



Queensland

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

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2018

A Bill

for

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

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Ministerial and Other Office
Holder Staff and Other Legislation Amendment Act 2018*. 4
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**Part 2 Amendment of Ministerial and
Other Office Holder Staff Act
2010** 6
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Clause 2 Act amended 9

This part amends the *Ministerial and Other Office Holder
Staff Act 2010*. 10
11

Clause 3 Insertion of new pt 2A 12

After part 2— 13

insert— 14

**Part 2A Assessing suitability to
be a staff member** 15
16

Division 1 Preliminary 17

13A Definitions for part 18

In this part— 19

criminal history see the *Criminal Law* 20

(Rehabilitation of Offenders) Act 1986, section 3. 1
criminal history report means a report given 2
under section 13D. 3

Division 2 Obtaining criminal 4 histories 5

13B Chief executive may ask for consent to obtain 6 criminal history 7

- (1) If the chief executive proposes to employ a person 8
as a staff member, the chief executive may ask the 9
person for written consent for the chief executive 10
to obtain the person's criminal history. 11
- (2) Subsection (1) applies even if the person is 12
employed as a staff member when the chief 13
executive proposes to employ the person. 14

13C Refusing consent 15

- (1) This section applies if the person does not 16
consent, or withdraws the person's consent, to the 17
chief executive obtaining the person's criminal 18
history. 19
- (2) If the person is not employed as a staff member, 20
the chief executive may decide not to consider the 21
person for employment as a staff member. 22
- (3) If the person is a staff member, the person's 23
employing member or, if the person is a 24
ministerial staff member, the Premier, may 25
prevent the person from performing any further 26
relevant duties. 27
- (4) For subsection (3), duties are *relevant duties* if, 28
because of the nature of the duties, the employing 29
member or Premier considers it may be necessary 30
to have regard to the criminal history of a person 31

[s 3]

who is or will be performing the duties. 1

13D Obtaining criminal history with consent 2

- (1) This section applies if the person gives the chief executive written consent to the chief executive obtaining the person's criminal history. 3
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- (2) The chief executive may ask the police commissioner for— 6
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- (a) a written report about the person's criminal history; and 8
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- (b) a brief description of the circumstances of a conviction mentioned in the criminal history. 10
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- (3) The request may include the following— 13
- (a) the person's name and any other name the chief executive believes the person may use or may have used; 14
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16
- (b) the person's date and place of birth, gender and address. 17
18
- (4) The police commissioner must comply with the request. 19
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- (5) However, the duty to comply applies only to information in the police commissioner's possession or to which the police commissioner has access. 21
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24

13E Criminal history no longer required to be obtained 25
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- (1) This section applies if— 27
- (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 28
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(b) the chief executive decides the criminal history is no longer required.	1 2
(2) The chief executive must, by written notice, tell the police commissioner that the requested report is no longer required.	3 4 5
(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.	6 7 8 9 10
Division 3 Use of criminal histories and related matters	11 12
13F Assessment of suitability	13
If the chief executive obtains a person's criminal history under this part, the chief executive must—	14 15
(a) give a copy of the criminal history to—	16
(i) if the person is proposed to be employed as a ministerial staff member—the Premier; or	17 18 19
(ii) otherwise—the person's proposed employing member; and	20 21
(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.	22 23 24 25 26
13G Destruction of reports and notices	27
(1) This section applies if—	28

[s 3]

(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	1 2 3
(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.	4 5 6 7 8
(2)	The chief executive must destroy the report, the notice and any other document containing information contained in the report or notice.	9 10 11
13H	Police commissioner must not use information given under this part	12 13
(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.	14 15 16 17 18
(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).	19 20 21 22
Division 4	Other matters	23
13I	Prosecuting authority to notify chief executive about committal, conviction etc.	24 25
(1)	This section applies if the police commissioner or the director of public prosecutions (each a <i>prosecuting authority</i>) is aware that a person is employed as a staff member and, after the commencement of this section, the person is charged with an indictable offence.	26 27 28 29 30 31
(2)	If the person is committed by a court for trial for	32

