

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

Report No. 9, 56th Parliament
Economics and Governance Committee
July 2018

Economics and Governance Committee

Chair	Mr Linus Power MP, Member for Logan
Deputy Chair	Mr Ray Stevens MP, Member for Mermaid Beach
Members	Ms Nikki Boyd MP, Member for Pine Rivers Mr Sam O'Connor MP, Member for Bonney Mr Dan Purdie MP, Member for Ninderry Ms Kim Richards MP, Member for Redlands

Committee Secretariat

Telephone	+61 7 3553 6637
Fax	+61 7 3553 6699
Email	egc@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/egc

Acknowledgements

The committee acknowledges the assistance provided by the Department of the Premier and Cabinet.

Contents

Abbreviations	ii
Chair’s foreword	iii
Recommendations	iv
1 Introduction	1
1.1 Role of the committee	1
1.2 Inquiry process	1
1.3 Policy objectives of the Bill	1
1.4 Government consultation on the Bill	2
1.5 Should the Bill be passed?	2
2 Examination of the Bill	3
2.1 Obtaining and using criminal history reports	3
2.1.1 Office of a Minister, Leader of the Opposition or non-government member	3
2.1.2 Parliamentary service	3
2.1.3 Information safeguards	4
2.2 Notice of committal, conviction, appeal or end of prosecution	5
2.3 Destruction of reports and notices	7
2.4 Confidentiality	7
2.5 False or misleading statements	7
2.6 Procedural and clarifying amendments	8
2.6.1 Parliamentary committees	8
2.6.2 Parliamentary precinct	8
3 Compliance with the <i>Legislative Standards Act 1992</i>	9
3.1 Fundamental legislative principles	9
3.1.1 Rights and liberties of individuals	9
3.2 Explanatory notes	10
Appendix A - Witnesses at public briefing	11

Abbreviations

Bill	Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018
Clerk	Clerk of the Queensland Parliament
committee	Economics and Governance Committee
department	Department of the Premier and Cabinet
employing member	Leader of the Opposition or another non-government member in whose office a staff member is engaged
FLP	fundamental legislative principle
Director-General	Director-General of the Department of the Premier and Cabinet
LS Act	<i>Legislative Standards Act 1992</i>
Parliamentary Service Act	<i>Parliamentary Service Act 1988</i>
PQ Act	<i>Parliament of Queensland Act 2001</i>
prosecuting authority	Police Commissioner or Director of Public Prosecutions
Public Service Act	<i>Public Service Act 2008</i>
relevant notice	a notice given to the Director-General or Clerk if a staff member or officer or employee of the parliamentary service is committed to stand trial for an indictable offence, is convicted of an indictable offence, has appealed against a conviction and the appeal is finally decided or has otherwise ended, or if prosecution against a staff member or officer or employee of the parliamentary service for an indictable offence ends without them being convicted
Speaker	Speaker of the Legislative Assembly
staff member	staff member in the office of a Minister, Leader of the Opposition or another non-government member

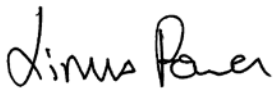
Chair's foreword

This report presents a summary of the Economics and Governance Committee's examination of the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank our Parliamentary Service staff and the Department of the Premier and Cabinet for their assistance.

I commend this report to the House.



Linus Power MP
Chair

Recommendations

Recommendation 1

2

The committee recommends the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 be passed.

Recommendation 2

6

The committee recommends that clauses 3 and 10 of the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 be amended to correct a drafting error.

1 Introduction

1.1 Role of the committee

The Economics and Governance Committee (the committee) is a portfolio committee of the Legislative Assembly.¹ The committee's areas of portfolio responsibility are:

- Premier and Cabinet, and Trade
- Treasury, and Aboriginal and Torres Strait Islander Partnerships, and
- Local Government, Racing and Multicultural Affairs.²

The committee is responsible for examining each bill in its portfolio areas to consider the policy to be given effect by the legislation and the application of fundamental legislative principles (FLPs).³

1.2 Inquiry process

The Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 (the Bill) was introduced into the Legislative Assembly and referred to the committee on 15 May 2018. The committee was required to report to the Legislative Assembly by 5 July 2018.

