

THIS PUBLIC BILL has this day been read a Third time and passed

*The Clerk of the Parliament.*

*Legislative Assembly Chamber,  
Brisbane, July 2020*



Queensland

**No.  
A BILL for**

**An Act to amend the Ministerial and Other Office Holder Staff Act 2010, the Parliament of Queensland Act 2001, the Parliamentary Service Act 1988 and the Queensland Independent Remuneration Tribunal Act 2013 for particular purposes**





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**2020**

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## **A Bill**

for

***An Act to amend the Ministerial and Other Office Holder Staff Act 2010, the Parliament of Queensland Act 2001, the Parliamentary Service Act 1988 and the Queensland Independent Remuneration Tribunal Act 2013 for particular purposes***

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[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Ministerial and Other Office Holder Staff and Other Legislation Amendment Act 2020*.

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

### **2 Act amended**

This part amends the *Ministerial and Other Office Holder Staff Act 2010*.

### **3 Insertion of new pt 2A**

After part 2—

*insert—*

## **Part 2A Assessing suitability to be a staff member**

### **Division 1 Preliminary**

#### **13A Definitions for part**

In this part—

*criminal history* see the *Criminal Law*

*(Rehabilitation of Offenders) Act 1986*, section 3.

***criminal history report*** means a report given under section 13D.

## **Division 2      Obtaining criminal histories**

### **13B Chief executive may ask for consent to obtain criminal history**

- (1) If the chief executive proposes to employ a person as a staff member, the chief executive may ask the person for written consent for the chief executive to obtain the person's criminal history.
- (2) Subsection (1) applies even if the person is employed as a staff member when the chief executive proposes to employ the person.

### **13C Refusing consent**

- (1) This section applies if the person does not consent, or withdraws the person's consent, to the chief executive obtaining the person's criminal history.
- (2) If the person is not employed as a staff member, the chief executive may decide not to consider the person for employment as a staff member.
- (3) If the person is a staff member, the person's employing member or, if the person is a ministerial staff member, the Premier, may prevent the person from performing any further relevant duties.
- (4) For subsection (3), duties are ***relevant duties*** if, because of the nature of the duties, the employing member or Premier considers it may be necessary to have regard to the criminal history of a person

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who is or will be performing the duties.

### **13D Obtaining criminal history with consent**

- (1) This section applies if the person gives the chief executive written consent to the chief executive obtaining the person's criminal history.
- (2) The chief executive may ask the police commissioner for—
  - (a) a written report about the person's criminal history; and
  - (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (3) The request may include the following—
  - (a) the person's name and any other name the chief executive believes the person may use or may have used;
  - (b) the person's date and place of birth, gender and address.
- (4) The police commissioner must comply with the request.
- (5) However, the duty to comply applies only to information in the police commissioner's possession or to which the police commissioner has access.

### **13E Criminal history no longer required to be obtained**

- (1) This section applies if—
  - (a) the chief executive has, under section 13D, asked the police commissioner to give the chief executive a written report about a person's criminal history; and

- (b) the chief executive decides the criminal history is no longer required.
- (2) The chief executive must, by written notice, tell the police commissioner that the requested report is no longer required.
- (3) If the police commissioner is notified as mentioned in subsection (2) before the police commissioner has given the requested report to the chief executive, the police commissioner must not give it to the chief executive.

## **Division 3            Use of criminal histories and related matters**

### **13F Assessment of suitability**

If the chief executive obtains a person's criminal history under this part, the chief executive must—

- (a) give a copy of the criminal history to—
  - (i) if the person is proposed to be employed as a ministerial staff member—the Premier; or
  - (ii) otherwise—the person's proposed employing member; and
- (b) consider the criminal history, in consultation with the member to whom a copy of the criminal history is given, in making an assessment about the person's suitability for employment as a staff member.

### **13G Destruction of reports and notices**

- (1) This section applies if—

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- (a) a criminal history report about a person is no longer required to be kept for the purpose for which it was requested under this part; or
  - (b) a notice given to the chief executive under section 13I is no longer required to be kept for assessing a person's suitability to perform relevant duties within the meaning of section 13C.
- (2) The chief executive must destroy the report, the notice and any other document containing information contained in the report or notice.

