

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

Statement of Compatibility for amendments to be moved during consideration in detail

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice make this statement of compatibility with respect to amendments to be moved during consideration in detail to the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018.

In my opinion, the amendments that I intend to move to the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 are compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the amendments to be moved during consideration in detail

Amendments to the *Ministerial and Other Office Holder Staff Act 2010* and the *Parliamentary Service Act 1988*

The objectives of the amendments to be moved during consideration in detail to the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 are to require the Police Commissioner and the Director of Public Prosecutions (DPP) to advise the Director-General of the Department of the Premier and Cabinet (the Director-General) and the Clerk of Parliament (the Clerk) if:

- any existing staff member employed under the *Ministerial and Other Office Holder Staff Act 2010* or the *Parliamentary Service Act 1988* is charged with or convicted of a relevant offence;
- an appeal for a conviction of any existing staff member employed under the *Ministerial and Other Office Holder Staff Act 2010* or the *Parliamentary Service Act 1988* for a relevant offence has been decided or otherwise ended; or
- a prosecution against any existing staff member employed under the *Ministerial and Other Office Holder Staff Act 2010* or the *Parliamentary Service Act 1988* has ended without the person being convicted.

The amendments to be moved during consideration in detail will address drafting errors to ensure alignment of the *Ministerial and Other Office Holder Staff Act 2010* and the *Parliamentary Service Act 1988* with the corresponding provisions of the *Public Service Act 2008* relating to notice of committal, conviction, appeal or end of prosecution. Addressing these drafting issues will also implement recommendation 2 made by the Economic and Governance Committee in Report No. 9, titled Ministerial and Other Office Holder Staff and Other

Legislation Amendment Bill 2018 (EGC Report No. 9), which was tabled in the Parliament on 5 July 2018.

The amendments to be moved during consideration in detail also relate to the breadth of offences that the Police Commissioner or the DPP will be required to notify the Director-General or the Clerk about, for staff after they have commenced employment.

Under the *Public Service Act 2008*, the Police Commissioner or the DPP are required to notify a chief executive if they are aware that a person who is a public service employee is charged with a 'relevant offence', committed for trial for a 'relevant offence', an appeal of a conviction for a 'relevant offence' has been decided in relation to the person or otherwise ended, or a prosecution for a 'relevant offence' has ended without the person being convicted.

In drafting the replication of these provisions in the Bill, only 'indictable offences' were included rather than 'relevant offences' as provided for in the *Public Service Act 2008*.

The meaning of 'relevant offence' is broader than the meaning of 'indictable offence' by also including disqualifying offences under the *Working with Children (Risk Management and Screening) Act 2000*, which are not indictable offences.

These amendments would ensure that there is alignment between the *Public Service Act 2008*, the *Ministerial and Other Office Holder Staff Act 2010*, and the *Parliamentary Service Act 1988* regarding the reporting requirements placed on the Police Commissioner and the DPP for staff employed under those Acts.

Amendments to the *Queensland Independent Remuneration Tribunal Act 2013*

The amendments to be moved during consideration in detail will also amend the *Queensland Independent Remuneration Tribunal Act 2013* to give the Queensland Independent Remuneration Tribunal (QIRT) functions regarding deciding additional staffing entitlements to support the functions of cross bench Members of Parliament.

The amendments will enable QIRT to make determinations on the staffing requirements to support cross bench Members of Parliament to undertake their parliamentary duties..

Human Rights Issues

Human rights relevant to the amendments to be moved during consideration in detail (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Amendments to the *Ministerial and Other Office Holder Staff Act 2010* and the *Parliamentary Service Act 1988*

It is acknowledged that under the *Human Rights Act 2019*, people have rights in criminal proceedings. A person charged with a criminal offence has the right to be presumed innocent until proven guilty according to law, and is entitled, without discrimination, to receive certain minimum guarantees.