During its examination of the Bill, the committee:

- invited written submissions from the public, identified stakeholders and subscribers; no submissions were received
- requested and received written advice from the Department of the Premier and Cabinet (the department) on the Bill
- received a public briefing from the department on 4 June 2018; a list of witnesses who appeared is at **Appendix A**.

Copies of the material published in relation to the committee's inquiry, including correspondence from the department and briefing transcript are available on the committee's webpage.

1.3 Policy objectives of the Bill

The primary objective of the Bill is to provide the Director-General of the department (the Director-General) and the Clerk of the Queensland Parliament (the Clerk) 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 or the Parliamentary Service including in an electorate office.

The explanatory notes state that the amendments will provide similar legislative power to conduct criminal history checks as is 'currently provided to chief executive officers for Queensland Government departmental employees under the *Public Service Act 2008*' (the Public Service Act).⁴

The Bill also amends the plan details of the parliamentary precinct outlined in the *Parliamentary Service Act 1988* (the Parliamentary Service Act) and updates references in the *Parliament of Queensland Act 2001* (the PQ Act).

¹ The committee was established on 15 February 2018 under the *Parliament of Queensland Act 2001* (PQ Act) section 88 and the Standing Rules and Orders of the Legislative Assembly (Standing Orders), SO 194.

² PQ Act, s 88; Standing Orders, SO 194, sch 6.

³ PQ Act, s 93(1).

⁴ Explanatory notes, p 1.

1.4 Government consultation on the Bill

The explanatory notes state that consultation was undertaken with the Queensland Police Service and the Department of Justice and Attorney-General, and with the Clerk in relation to parts 3 and 4 of the Bill (these parts amend the PQ Act and the Parliamentary Service Act). No consultation with the community was undertaken in preparing the Bill.⁵

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

After examination of the Bill, including the policy objectives it is intended to achieve, and consideration of the information provided by the department, the committee recommends that the Bill be passed.

Recommendation 1

The committee recommends the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 be passed.

⁵ Explanatory notes, p 2.

2 Examination of the Bill

2.1 Obtaining and using criminal history reports

2.1.1 Office of a Minister, Leader of the Opposition or non-government member

The Bill provides that if the Director-General proposes to employ a person as a staff member in the office of a Minister, the Leader of the Opposition or another non-government member (a staff member) they may ask the person for written consent to obtain their criminal history. This applies even if the person is employed as a staff member at the time the Director-General proposes to employ them.⁶

If the prospective staff member does not consent or withdraws consent for the Director-General to obtain their criminal history, the Director-General may decide not to consider them for employment as a staff member. If the person is an existing staff member, the Leader of the Opposition or another non-government member (employing member), or the Premier in relation to ministerial staff, may prevent them from performing any further relevant duties.⁷

If the prospective staff member gives their written consent, the Director-General may ask the Police Commissioner for a written report about their criminal history and a brief description of the circumstances of any conviction mentioned in the criminal history.⁸ However, if after the Director-General asks for a written report they decide the criminal history is no longer required, they must tell the Police Commissioner in writing, and if the report has not already been provided, the Police Commissioner must not provide the report.⁹

If the Director-General obtains a person's criminal history, they must give a copy of it to the proposed employing member, or the Premier if the person is proposed to be employed as a ministerial staff member. The Director-General must consider the criminal history, in consultation with the employing member or the Premier, in making an assessment about the person's suitability for employment as a staff member.¹⁰

2.1.2 Parliamentary service

The Bill provides that if the Clerk or Speaker of the Legislative Assembly (the Speaker) proposes to appoint or engage a person to perform relevant duties as an officer or employee of the parliamentary service, including in an electorate office, the Clerk may ask for written consent to obtain their criminal history. The Clerk may ask for consent even if the person is an officer or employee of the parliamentary service when the Clerk proposes to appoint or engage them.¹¹