### **13H Police commissioner must not use information given under this part**

- (1) Information given to the police commissioner by the chief executive under section 13D(3) must not be accessed, disclosed or used for any purpose, other than a purpose under this part or any other purpose relevant to law enforcement.
- (2) However, subsection (1) does not apply to information obtained by the police commissioner before the chief executive gave the information under section 13D(3).

## **Division 4      Other matters**

### **13I Prosecuting authority to notify chief executive about committal, conviction etc.**

- (1) This section applies if the police commissioner or the director of public prosecutions (each a *prosecuting authority*) is aware that a person is employed as a staff member and, after the commencement of this section, the person is charged with a relevant offence.
- (2) If the person is committed by a court for trial for

the relevant offence, the prosecuting authority must, within 7 days after the committal, give notice to the chief executive of the following—

- (a) the person's name;
  - (b) the court;
  - (c) particulars of the offence;
  - (d) the date of the committal;
  - (e) the court to which the person was committed.
- (3) If the person is convicted before a court of the relevant offence, the prosecuting authority must, within 7 days after the conviction, give notice to the chief executive of the following—
- (a) the person's name;
  - (b) the court;
  - (c) particulars of the offence;
  - (d) the date of the conviction;
  - (e) the sentence imposed by the court.
- (4) If the person has appealed against the conviction mentioned in subsection (3) and the appeal is finally decided or has otherwise ended, the prosecuting authority must, within 7 days after the decision or the day the appeal otherwise ends, give notice to the chief executive of the following—
- (a) the person's name;
  - (b) particulars of the offence;
  - (c) the date of the decision or other ending of the appeal;
  - (d) if the appeal was decided—
    - (i) the court in which it was decided; and

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- (ii) particulars of the decision.
- (5) If the prosecution process for the relevant offence ends without the person being convicted of the offence, the prosecuting authority must, within 7 days after the prosecution process ends, give notice to the chief executive of the following—
- (a) the person's name;
  - (b) if relevant, the court in which the prosecution process ended;
  - (c) particulars of the offence;
  - (d) the date the prosecution process ended.
- (6) For subsection (5), the prosecution process ends if—
- (a) an indictment was presented against the person but a nolle prosequi is entered on the indictment or the person is acquitted; or
  - (b) the prosecution process otherwise ends.
- (7) In this section—
- disqualifying offence*** see the *Working with Children (Risk Management and Screening) Act 2000*, section 168.
- relevant offence*** means—
- (a) an indictable offence; or
  - (b) a disqualifying offence that is not an indictable offence.

### **13J False or misleading statements in consent**

A person must not give the chief executive a consent mentioned in section 13B, or another document for this part, that the person knows contains information that is false or misleading in a material particular.

Maximum penalty—100 penalty units.

### **13K Confidentiality**

- (1) If a person obtains criminal history information in carrying out functions or performing duties as the chief executive, a Minister, the Leader of the Opposition, a non-government member or a staff member, the person must not disclose the criminal history information to any other person unless the disclosure is permitted under subsection (2).

Maximum penalty—100 penalty units.

- (2) A person is permitted to disclose criminal history information about an individual to another person—
- (a) if the other person is the chief executive, a Minister, the Leader of the Opposition, a non-government member or a staff member, for the purpose of assessing the individual's suitability for employment as a staff member; or
  - (b) with the individual's consent; or
  - (c) if the disclosure is otherwise required or permitted under an Act.

- (3) In this section—

***criminal history information*** means information contained in the following—

- (a) a criminal history report;
- (b) a notice given to the chief executive under section 13I.

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

Schedule—

*insert—*





## Division 1      Preliminary

### 45 Definitions for part

In this part—

*criminal history* see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

*criminal history report* means a report given under section 47B.

*engage*, a person, includes—

- (a) allow a person employed by or within another entity to perform work or duties within the parliamentary service, under an arrangement with the other entity; and
- (b) start training a person in the parliamentary service as an apprentice or trainee, within the meaning of the *Further Education and Training Act 2014*.

*relevant duties* see section 46.

### 46 Meaning of *relevant duties*

Duties to be performed in the carrying out of the functions of the parliamentary service are *relevant duties* if the Clerk considers it may be necessary, because of the nature of the particular duties, to have regard to the criminal history of a person who is or will be performing the duties.