-
- the indictable 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 indictable 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

[s 3]

- (ii) particulars of the decision. 1
- (5) If the prosecution for the indictable offence ends 2
without the person being convicted of the offence, 3
the prosecuting authority must, within 7 days after 4
the prosecution process ends, give notice to the 5
chief executive of the following— 6
 - (a) the person’s name; 7
 - (b) the court; 8
 - (c) particulars of the offence; 9
 - (d) the date of the committal; 10
 - (e) the court to which the person was 11
committed. 12
- (6) For subsection (5), the prosecution process ends 13
if— 14
 - (a) an indictment was presented against the 15
person but a nolle prosequi is entered on the 16
indictment or the person is acquitted; or 17
 - (b) the prosecution process otherwise ends. 18

13J False or misleading statements in consent 19

A person must not give the chief executive a 20
consent mentioned in section 13B, or another 21
document for this part, that the person knows 22
contains information that is false or misleading in 23
a material particular. 24

Maximum penalty—100 penalty units. 25

13K Confidentiality 26

- (1) If a person obtains criminal history information in 27
carrying out functions or performing duties as the 28
chief executive, a Minister, the Leader of the 29
Opposition, a non-government member or a staff 30
member, the person must not disclose the criminal 31

history information to any other person unless the disclosure is permitted under subsection (2).	1 2
Maximum penalty—100 penalty units.	3
(2) A person is permitted to disclose criminal history information about an individual to another person—	4 5 6
(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	7 8 9 10 11 12
(b) with the individual's consent; or	13
(c) if the disclosure is otherwise required or permitted under an Act.	14 15
(3) In this section—	16
<i>criminal history information</i> means information contained in the following—	17 18
(a) a criminal history report;	19
(b) a notice given to the chief executive under section 13I.	20 21
Clause 4 Amendment of schedule (Dictionary)	22
Schedule—	23
<i>insert</i> —	24
<i>criminal history</i> , for part 2A, see section 13A.	25
<i>criminal history report</i> , for part 2A, see section 13A.	26 27
<i>police commissioner</i> means the commissioner of the police service under the <i>Police Service Administration Act 1990</i> .	28 29 30

[s 5]

Part 3	Amendment of Parliament of Queensland Act 2001	1 2
Clause 5	Act amended	3
	This part amends the <i>Parliament of Queensland Act 2001</i> .	4
Clause 6	Amendment of s 93 (Legislation)	5
	(1) Section 93(2), before paragraph (a)—	6
	<i>insert—</i>	7
	(aa) the <i>Acts Interpretation Act 1954</i> , section 48;	8
	and	9
	(2) Section 93(2)(b), ‘parts 6 to 8’—	10
	<i>omit, insert—</i>	11
	parts 6, 7	12
	(3) Section 93(2)(aa) to (c)—	13
	<i>renumber</i> as section 93(2)(a) to (d).	14
Clause 7	Amendment of s 107 (Ministerial response to committee report)	15 16
	Section 107(8), ‘Votes and Proceedings’—	17
	<i>omit, insert—</i>	18
	Record of Proceedings	19
Part 4	Amendment of Parliamentary Service Act 1988	20 21
Clause 8	Act amended	22
	This part amends the <i>Parliamentary Service Act 1988</i> .	23

Clause 9	Amendment of s 4 (Definitions)	1	
(1)	Section 4—	2	
	<i>insert—</i>	3	
	<i>criminal history</i> , for part 5A, see section 45.	4	
	<i>criminal history report</i> , for part 5A, see section 45.	5	
		6	
	<i>engage</i> , for part 5A, see section 45.	7	
	<i>police commissioner</i> means the commissioner of the police service under the <i>Police Service Administration Act 1990</i> .	8	
		9	
		10	
	<i>relevant duties</i> , for part 5A, see section 46.	11	
(2)	Section 4, definition <i>parliamentary precinct</i> , paragraph (a), ‘, lot 437 on plan SL8601 and lot 704 on plan SL12303’—	12	
		13	
	<i>omit, insert—</i>	14	
	and lots 437 and 704 on SP289469	15	
Clause 10	Insertion of new pt 5A	16	
	After part 5—	17	
	<i>insert—</i>	18	
	Part 5A	Assessing suitability to be an officer or employee	19
			20
			21
	Division 1	Preliminary	22
	45 Definitions for part		23
	In this part—		24
	<i>criminal history</i> see the <i>Criminal Law (Rehabilitation of Offenders) Act 1986</i> , section 3.		25
			26