If the prospective officer or employee does not consent or withdraws consent the Clerk may decide not to consider them for engagement or appointment to perform relevant duties in the parliamentary service. If they are performing relevant duties the Clerk may prevent them from performing any further relevant duties.¹²

If the prospective officer or employee gives written consent, the Clerk may ask the Police Commissioner or another entity for a written report about their criminal history and a brief description of the circumstances of any conviction mentioned in the criminal history.¹³

⁶ Bill, cl 3 (s 13B); Explanatory notes, p 3.

⁷ Bill, cl 3 (s 13C); Explanatory notes, p 3.

⁸ Bill, cl 3 (s 13D); Explanatory notes, p 3.

⁹ Bill, cl 3 (s 13E); Explanatory notes, p 3.

¹⁰ Bill, cl 3 (s 13F); Explanatory notes, p 4.

¹¹ Bill, cl 10 (s 47); Explanatory notes, p 6.

¹² Bill, cl 10 (s 47A); Explanatory notes, p 6.

¹³ Bill, cl 10 (s 47B); Explanatory notes, p 6.

However, if after the Clerk asks the Police Commissioner for a written report they decide the criminal history is no longer required they must tell the Police Commissioner in writing, and if the report has not already been provided, the Police Commissioner must not provide the report. There are no requirements to tell another entity that has been asked for a criminal history report that the report is no longer required.¹⁴

If the Clerk obtains a person's criminal history, they must consider it in making an assessment about the person's suitability for appointment or engagement to perform relevant duties in the parliamentary service.¹⁵

Committee consideration and comment

The committee noted that while the Director-General must request a criminal history report from the Police Commissioner, the Clerk may request a criminal history report from the Police Commissioner or another entity.

The committee sought advice from the department about this process including who 'another entity' may be. The department advised:

The Australian Criminal Intelligence Commission (ACIC) in cooperation with the Australian Police Agencies, uses a central index to provide the National Police Checking Service (NPCS) to accredited third-party agencies. This is principally for the purpose of ensuring that persons in positions of trust or specified fields of endeavour or who are required to meet mandated requirements are adequately screened for criminal records. Other entities would therefore be limited to third party agencies accredited by ACIC.

In December 2017, the Legislative Assembly entered into a contract with an agency approved by ACIC (on behalf of the Australian Police Agencies) that has access to the NPCCS in order to provide criminal history reports.¹⁶

2.1.3 Information safeguards

The Bill provides that information given to the Police Commissioner by the Director-General or the Clerk in making a request for a person's criminal history must not be accessed, disclosed or used for any purpose, other than a purpose relating to assessing the person's suitability to be a staff member or perform relevant duties in the parliamentary service, or a purpose relevant to law enforcement.¹⁷

If the Clerk requests a criminal history report from another entity, there are no provisions in the Bill regarding the access, disclosure or use of the information by that entity.

Committee consideration and comment

The committee noted that there were no provisions in the Bill in relation to the access, disclosure or use of information provided to another entity when requesting a criminal history report, and sought advice from the department about safeguards for information provided to another entity. The department advised:

DPC [the department] understands that the contract between the Legislative Assembly and the accredited agency contains safeguards around the disclosure and use of information.

Given the contract, and a potential difficulty in legislating safeguards relating to third parties, the Bill was drafted accordingly.¹⁸

¹⁴ Bill, cl 10 (s 47C); Explanatory notes, p 6.

¹⁵ Bill, cl 10 (s 47E); Explanatory notes, p 7.

¹⁶ Department, correspondence dated 28 May 2018, *Briefing for the Economics and Governance Committee Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018*, p 2.

¹⁷ Bill, cl 10 (s 47D); Explanatory notes, p 7.