## Division 2      Obtaining criminal histories

#### **47 Clerk may ask for consent to obtain criminal history**

- (1) If the Clerk or Speaker proposes to appoint or engage a person to perform relevant duties, the Clerk may ask the person for written consent for the Clerk to obtain the person's criminal history.
- (2) Subsection (1) applies even if the person is an officer or employee of the parliamentary service when the Clerk proposes to appoint or engage the person to perform the relevant duties.

#### **47A Refusing consent**

- (1) This section applies if the person does not consent, or withdraws the person's consent, to the Clerk obtaining the person's criminal history.
- (2) If the person is not an officer or employee of the parliamentary service, the Clerk may decide not to consider the person for appointment or engagement as an officer or employee to perform the relevant duties.
- (3) If the person is an officer or employee of the parliamentary service who is performing relevant duties, the Clerk may prevent the person from performing any further relevant duties.

#### **47B Obtaining criminal history with consent**

- (1) This section applies if the person gives the Clerk written consent to the Clerk obtaining the person's criminal history.
- (2) The Clerk may ask the police commissioner or another entity for—
  - (a) a written report about the person's criminal history; and

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- (b) a brief description of the circumstances of a conviction mentioned in the criminal history.
- (3) The request may include the following—
  - (a) the person's name and any other name the Clerk believes the person may use or may have used;
  - (b) the person's date and place of birth, gender and address.
- (4) The police commissioner must comply with a request made to the police commissioner under this section.
- (5) However, the duty to comply under subsection (4) applies only to information in the police commissioner's possession or to which the police commissioner has access.

#### **47C Criminal history no longer required to be obtained**

- (1) This section applies if—
  - (a) the Clerk has, under section 47B, asked the police commissioner to give the Clerk a written report about a person's criminal history; and
  - (b) the Clerk decides the criminal history is no longer required.
- (2) The Clerk must, by written notice, tell the police commissioner that the requested report is no longer required.
- (3) If the police commissioner is notified as mentioned in subsection (2) before the police commissioner has given the requested report to the Clerk, the police commissioner must not give it to the Clerk.

#### **47D Police commissioner must not use information given under this part**

- (1) Information given to the police commissioner by the Clerk under section 47B(3) must not be accessed, disclosed or used for any purposes, other than a purpose under this part or any other purpose relevant to law enforcement.
- (2) However, subsection (1) does not apply to information obtained by the police commissioner before the Clerk gave the information under section 47B(3).

### **Division 3      Use of criminal histories**

#### **47E Assessment of suitability**

If the Clerk obtains a person's criminal history under this part, the Clerk must consider the criminal history in making an assessment about the person's suitability for appointment or engagement to perform relevant duties.

#### **47F Destruction of reports and notices**

- (1) This section applies if—
  - (a) a criminal history report about a person is no longer required to be kept for the purpose for which it was requested under this part; or
  - (b) a notice given to the Clerk under section 47G is no longer required to be kept for deciding whether a person is suitable to perform relevant duties.
- (2) The Clerk must destroy the report, the notice and any other document containing information contained in the report or notice.

## Division 4      Other matters

### **47G Prosecuting authority to notify Clerk about committal, conviction etc.**

- (1) This section applies if the police commissioner or the director of public prosecutions (each a *prosecuting authority*) is aware that a person is an officer or employee of the parliamentary service and, after the commencement of this section, the person is charged with a relevant offence.
- (2) If the person is committed by a court for trial for the relevant offence, the prosecuting authority must, within 7 days after the committal, give notice to the Clerk of the following—
  - (a) the person's name;
  - (b) the court;
  - (c) particulars of the offence;
  - (d) the date of the committal;
  - (e) the court to which the person was committed.
- (3) If the person is convicted before a court of the relevant offence, the prosecuting authority must, within 7 days after the conviction, give notice to the Clerk of the following—
  - (a) the person's name;
  - (b) the court;
  - (c) particulars of the offence;
  - (d) the date of the conviction;
  - (e) the sentence imposed by the court.
- (4) If the person has appealed against the conviction mentioned in subsection (3) and the appeal is finally decided or has otherwise ended, the

