and may require the commission have regard to particular matters. The commission may also advise the Minister on any other matter it considers relevant.

The Minister may withdraw or amend the request at any time before being given the advice by the commission, pursuant to s 24AA of the *Acts Interpretation Act 1954*.

### **Division 2 Research and analysis by commission**

#### **Clause 30 Research and analysis initiated by commission**

*Clause 30* states the commission can undertake self-initiated research and analysis relating to productivity, economic development or industry in Queensland. The commission must advise the chief executive (i.e. the Under Treasurer) before publishing any work undertaken under this Part.

## **Part 5 Competitive Neutrality**

### **Division 1 Preliminary**

#### **Clause 31 Definition for Part 5**

*Clause 31* defines a competitive neutrality complaint.

#### **Clause 32 Principle of competitive neutrality**

*Clause 32* defines the principle of competitive neutrality. A Government agency carrying on a significant business activity should meet the same requirements as their private sector competitors in regard to debt guarantee fees, tax equivalents, and procedural and regulatory requirements.

Defining the scope of the principle means that the commission will be able to investigate a competitive neutrality complaint where a government agency allegedly enjoys an advantage over its competitors solely because it is not required to pay debt guarantee fees, or where it is not subject to tax equivalent regimes, or where it enjoys procedural and regulatory advantages.

#### **Clause 33 Significant business activities**

*Clause 33* defines a significant business activity as an activity carried out by a government owned corporation; or a business activity, carried out by another government agency and included in the "significant business activities list" published on the commission's website.

The commission may recommend to the Minister that a business activity carried out by a government agency be included in the significant business activities list. If the Minister accepts the recommendation, the commission must include the activity in the significant business activities list and inform the appropriate government agency.

## **Division 2 Competitive neutrality complaints**

### **Clause 34 Making competitive neutrality complaint**

*Clause 34* sets out which persons may make a competitive neutrality complaint with the commission, how the complaint is to be lodged and the details required by the commission.

### **Clause 35 Further information to support complaint**

*Clause 35* provides that the commission may require the person to give it further information about the complaint.

### **Clause 36 Handling competitive neutrality complaint**

*Clause 36* states that subject to this Act, the commission must follow the process outlined in the government's prescribed competitive neutrality policy when dealing with competitive neutrality complaints.

## **Division 3 Investigations of competitive neutrality complaints**

### **Clause 37 Requirement of commission to investigate**

*Clause 37* states that the commission is required to investigate a competitive neutrality complaint unless the commission believes the complainant is not in competition with the government agency; the complainant has failed to give the commission sufficient information as requested by the commission; or the commission believes the complaint is frivolous or vexatious.

Should the commission decide not to investigate a complaint, it must inform the complainant of this decision with 14 days.

### **Clause 38 Notice of investigation**

*Clause 38* states that the commission must provide reasonable written notice to certain entities should it decide to commence a competitive neutrality investigation.

## **Division 4 Report on investigation**

### **Clause 39 Commission to prepare report**

*Clause 39* states that the commission must submit a report about the results of a competitive neutrality investigation.

### **Clause 40 Delaying public availability of report**

*Clause 40* states that the commission may recommend that a report or part of a report not be made publicly available for a certain period.

### **Clause 41 Minister's response to report**

*Clause 41* states that the Minister must give the commission a response to the report as soon as practicable after the Minister receives the report.

### **Clause 42 Public availability of report**

*Clause 42* states that, unless a delay of the report publication is accepted by the Minister, the commission must publish the report on its website as soon as practicable after receiving the Minister's response to the report.

## **Part 6 Regulatory review**

### **Clause 43 Minister may direct commission to review regulatory matter**

*Clause 43* provides for the Minister to direct the commission to conduct research and analysis of, and to provide recommendations in relation to, a regulatory matter.

## **Part 7 Administration**

### **Division 1 Board meetings**

#### **Clause 44 Board meetings**

*Clause 44* states the commission may conduct commission meetings in the way it considers appropriate, subject to the approval of the principal commissioner.

### **Division 2 Reporting on operations**

#### **Clause 45 Commission to keep Minister informed**

*Clause 45* states that the commission must keep the Minister reasonably informed of its operations.

### **Division 3 Information management**

#### **Clause 46 Power to require certain information**

*Clause 46* gives the commission the power to require information from relevant entities for the purpose of carrying out functions relating to undertaking inquiries, providing Ministerial advice or dealing with competitive neutrality complaints. However, a relevant entity may refuse to comply with the request if the report or information is subject to legal professional privilege, parliamentary privilege or public interest immunity; disclosure is prohibited under an Act; or disclosure of the report or information could reasonably be expected to prejudice the investigation of a contravention or possible contravention of a law in a particular case.