¹⁸ Department, correspondence dated 28 May 2018, *Briefing for the Economics and Governance Committee Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018*, p 2.

During the public briefing, the department further advised:

*The Clerk has confirmed that the contract between the Legislative Assembly and the accredited agency contains safeguards around the disclosure and use of information.*¹⁹

2.2 Notice of committal, conviction, appeal or end of prosecution

The Bill provides that if a staff member or officer or employee of the parliamentary service is charged with an indictable offence, and the Police Commissioner or director of public prosecutions (the prosecuting authority) is aware that a person is employed as a staff member or is an officer or employee of the parliamentary service, the prosecuting authority must give notice (a relevant notice) to the Director-General or Clerk:

- if the person is committed by a court to stand trial for the indictable offence
- if the person is convicted of the indictable offence
- if the person has appealed against the conviction and the appeal is finally decided or has otherwise ended
- if the prosecution for the indictable offence ends without the person being convicted.²⁰

The prosecuting authority must give the Director-General or Clerk notice about the following information within seven days of the relevant event²¹ occurring:

Committed to stand trial	Convicted of an indictable offence	Prosecution ends without conviction ²²	Appeal against conviction ends
<ul style="list-style-type: none"> • person's name • the court • particulars of the offence • date of committal • court to which the person was committed. 	<ul style="list-style-type: none"> • person's name • the court • particulars of the offence • date of conviction • sentence imposed by the court. 	<ul style="list-style-type: none"> • person's name • the court, if relevant • particulars of the offence • date of committal • court to which the person was committed. 	<ul style="list-style-type: none"> • person's name • particulars of the offence • date of decision or other ending of appeal • if appeal decided - court in which it was decided and particulars of decision.

Committee consideration and comment

The committee noted that the proposed new subsections regarding the information that must be given to the Director-General or Clerk when a prosecution ends without conviction may contain a drafting error as some of the information relates to details of a committal.

The committee also noted that the drafting of these subsections is inconsistent with the corresponding provision in the Public Service Act. The Public Service Act provides that if the prosecution ends without the person being convicted of the offence, the prosecuting authority must give the department's chief executive notice about:

- (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.*²³

¹⁹ Public briefing transcript, Brisbane, 4 June 2018, p 2.

²⁰ Bill, cls 3 (s 13I) and 10 (s 47G); Explanatory notes, pp 4, 7.

²¹ Relevant events are committal, conviction, the appeal decision or otherwise ending and the prosecution process ending.

²² The prosecution process ends if an indictment was presented against the person but a nolle prosequi (when the prosecuting authority ends the trial by deciding not to proceed further upon the indictment) is entered on the indictment or prosecution process otherwise ends.

²³ Public Service Act, s 170(5).

The committee sought advice from the department about the drafting of these subsections and the inconsistency with the Public Service Act.

The department advised:

DPC acknowledges that there is inconsistency between the provisions of the Bill (new section 13I(5) at Clause 3 and new section 47G(5) at Clause 10) and the corresponding section of the PSA (section 170(5) with regard to the information the prosecuting authority must provide where a prosecution for an indictable offence ends without the person being convicted. This is the result of a drafting error.²⁴

The committee notes the department's advice and unanimously recommends that the Bill be amended to correct the drafting error.

Recommendation 2

The committee recommends that clauses 3 and 10 of the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 be amended to correct a drafting error.

Obligation to disclose charges

The committee noted that the Public Service Act requires public service employees who are charged with an indictable offence or convicted by a court of an indictable offence to immediately give their chief executive notice of the charge or conviction. However, there are no equivalent provisions proposed in the Bill to require staff members and officers or employees of the parliamentary service who are charged with an indictable offence or convicted of an indictable offence to give notice of the charge or conviction to the Director-General or the Clerk.