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prosecuting authority must, within 7 days after the decision or the day the appeal otherwise ends, give notice to the Clerk of the following—

- (a) the person's name;
  - (b) particulars of the offence;
  - (c) the date of the decision or other ending of the appeal;
  - (d) if the appeal was decided—
    - (i) the court in which it was decided; and
    - (ii) particulars of the decision.
- (5) If the prosecution process for the relevant offence ends without the person being convicted of the offence, the prosecuting authority must, within 7 days after the prosecution process ends, give notice to the Clerk of the following—
- (a) the person's name;
  - (b) if relevant, the court in which the prosecution process ended;
  - (c) particulars of the offence;
  - (d) the date the prosecution process ended.
- (6) For subsection (5), the prosecution process ends if—
- (a) an indictment was presented against the person but a nolle prosequi is entered on the indictment or the person is acquitted; or
  - (b) the prosecution process otherwise ends.
- (7) In this section—
- disqualifying offence*** see the *Working with Children (Risk Management and Screening) Act 2000*, section 168.
- relevant offence*** means—

[s 10]

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- (a) an indictable offence; or
- (b) a disqualifying offence that is not an indictable offence.

#### **47H False or misleading statements in consent**

A person must not give the Clerk a consent mentioned in section 47, or another document for this part, that the person knows contains information that is false or misleading in a material particular.

Maximum penalty—100 penalty units.

#### **47I Confidentiality**

- (1) If a person obtains criminal history information in carrying out functions or performing duties as the Speaker, the Clerk, a member of the Legislative Assembly or an officer or employee of the parliamentary service, the person must not disclose the criminal history information to any other person unless the disclosure is permitted under subsection (2).

Maximum penalty—100 penalty units.

- (2) The person is permitted to disclose criminal history information about an individual—
  - (a) to the Speaker, the Clerk, or an officer or employee of the parliamentary service, for the purpose of assessing the individual's suitability to perform relevant duties; or
  - (b) to a member of the Legislative Assembly for the purpose of assessing the individual's suitability—
    - (i) to perform relevant duties in the member's electorate office under section 26AA; or

- (ii) for otherwise providing administrative and support services to the member; or
  - (c) with the person's consent; or
  - (d) if the disclosure is otherwise required or permitted under an Act.
- (3) In this section—
- criminal history information*** means information contained in the following—
- (a) a criminal history report;
  - (b) a notice given to the Clerk under section 47G.

## Part 5 **Amendment of Queensland Independent Remuneration Tribunal Act 2013**

### 11 **Act amended**

This part amends the *Queensland Independent Remuneration Tribunal Act 2013*.

### 12 **Amendment of long title**

Long title, after 'Assembly'—  
*insert—*

**and matters relating to entitlements of cross bench members to additional staff members**

### 13 **Amendment of s 3 (Main purpose of Act)**

Section 3, from 'decide'—  
*omit, insert—*  
decide—

[s 14]

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- (a) remuneration in connection with members and former members of the Assembly; and
- (b) entitlements of cross bench members to additional staff members.

#### **14 Amendment of s 7 (Functions)**

Section 7(b)—

*omit, insert—*

- (b) to review entitlements of cross bench members to additional staff members;
- (c) to make determinations under this Act about the matters mentioned in paragraphs (a) and (b).

#### **15 Insertion of new pt 3, div 1, sdiv 1, hdg**

Before section 27—

*insert—*

##### **Subdivision 1 General**

#### **16 Amendment of s 27 (Power to make determination)**

Section 27, from ‘about’—

*omit, insert—*

about the following matters—

- (a) remuneration in connection with members and former members of the Assembly;
- (b) entitlements of cross bench members to additional staff members.

#### **17 Insertion of new pt 3, div 1, sdiv 2, hdg and s 28A**

After section 28—

*insert—*

## **Subdivision 2 Determinations about remuneration**

### **28A Application of subdivision**

This subdivision applies in relation to a determination about remuneration in connection with members and former members of the Assembly (a *remuneration determination*).

