

# Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018

## Explanatory Notes

### Short title

The short title of the Bill is the *Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018*.

### Policy objectives and the reasons for them

The objectives of the Bill are to:

- provide the Director-General of the Department of the Premier and Cabinet (the Director-General) with explicit power to conduct criminal history checks to assess the suitability of a person to be engaged in a Ministerial Office, the Office of the Leader of the Opposition or an office of a non-government member;
- provide the Clerk of the Parliament (the Clerk) with explicit power to conduct criminal history checks to assess the suitability of a person to be engaged in the Parliamentary Service (including in an Electorate Office);
- amend the plan details of the parliamentary precinct outlined in the *Parliamentary Service Act 1988*; and
- make some minor updates to references in the *Parliament of Queensland Act 2001*.

In December 2017, administrative procedures were implemented by the Director-General and the Clerk to conduct criminal history checks for ministerial and Parliamentary Service staff. However, this has been considered an interim arrangement pending legislative changes to provide a specific head of power to conduct the checks.

The extent of the legislative power to be provided to the Director-General and the Clerk is similar to that currently provided to chief executive officers for Queensland Government departmental employees under the *Public Service Act 2008*.

## Achievement of policy objectives

To achieve these objectives, the Bill will amend:

- the *Ministerial and Other Office Holder Staff Act 2010* to provide the Director-General with explicit power to conduct criminal history checks to assess the suitability of a person to be engaged in a Ministerial Office, the Office of the Leader of the Opposition or an office of a non-government member;
- the *Parliamentary Service Act 1988* to provide the Clerk with explicit power to conduct criminal history checks to assess the suitability of a person to be engaged in the Parliamentary Service;
- the plan details of the parliamentary precinct outlined in the *Parliamentary Service Act 1988*; and
- the *Parliament of Queensland Act 2001* to replace a reference to ‘Votes and Proceedings’ with ‘Record of Proceedings’ and to reflect that the monitoring of form making by the Parliament’s portfolio committees relates to provisions in the *Acts Interpretation Act 1954*.

## Alternative ways of achieving policy objectives

There is no alternative method of achieving the policy objectives as the objectives require amendment of existing legislation.

## Estimated cost for government implementation

The costs associated with undertaking criminal history checks for ministerial and Parliamentary Service staff will be met from within the existing budget allocations of the Department of the Premier and Cabinet and the Parliamentary Service.

## Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles.

The Bill does insert new offence provisions in the *Ministerial and Other Office Holder Staff Act 2010* and the *Parliamentary Service Act 1988*. These are discussed at Clauses 3 and 10.

## Consultation

Consultation has been undertaken with the Clerk in relation to Parts 3 and 4 of the Bill.

No consultation with the community has been undertaken in the preparation of the Bill.

The Queensland Police Service and the Department of Justice and Attorney-General were consulted in the preparation of the Bill.

## Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland, and is not uniform with or complementary to legislation of the Commonwealth or another state.

## Notes on provisions

### Part 1 Preliminary

#### Clause 1 – Short Title

Clause 1 states that the Act may be cited as the *Ministerial and Other Office Holder Staff and Other Legislation Amendment Act 2018*.

### Part 2 Amendment of Ministerial and Other Office Holder Staff Act 2010

#### Clause 2 – Act amended

Clause 2 provides that Part 2 of the Bill amends the *Ministerial and Other Office Holder Staff Act 2010*.

#### Clause 3 - Insertion of new Part 2A (Assessing suitability to be a staff member)

Clause 3 inserts a new Part 2A in the *Ministerial and Other Office Holder Staff Act 2010* to provide authority for the chief executive to ask a person, in accordance with the provision, for written consent to obtain the person's criminal history. New Part 2A also outlines the obligations of the chief executive and the Police Commissioner in this regard.

New Section 13A (Definitions for part) outlines the definitions that apply to Part 2A.

New Section 13B (Chief executive may ask for consent to obtain criminal history) provides authority for the chief executive to ask a person for written consent to obtain the person's criminal history if the chief executive proposes to employ a person as a staff member. This applies even if the person is already employed as a staff member, to cover situations such as promotions or transfers.

New Section 13C (Refusing consent) provides the courses of action that the chief executive may follow if a person does not consent, or withdraws their consent, to the chief executive obtaining the person's criminal history.

New Section 13D (Obtaining criminal history with consent) outlines how the chief executive obtains a person's criminal history from the Police Commissioner, if the person has given the chief executive their written consent. This section also provides that the Police Commissioner must comply with the chief executive's request however only to the extent of information in the Police Commissioner's possession or to which the Police Commissioner has access.

New Section 13E (Criminal history no longer required to be obtained) outlines the duties that apply to the chief executive and the Police Commissioner if the chief executive decides that a person's criminal history requested under new section 13D is no longer required.