As there may be a substantial delay between when a person is charged with an indictable offence and when they are committed to stand trial, during which the Director-General or the Clerk would be unaware of the charge, the committee sought advice from the department about the absence in the Bill of a requirement for staff members and officers or employees of the parliamentary service to provide notice. The department advised:

This requirement was not included in the Bill as it was considered that it was adequately covered by the applicable policies and codes of conduct.

Employment Screening Directive 01/2017 (the Directive) was issued by the Director-General under the Ministerial and Other Office Holder Staff Act 2010 on 15 December 2017. The Directive applies to all ministerial office staff and imposes a duty on staff to (amongst other things) disclose to the Director-General changes in their criminal history screening information. Ministerial office staff are required to disclose if they have been charged with an indictable offence or convicted by a court of an indictable offence.

In addition, all staff employed under the Ministerial and Other Office Holder Staff Act 2010 are required to report any instances where they have breached their respective codes of conduct to their Chief of Staff or any other appropriate senior staff member. This includes personal conduct that reflects adversely on their employing member and non-compliance with Australian laws. The Ministerial and Other Office Holder Staff Act 2010 specifically states that staff must comply with an approved code of conduct.

Similarly, the Code of Conduct and internal policy that applies to Parliamentary Service employees employed under the Parliamentary Service Act 1988 makes it an obligation on officers and employees to advise the Clerk of the Parliament of any charges or convictions against them.²⁵

²⁴ Department, correspondence dated 28 May 2018, *Briefing for the Economics and Governance Committee Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018*, p 3.

²⁵ Department, correspondence dated 28 May 2018, *Briefing for the Economics and Governance Committee Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018*, p 3.

The committee notes the department's advice that staff members and officers or employees of the parliamentary service are required, under relevant directives and codes of conduct, to notify the Director-General or Clerk if they are charged with, or convicted of, an indictable offence.

2.3 Destruction of reports and notices

The Bill proposes to require that the Director-General or Clerk must destroy a criminal history report, relevant notice and any other document containing information contained in the report or notice if:

- the criminal history report is no longer required to be kept for the purpose for which it was requested
- the relevant notice is no longer required to be kept for assessing a person's suitability to perform relevant duties.²⁶

2.4 Confidentiality

The Bill provides that if a person obtains criminal history information²⁷ in carrying out functions or performing duties as the Director-General, a Minister, Leader of the Opposition, a non-government member or a staff member they must not disclose the information to any other person unless the disclosure is:

- to the Director-General, a Minister, the Leader of the Opposition, a non-government member or a staff member for the purpose of assessing the person's suitability for employment as a staff member
- made with the individual's consent
- otherwise required or permitted under an Act.²⁸

Similarly, if a person obtains criminal history information in carrying out functions or performing duties as the Speaker, Clerk, member of the Legislative Assembly or an officer or employee of the parliamentary service they must not disclose the information to any other person unless the disclosure is:

- to the Speaker, Clerk or an officer or employee of the parliamentary service for the purpose of assessing the person's suitability to perform relevant duties
- to a member of the Legislative Assembly for the purpose of assessing the person's suitability to perform relevant duties in the member's electorate office or providing administrative and support services to the member
- made with the individual's consent
- otherwise required or permitted under an Act.²⁹

A person who unlawfully discloses criminal history information would commit an offence punishable by up to \$12,615 (100 penalty units).³⁰

2.5 False or misleading statements

The Bill provides that it is an offence for a person to give the Director-General or Clerk consent to obtain their criminal history, or another document relating to assessing a person's suitability to be a staff member or an officer or employee of the parliamentary service, that they know contains information that is false or misleading in a material particular.

²⁶ Bill, cls 3 (s 13G) and 10 (s 47F); Explanatory notes, pp 4, 7.

²⁷ Criminal history information is information contained in a criminal history report or a relevant notice.

²⁸ Bill, cl 3 (s 13K); Explanatory notes, p 7.

²⁹ Bill, cl 10 (s 47I); Explanatory notes, p 7.