#### **18 Amendment of s 29 (General principles for making determination)**

- (1) Section 29, heading, ‘determination’—

*omit, insert—*

**remuneration determinations**

- (2) Section 29(1) and (2), before ‘determination’—

*insert—*

remuneration

#### **19 Amendment of s 30 (Requirements for making determination)**

- (1) Section 30, heading, ‘determination’—

*omit, insert—*

**remuneration determinations**

- (2) Section 30, before ‘determination,’—

*insert—*

remuneration

- (3) Section 30(d), ‘section 55’—

*omit, insert—*

section 59D

[s 20]

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**20 Amendment of s 31 (When determination to be made)**

- (1) Section 31, heading, ‘determination’—

*omit, insert—*

**remuneration determinations**

- (2) Section 31(1) to (3), before ‘determination’—

*insert—*

remuneration

**21 Amendment of s 31A (Determinations about salary entitlements following public service salary decisions)**

- (1) Section 31A, heading, ‘Determinations’—

*omit, insert—*

**Remuneration determinations**

- (2) Section 31A(1) to (3), before ‘determination’—

*insert—*

remuneration

- (3) Section 31A(4), ‘If the determination’—

*omit, insert—*

If the remuneration determination

**22 Amendment of s 31B (Particular determinations about additional salary entitlements)**

- (1) Section 31B, heading, before ‘determinations’—

*insert—*

**remuneration**

- (2) Section 31B(1) and (2), before ‘determination’—

*insert—*

remuneration

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**23 Insertion of new pt 3, div 1, sdiv 3**

Part 3, division 1—

*insert—*

**Subdivision 3 Determinations about entitlements of cross bench members to additional staff members**

**31C Application of subdivision**

This subdivision applies in relation to a determination about entitlements of cross bench members to additional staff members (an *additional staff member determination*).

**31D General matters about additional staff member determinations**

- (1) An additional staff member determination may provide for additional staff members for—
  - (a) all cross bench members; or
  - (b) 1 or more stated classes of cross bench members; or
  - (c) 1 or more stated cross bench members; or
  - (d) a combination of 1 or more stated classes of cross bench members and 1 or more stated cross bench members.
- (2) An additional staff member determination may provide for—
  - (a) the same entitlement to additional staff members for all cross bench members, or classes of cross bench members, for whom the determination is made; or

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- (b) different entitlements to additional staff members for cross bench members, or classes of cross bench members, for whom the determination is made.
- (3) An additional staff member determination may state 1 or more of the following matters for an additional staff member for a cross bench member—
  - (a) the role of the staff member;
  - (b) the classification level of, including, for example, the level of salary for, the staff member;
  - (c) the location where the staff member is to perform the staff member's functions for the cross bench member.

### **31E General principles for making additional staff member determinations**

- (1) In making an additional staff member determination, the tribunal may have regard to the following—
  - (a) parliamentary resources provided to cross bench members and other members of the Assembly;
  - (b) the composition of the Assembly and how the composition of the Assembly affects cross bench members;
  - (c) the workload and duties of the cross bench members for whom the tribunal is considering to make the determination;
  - (d) whether the cross bench members for whom the tribunal is considering to make the determination are members of political parties;

- (e) relevant laws applying to members of the Assembly;
  - (f) other matters the tribunal considers appropriate.
- (2) In this section—

*composition of the Assembly* means the extent to which the Assembly is made up of the following members of the Assembly—

- (a) members of a political party recognised in the Assembly as being in government;
- (b) members of a political party recognised in the Assembly as being in opposition;
- (c) cross bench members.

*parliamentary resources*, for a member of the Assembly, means services and support, including, for example, general staff members, provided to the member, in the parliamentary precinct or elsewhere, to help the member to carry out the member's duties.

### **31F Requirement to consult with Clerk**

In making an additional staff member determination, the tribunal must consult with, and consider the views of, the Clerk.

### **31G When additional staff member determinations to be made**

- (1) Subject to subsection (2), the tribunal may decide the frequency of additional staff member determinations.
- (2) The tribunal must make an additional staff member determination within 3 months after each of the following days—

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- (a) the day the Assembly is next summoned under the *Constitution of Queensland 2001*, section 15(1);
  - (b) if a person becomes, or ceases to be, a cross bench member during a term of the Assembly—the day the person becomes, or ceases to be, a cross bench member.
- (3) In this section—
- term*, of the Assembly, means the period—
- (a) starting on the day the Assembly is summoned under the *Constitution of Queensland 2001*, section 15(1); and
  - (b) ending on the day the Assembly is next dissolved or expires.