[s 10]

<i>criminal history report</i> means a report given under section 47B.	1 2
<i>engage</i> , a person, includes—	3
(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	4 5 6 7
(b) start training a person in the parliamentary service as an apprentice or trainee, within the meaning of the <i>Further Education and Training Act 2014</i> .	8 9 10 11
<i>relevant duties</i> see section 46.	12

46 Meaning of *relevant duties* 13

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. 14
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Division 2 Obtaining criminal histories 20 21

47 Clerk may ask for consent to obtain criminal history 22 23

- (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. 24
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- (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. 28
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- 47A Refusing consent** 1
- (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
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- (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. 5
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- (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. 10
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- 47B Obtaining criminal history with consent** 14
- (1) This section applies if the person gives the Clerk written consent to the Clerk obtaining the person's criminal history. 15
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- (2) The Clerk may ask the police commissioner or another entity for— 18
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- (a) a written report about the person's criminal history; and 20
21
- (b) a brief description of the circumstances of a conviction mentioned in the criminal history. 22
23
24
- (3) The request may include the following— 25
- (a) the person's name and any other name the Clerk believes the person may use or may have used; 26
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- (b) the person's date and place of birth, gender and address. 29
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- (4) The police commissioner must comply with a request made to the police commissioner under this section. 31
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[s 10]

- (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. 1
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- 47C Criminal history no longer required to be obtained** 5
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- (1) This section applies if— 7
- (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 8
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- (b) the Clerk decides the criminal history is no longer required. 12
13
- (2) The Clerk must, by written notice, tell the police commissioner that the requested report is no longer required. 14
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- (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. 17
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- 47D Police commissioner must not use information given under this part** 22
23
- (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. 24
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- (2) However, subsection (1) does not apply to information obtained by the police commissioner before the Clerk gave the information under section 47B(3). 29
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Division 3	Use of criminal histories	1
47E Assessment of suitability		2
	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.	3 4 5 6 7
47F Destruction of reports and notices		8
(1)	This section applies if—	9
(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	10 11 12
(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.	13 14 15 16
(2)	The Clerk must destroy the report, the notice and any other document containing information contained in the report or notice.	17 18 19
Division 4	Other matters	20
47G Prosecuting authority to notify Clerk about committal, conviction etc.		21 22
(1)	This section applies if the police commissioner or the director of public prosecutions (each a <i>prosecuting authority</i>) 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 an indictable offence.	23 24 25 26 27 28
(2)	If the person is committed by a court for trial for	29

[s 10]

- the indictable 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 indictable 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 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 for the indictable 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) the court;
 - (c) particulars of the offence;
 - (d) the date of the committal;
 - (e) the court to which the person was committed.
- (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.

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

[s 10]

other person unless the disclosure is permitted under subsection (2).	1 2
Maximum penalty—100 penalty units.	3
(2) The person is permitted to disclose criminal history information about an individual—	4 5
(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	6 7 8 9
(b) to a member of the Legislative Assembly for the purpose of assessing the individual’s suitability—	10 11 12
(i) to perform relevant duties in the member’s electorate office under section 26AA; or	13 14 15
(ii) for otherwise providing administrative and support services to the member; or	16 17
(c) with the person’s consent; or	18
(d) if the disclosure is otherwise required or permitted under an Act.	19 20
(3) In this section—	21
criminal history information means information contained in the following—	22 23
(a) a criminal history report;	24
(b) a notice given to the Clerk under section 47G.	25 26

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