³⁰ Bill, cls 3 (s 13K) and 10 (s 47I); Explanatory notes, pp 4, 7. A penalty unit currently has a value of \$126.15: Penalties and Sentences Regulation 2015.

A person who makes a false or misleading statement is liable for a maximum penalty of \$12,615 (100 penalty units).³¹

2.6 Procedural and clarifying amendments

The Bill proposes a number of procedural and clarifying amendments to correct oversights and reflect current practice and agreements.

2.6.1 Parliamentary committees

The Bill proposes to amend the PQ Act to reflect that the monitoring power of portfolio committees regarding approved forms relates to provisions in the *Acts Interpretation Act 1954* not the *Statutory Instruments Act 1992*.³² Since 1995 a parliamentary committee, or from 2011 the portfolio committees, have had the power to monitor the making of approved forms under an authorising law. However, in 2013 when the approved form making provisions were transferred from the *Statutory Instruments Act 1992* to the *Acts Interpretation Act 1954*, a consequential amendment was not made to the *PQ Act* to reflect the transfer of the provisions. The proposed amendment in the Bill corrects the oversight.³³

This Bill also proposes a procedural amendment to section 107(8) of the PQ Act to update a reference to 'Votes and Proceedings' with 'Record of Proceedings' to reflect current practice. The parliament replaced the publication titled 'Votes and Proceedings' with the publication titled 'Record of Proceedings' in 2006.³⁴

2.6.2 Parliamentary precinct

The Bill proposes to amend the Parliamentary Service Act to change the plan details of the parliamentary precinct.³⁵ The proposed change is the result of a resurvey of the land following the former Speaker's agreement to 'relinquish a small parcel of land in return for another small area of land to facilitate development of the Queen's Wharf project in Brisbane'.³⁶

³¹ Bill, cls 3 (s 13J) and 10 (s 47H); Explanatory notes, pp 4, 7. A penalty unit currently has a value of \$126.15: Penalties and Sentences Regulation 2015.

³² Bill, cl 6; Explanatory notes p 5.

³³ Explanatory notes, p 5.

³⁴ Bill, cl 7; Explanatory notes, p 5; Hon Anastacia Palaszczuk MP, Premier and Minister for Trade, Record of Proceedings, 15 May 2018, p 1128.

³⁵ Bill, cl 9; Explanatory notes, p 6.

³⁶ Hon Anastacia Palaszczuk MP, Premier and Minister for Trade, Record of Proceedings, 15 May 2018, p 1128.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LS Act) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to the rights and liberties of individuals, and the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill, and brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

Right to privacy of personal information

The Bill provides that the Director-General or Clerk may obtain a written criminal history report about a prospective staff member or officer or employee of the parliamentary service, including a summary of the circumstances of any conviction mentioned in the report.

The Bill contains three proposed caveats on the Director-General or Clerk’s power to obtain a criminal history report, which act as safeguards against potential abuse of the power. Firstly, the prospective or existing staff member or officer or employee of the parliamentary service must give their written consent for the report to be obtained. While a person may not be employed, engaged or appointed if they do not consent, they could refuse to provide consent if they were strongly opposed to a report being obtained. Secondly, the Director-General or Clerk must ensure the report is destroyed after it is no longer required for the purpose it was obtained. At the public briefing the department advised that the criminal history reports ‘would be destroyed as soon as they are no longer required for that selection process’.³⁷ Finally, the Bill provides for a new offence, punishable by up to \$12,615 (100 penalty units), if a person unlawfully discloses information in a criminal history report.³⁸

The Bill also proposed to require the prosecuting authority to provide to the Director-General or Clerk a relevant notice if the prosecuting authority is aware that a person is employed as a staff member or is an officer or employee of the parliamentary service and:

- the person is committed by a court to stand trial for the indictable offence
- the person is convicted of the indictable offence
- the person has appealed against the conviction and the appeal is finally decided or has otherwise ended
- the prosecution for the indictable offence ends without the person being convicted.³⁹