## 24 Replacement of s 33 (Determination creates entitlement to remuneration)

Section 33—

*omit, insert—*

### 33 Effect of determination

- (1) If the tribunal makes a remuneration determination, a member or former member is entitled to the remuneration decided by the tribunal under the determination.

*Note—*

Also see part 4.

- (2) If the tribunal makes an additional staff member determination, a cross bench member is entitled to the additional staff members, decided by the tribunal for the member, under the determination.

*Note—*

Also see part 4A.

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- 25 Amendment of s 41 (Annual salary entitlement of member)**  
Section 41, before ‘determination’—  
*insert—*  
remuneration
- 26 Amendment of s 42 (Additional salary entitlement of some members)**  
Section 42(1) and (2), before ‘determination’—  
*insert—*  
remuneration
- 27 Amendment of s 43 (Amount of additional salary)**  
Section 43(1), before ‘determination’—  
*insert—*  
remuneration
- 28 Amendment of s 54 (Member’s allowances and entitlements)**  
Section 54, before ‘determination’—  
*insert—*  
remuneration
- 29 Relocation and renumbering of s 55 (Act does not affect other entitlements)**  
Section 55—  
*relocate* to part 5 and *renumber* as section 59D.
- 30 Insertion of new pt 4A**  
After part 4—
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[s 30]

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*insert—*

## **Part 4A                    Additional staff members for cross bench members**

### **59A Purpose of part**

The purpose of this part is to provide for particular matters about additional staff members for cross bench members.

### **59B Clerk to give effect to entitlement to additional staff members**

- (1) This section applies in relation to a cross bench member if the member is entitled to additional staff members under an additional staff member determination.
- (2) The cross bench member may request the Clerk provide additional staff members to the cross bench member in accordance with the additional staff member determination.
- (3) The Clerk must give effect to a cross bench member's request under subsection (2) in a way—
  - (a) the Clerk considers appropriate; and
  - (b) that ensures the member's request is fulfilled to the greatest practicable extent without exceeding the member's entitlement under the additional staff member determination.
- (4) The Clerk's functions under this section are to be carried out as part of the Clerk's functions under the *Parliamentary Service Act 1988* as the chief executive of the parliamentary service established under that Act.

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*Note—*

See the *Parliamentary Service Act 1988*, part 5 for matters about the management of the parliamentary service established under that Act.

### **59C When entitlement to additional staff members ceases**

- (1) A person's entitlement under an additional staff member determination ceases if—
  - (a) the person ceases to be a cross bench member; or
  - (b) for an entitlement that is conditional on the person being part of a class of cross bench members—the person ceases to be part of the class.
- (2) This section does not limit the ways in which a person's entitlement under an additional staff member determination may cease.

## **31 Amendment of sch 1 (Dictionary)**

- (1) Schedule 1, definition *remuneration*—

*omit.*

- (2) Schedule 1—

*insert—*

***additional staff member determination*** see section 31C.

***additional staff members***, for a cross bench member, means persons—

- (a) appointed under the *Parliamentary Service Act 1988*, part 5; and
- (b) provided to the member to help the member to carry out the member's duties in addition to general staff members for the member.

[s 31]

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***cross bench member*** means a member of the Assembly who is neither—

- (a) a member of a political party recognised in the Assembly as being in government; nor
- (b) a member of a political party recognised in the Assembly as being in opposition.

***general staff members***, for a member of the Assembly, means persons—

- (a) appointed, under the *Parliamentary Service Act 1988*, part 5, and provided to the member other than under an additional staff member determination; or
- (b) employed, under the *Ministerial and Other Office Holder Staff Act 2010*, part 2, as staff members in the member's office.

***remuneration***, in connection with a member or former member of the Assembly—

- (a) means salary, allowances or entitlements in connection with the member or former member, other than accommodation, services or other entitlements mentioned in section 59D; and
- (b) for a cross bench member—does not include an entitlement to additional staff members under an additional staff member determination.

***remuneration determination*** see section 28A.

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