New Section 13F (Assessment of suitability) provides that the chief executive must give a copy of a person's criminal history to the person's proposed employing member or in the case of ministerial staff to the Premier. The clause also requires the chief executive to consider the criminal history in consultation with the member to whom the criminal history is given, when assessing suitability for employment as a staff member.

New Section 13G (Destruction of reports and notices) provides that the chief executive must destroy a criminal history report or notice given to the chief executive under new section 13I, together with any other document containing information contained in the report or notice if it is no longer required to be kept for the purpose for which it was requested.

New Section 13H (Police commissioner must not use information given under this part) provides that information given to the Police Commissioner by the chief executive under new section 13D(3) must not be accessed, disclosed or used for any purpose, except for a purpose under Part 2A or any other purpose relevant to law enforcement.

New Section 13I (Prosecuting authority to notify chief executive about committal, conviction etc.) provides that the Police Commissioner or the Director of Public Prosecutions is to notify the chief executive of particular information in certain circumstances, where the Police Commissioner or the Director of Public Prosecutions is aware that a person is a staff member of a Ministerial Office, the Office of the Leader of the Opposition or an office of a non-government member and, after commencement of this section, the person is charged with an indictable offence. The section outlines the particulars that must be provided to the chief executive if the person is committed by a court for trial; is convicted; appeals against the conviction; or the prosecution ends without the person being convicted.

New Section 13J (False or misleading statements in consent) provides that it is an offence punishable by a maximum penalty of 100 penalty units if a person gives the chief executive a consent mentioned in section 13B, or other document for Part 2A, that the person knows to be false or misleading in a material particular.

The maximum penalty provided for in new section 13J is the same as that which applies in section 171 of the *Public Service Act 2008* from which new section 13J has been adapted.

New Section 13K (Confidentiality) outlines the disclosure limits on a person who possesses criminal history information about a person.

The section will permit the chief executive to disclose criminal history information about a person to the employing member or in the case of ministerial staff – the Premier – for the purpose of assessing that person's suitability. For example, the chief executive needs to be able to lawfully disclose the criminal history information of a person being considered for appointment in a Ministerial Office to the Premier. The same principle would apply to a person being considered for appointment in the Office of the Leader of the Opposition or the office of a non-government member.

This will enable an employing member to make an informed decision as to whether they should recommend the appointment of the person to the chief executive.

New section 13K makes it an offence punishable by a maximum penalty of 100 penalty units if a person discloses criminal history information to a person to which disclosure is not permitted.

The maximum penalty provided for in new section 13K is the same as that which applies in section 172 of the *Public Service Act 2008* from which new section 13K has been adapted.

#### **Clause 4 – Amendment of schedule (Dictionary)**

Clause 4 inserts new definitions in the Schedule to the Act relevant to the new Part 2A.

### **Part 3 Amendment of Parliament of Queensland Act 2001**

#### **Clause 5 – Act amended**

Clause 5 provides that Part 3 of the Bill amends the *Parliament of Queensland Act 2001*.

#### **Clause 6 – Amendment of section 93 (Legislation)**

Clause 6 amends section 93 of the *Parliament of Queensland Act 2001* to rectify an oversight from 2013 when the Parliament transferred the provisions for the notification and availability of forms from the *Statutory Instruments Act 1992* to the *Acts Interpretation Act 1954*.

Since 1995, a parliamentary committee, or from 2011 the Parliament's portfolio committees, have had the power to monitor the making of forms under an authorising law. When the Parliament transferred the form making provisions to the *Acts Interpretation Act 1954* in 2013, a consequential amendment should have also been made to the *Parliament of Queensland Act 2001* to reflect that the monitoring power of portfolio committees now related to provisions in the *Acts Interpretation Act 1954* rather than provisions in the *Statutory Instruments Act 1992*.

Clause 6(1) inserts reference to section 48 of the *Acts Interpretation Act 1954* in the *Parliament of Queensland Act 2001* to give committees responsibility to monitor form making.

Clause 6(2) amends section 93 of the *Parliament of Queensland Act 2001* to reflect that committees have responsibility for monitoring parts 6 and 7 of the *Statutory Instruments Act 1992* and not part 8, which was the now repealed part dealing with form making.

Clause 6(3) provides for renumbering within section 93 of the *Parliament of Queensland Act 2001*.

#### **Clause 7 – Amendment of section 107 (Ministerial response to committee report)**

Clause 7 amends section 107(8) of the *Parliament of Queensland Act 2001* to omit a reference to 'Votes and Proceedings' and insert a reference to 'Record of Proceedings' in its stead.

The Parliament no longer produces the publication titled Votes and Proceedings having replaced it with a publication titled Record of Proceedings. This minor amendment reflects the current practice of the Clerk of recording the tabling of ministerial responses to committee reports in the Record of Proceedings.