The Bill provides two safeguards to protect a person’s privacy regarding information contained in a relevant notice. Firstly, the Director-General or Clerk must ensure the relevant notice is destroyed after it is no longer required for the purpose it was obtained, and secondly, the unauthorised disclosure of the information would be an offence punishable by up to \$12,615 (100 penalty units).⁴⁰

Providing the Director-General or Clerk with the power to obtain a criminal history report for a prospective staff member or officer or employee of the parliamentary service, and requiring the prosecuting authority to provide a relevant report to the Director-General or Clerk potentially breaches the FLP regarding the person’s right to privacy with respect to their personal information.

The explanatory notes do not address this potential FLP breach.

³⁷ Public briefing transcript, Brisbane, 4 June 2018, p 5.

³⁸ Bill, cls 3 (s 13K) and 10 (s 47I); Explanatory notes, pp 4, 7. A penalty unit currently has a value of \$126.15: Penalties and Sentences Regulation 2015.

³⁹ Bill, cls 3 (s 13I) and 10 (s 47G); Explanatory notes, pp 4, 7.

⁴⁰ Bill, cls 3 (s 13K) and 10 (s 47I); Explanatory notes, pp 4, 7. A penalty unit currently has a value of \$126.15: Penalties and Sentences Regulation 2015.

Committee consideration and comment

The committee notes that the following safeguards would be put into place with respect to criminal history reports and relevant notices:

- a criminal history report may only be obtained with the person's written consent
- criminal history report and relevant notice must be destroyed when no longer required for the purpose it was obtained, and
- there are strict limits on disclosure of criminal history information.

The committee also notes that if a person does not wish for their criminal history report to be obtained they can simply not give their consent.

The committee considers that, with the above safeguards, there appears to be sufficient protections for the privacy of prospective, and those engaged as, staff members and officers and employees of the parliamentary service.

3.2 Explanatory notes

Part 4 of the LS Act requires that explanatory notes be circulated when a Bill is introduced into the Legislative Assembly. Section 23 of the LS Act sets out the information the explanatory notes should contain to ensure the explanatory notes are useful to stakeholders as mentioned above.

Explanatory notes are used by the committee, other Members of Parliament, and a variety of stakeholders when considering Bills and forming a view about the extent to which they support the proposed legislation. Explanatory notes are also an important form of extrinsic material which may be used to assist in the interpretation of the legislation once in operation. It is therefore important that explanatory notes are clear, precise and sufficiently detailed to be useful in explaining the policy that a Bill is to implement, and the intended operation of all aspects of a Bill.

Explanatory notes were tabled with the introduction of the Bill. While the notes are fairly detailed and contain a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins, the notes contained minimal information about the Bill's consistency with FLPs. The explanatory notes state:

*The Bill is generally consistent with fundamental legislative principles.*⁴¹

Committee consideration and comment

The committee notes that the explanatory notes contain a brief statement about the Bill's consistency with FLPs. However, the committee has some concerns about the level of detail regarding potential breaches of the FLPs.

The committee notes that the LS Act requires the explanatory notes to include a brief assessment of the consistency of the Bill with FLPs and, if it is inconsistent with FLPs, the reasons for the inconsistency. If the explanatory notes do not include this information, they must state the reason that it is not included.⁴²

As the Bill includes provisions that potentially breach the FLPs in relation to right to privacy and privacy and confidentiality issues, the committee considers that it would be beneficial for the explanatory notes to include information identifying the nature of the potential FLP breach and outlining the reasons for it.

⁴¹ Explanatory notes, p 2.

⁴² See section 23, *Legislative Standards Act 1992*

Appendix A - Witnesses at public briefing

Public briefing

4 June 2018

Department of the Premier and Cabinet

- Filly Morgan – Deputy Director-General, Corporate and Government Services
- Mike Kirton – Acting General Manager, Government Services
- Andrew Timperley – Principal Policy Officer, Cabinet and Parliamentary Services