### **Clause 47 Confidentiality requests**

*Clause 47* states that a person disclosing information to the commission can request that it be treated confidentially on the basis of the information being commercially sensitive. If the commission accepts the person's confidentiality request, the commission must then ensure the information is not disclosed to external entities without the party's consent. However, the commission may publish the information in a way that would not readily identify the interested party.

### **Division 4 Delegations**

#### **Clause 48 Delegations**

*Clause 48* states that the commission may delegate its functions, including its powers, to the board, a commissioner or an appropriate person in the commission.

### **Part 8 Evidentiary provision**

#### **Clause 49 Authentication of documents**

*Clause 49* states that a document made by the commission is sufficiently made if it is signed by the principal commissioner or another person authorised by the commission.

### **Part 9 Miscellaneous**

#### **Clause 50 Application of other Acts to commission**

*Clause 50* states that the commission is a unit of public administration under the *Crime and Corruption Act 2001*, and a statutory body under the *Financial Accountability Act 2009* and the *Statutory Bodies Financial Arrangements Act 1982*.

#### **Clause 51 Regulation-making power**

*Clause 51* states that the Governor in Council may make regulations under this Act.

### **Part 10 Transitional provisions**

#### **Clause 52 Definitions for Part 10**

*Clause 52* defines terms used in Part 10.

#### **Clause 53 Transfer of particular records to commission**

*Clause 53* states that on commencement, certain QCA records transfer to the commission.

#### **Clause 54 Transfer of existing complaints to commission**

*Clause 54* states that any existing competitive neutrality complaint under Part 4 of the QCA Act will be transferred to the commission.

### **Clause 55 Transfer of existing investigations to commission**

*Clause 55* states that any existing competitive neutrality investigation will be transferred to the commission.

### **Clause 56 Transfer of employees from QCA to commission.**

*Clause 56* provides that all transferrable employees from the QCA mentioned in a register of employees signed by the chief executive will become employees of the commission on commencement.

### **Clause 57 Transfer of employees from department to commission**

*Clause 57* provides that all transferrable employees from the department mentioned in a register of employees signed by the chief executive will become employees of the commission on commencement.

### **Clause 58 Appointment of first principal commissioner**

*Clause 58* provides for the current principal commissioner of the 'interim' Queensland Productivity Commission employed under section 122 of the *Public Service Act 2008* to become the principal commissioner under this Act.

While this will end the principal commissioner's term under the *Public Service Act 2008*, the preservation of employment terms and conditions will prevail.

## **Part 11 Amendment of this Act and other legislation**

### **Division 1 Amendment of this Act**

#### **Clause 59 Act amended**

*Clause 59* provides for the amendment of this Act.

#### **Clause 60 Amendment of long title**

*Clause 60* amends the long title.

### **Division 2 Amendment of Payroll Tax Act 1971**

*Clause 61* states this Division amends the *Payroll Tax Act 1971*.

*Clause 62* changes the references to the definition of a significant business activity from the *Queensland Competition Authority Act 1997* to this Act.

### **Division 3 Amendment of the Queensland Competition Authority Act 1997**

*Clause 63* amends the *Queensland Competition Authority Act 1997*.

**Clause 64 Amendment of s 10 (Authority's functions)**

*Clause 64* omits certain functions from the QCA Act that will now be undertaken by the Commission.

**Clause 65 Omission of pt4 (Competitive neutrality and significant business activities)**

*Clause 65* omits competitive neutrality Part from the QCA Act, as this function will now be undertaken by the commission.

**Clause 66 Omission of s 239A (Confidential information – regulatory proposals, regulatory impact statements and exempt matter)**

*Clause 66* omits references to functions that will now be undertaken by the commission.

**Clause 67 Amendment of s 242 (Annual reports)**

*Clause 67* omits references to functions that will now be undertaken by the commission

**Clause 68 Amendment of sch 2 (Dictionary)**

*Clause 68* omits references to terms.

**Part 12 Amendment of regulations**

**Clause 69 Regulations amended**

*Clause 69* states that Schedule 2 amends the stated regulations.

**Schedule 1 Dictionary**

This schedule contains the dictionary which defines particular words used in the Act.

**Schedule 2 Amendment of regulations**

This schedule amends the *City of Brisbane Regulation 2012*, the *Industrial Relations Regulation 2011*, the *Local Government Regulation 2012* and the *Queensland Competition Authority Regulation 2007*.