## **Part 4 Amendment of Parliamentary Service Act 1988**

### **Clause 8 – Act amended**

Clause 8 provides that Part 4 of the Bill amends the *Parliamentary Service Act 1988*.

### **Clause 9 – Amendment of section 4 (Definitions)**

Clause 9 inserts new definitions in the Act which are relevant to new Part 5A of the Act.

Clause 9 also amends the plan details of the parliamentary precinct outlined in the Act. This amendment is necessary due to a resurvey of the land upon which the parliamentary precinct sits. This was necessitated following the Parliament's agreement in 2017 to relinquish a small parcel of land which relates to the Queen's Wharf Brisbane project.

### **Clause 10 – Insertion of new Part 5A (Assessing suitability to be an officer or employee)**

Clause 10 inserts a new Part 5A in the *Parliamentary Service Act 1988* to provide authority for the Clerk to ask a person, in accordance with the provision, for written consent to obtain the person's criminal history. New Part 5A also outlines the obligations of the Clerk and the Police Commissioner in this regard.

New section 45 (Definitions for part) outlines the definitions that apply to Part 5A.

New section 46 (Meaning of *relevant duties*) outlines the meaning of relevant duties if the Clerk considers it may be necessary, because of the nature of particular duties, to have regard to the criminal history of a person who will be performing the duties.

New section 47 (Clerk may ask for consent to obtain criminal history) provides authority for the Clerk to ask a person for written consent to obtain the person's criminal history if the Clerk or the Speaker proposes to appoint or engage the person to perform relevant duties. This section applies even if the person is an officer or employee of the Parliamentary Service when the Clerk proposes to engage the person.

New section 47A (Refusing consent) provides the courses of action that the Clerk may follow if a person does not consent, or withdraws their consent, to the Clerk obtaining the person's criminal history.

New section 47B (Obtaining criminal history with consent) outlines how the Clerk obtains a person's criminal history from the Police Commissioner or another entity, if the person has given the Clerk their written consent. The section also provides that the Police Commissioner must comply with the Clerk's request but that this duty only applies to information in the Police Commissioner's possession or to which the Police Commissioner has access.

New section 47C (Criminal history no longer required to be obtained) outlines the duties that apply to the Clerk and the Police Commissioner if the Clerk decides that a person's criminal history requested under new section 47B is no longer required.

New section 47D (Police commissioner must not use information given under this part) provides that information given to the Police Commissioner by the Clerk under new section 47B(3) must not be accessed, disclosed or used for any purpose, except for a purpose under Part 5A or any other purpose relevant to law enforcement.

New section 47E (Assessment of suitability) provides that if the Clerk obtains a person's criminal history, the Clerk must consider the criminal history in making an assessment about the person's suitability for engagement or appointment to perform relevant duties.

New section 47F (Destruction of reports and notices) provides that the Clerk must destroy a criminal history report or a notice given to the Clerk under new section 47G, together with any other document containing information contained in the report or notice if it is no longer required to be kept for the purpose for which it was requested.

New section 47G (Prosecuting authority to notify Clerk about committal, conviction etc.) provides that the Police Commissioner or the Director of Public Prosecutions is to notify the Clerk of particular information in certain circumstances, where the Police Commissioner or the Director of Public Prosecutions is aware that a person is an officer or an employee of the Parliamentary Service and, after commencement of this section, the person is charged with an indictable offence. The section outlines the particulars that must be provided to the Clerk if the person is committed by a court for trial; is convicted; appeals against the conviction; or the prosecution ends without the person being convicted.

New section 47H (False or misleading statements in consent) provides that it is an offence punishable by a maximum penalty of 100 penalty units if a person gives the Clerk a consent mentioned in section 47, or other document for Part 5A, that the person knows to be false or misleading in a material particular.

The maximum penalty provided for in new section 47H is the same as that which applies in section 171 of the *Public Service Act 2008* from which new section 47H has been adapted.

New section 47I (Confidentiality) outlines the disclosure limits on a person who possesses criminal history information about a person.

The section will permit the Clerk to disclose criminal history information about a person to members of the Legislative Assembly for the purpose of assessing the person's suitability to perform relevant duties. For example, as Electorate Office staff are engaged by the Clerk upon recommendation of the relevant member of the Legislative Assembly (refer to section 26AA of the *Parliamentary Service Act 1988*), the Clerk needs to be able to lawfully disclose the criminal history information of the person being considered for appointment in an Electorate Office to the relevant member. This will enable the member to make an informed decision as to whether they should recommend the appointment of the person to the Clerk.

New section 47I makes it an offence punishable by a maximum penalty of 100 penalty units if a person discloses criminal history information to a person to which disclosure is not permitted.

The maximum penalty provided for in new section 47I is the same as that which applies in section 172 of the *Public Service Act 2008* from which new section 47H has been adapted.