The amendments to be moved during consideration in detail do not relate to the prosecution process a person faces if they are charged with a relevant offence e.g. being committed for trial and being convicted or not convicted.

The amendments relate to the type of offences that will trigger the Police Commissioner or the DPP's requirement to provide a notice of committal, conviction, appeal or end of prosecution to the Director-General or the Clerk for persons employed under the *Ministerial and Other Office Holder Staff Act 2010*, or the *Parliamentary Service Act 1988*.

The Director-General or the Clerk will then be able to use any information received from the Police Commissioner or the DPP about a person, or otherwise disclose it to another person as provided for in the Bill, to enable a decision to be made regarding whether the person the subject of the information received remains suitable for employment under the *Ministerial and Other Office Holder Staff Act 2010* or the *Parliamentary Service Act 1988*.

To this extent, the amendments could adversely impact a person's rights in criminal proceedings by expanding the range of adverse consequences they could potentially face as a result of being charged with, or convicted of, an offence. However, this impact is considered proportionate and justifiable, as it aligns the consequences for Ministerial and parliamentary staff with those for public servants and involves only a minimal expansion of the range of offences with the potential to attract these adverse consequences.

It is considered that the amendments to be moved during consideration in detail will not otherwise limit or affect a person's rights in criminal proceedings.

The EGC Report No. 9, which was tabled in the Parliament on 5 July 2018, identified that the provision of details regarding an individual's criminal charges to the Director-General or the Clerk may be seen to be a breach of a person's right to privacy with respect to their personal information.

It is acknowledged that under s 25 of the *Human Rights Act 2019*, people have the right to privacy and reputation. Section 25 of the *Human Rights Act 2019* states that a person has the right not to have the person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

It is further acknowledged that the requirement for the Police Commissioner or the DPP to notify the Director-General or the Clerk should a person employed under the *Ministerial and Other Office Holder Staff Act 2010* or the *Parliamentary Service Act 1988* be charged with a relevant offence, may place a limitation on a person's right to privacy and reputation.

The Explanatory Notes for the *Human Rights Bill 2018* explain that this section is modelled on article 17 of the International Covenant on Civil and Political Rights and that the right to privacy is very broad. It protects privacy in the narrower sense including personal information, data collection and correspondence, but also extends to an individual's private life more generally.

Section 25 of the *Human Rights Act 2019* contains limitations on the right to privacy and reputation. The protection against interference with privacy, family, home or correspondence is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to

those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate. The protection against attack on reputation is limited to unlawful attacks.

These amendments would ensure the provision of criminal history information against a person employed under the *Ministerial and Other Office Holder Staff Act 2010* or the *Parliamentary Service Act 1988* to the Director-General or the Clerk by the Police Commissioner or the DPP is lawful and therefore not in breach of section 25 on the grounds of unlawfulness.

The interference with a person's privacy by means of the provision of such information as proposed in the amendments, should not be considered 'arbitrary interference,' as it brings certain conditions applying to the employment of Ministerial and parliamentary staff into line with those applying to public service employment more broadly. It corrects a drafting error which otherwise would result in an inconsistent approach applying depending on the legislation under which a person is employed.

In addition to the limitation applying to the right to privacy and reputation under section 25, section 13 of the *Human Rights Act 2019* recognises that a human right may be subject under law to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. The limit on the right to privacy and reputation imposed by the amendments is considered to be reasonable and justifiable for a number of reasons.

These include that the limitation has a rational purpose. The provision of information regarding charges against a person employed under the *Ministerial and Other Office Holder Staff Act 2010* or the *Parliamentary Service Act 1988* to the Director-General or the Clerk by the Police Commissioner or the DPP aims to:

- ensure safety and security for the Queensland community by ensuring that properly informed decisions about are made in relation to the employment of persons in positions of significant trust;
- maintain public confidence in the integrity of the Queensland Government, the parliamentary service and staff in the offices of particular members of the Legislative Assembly.

Prescribing in legislation the range of offences for which disclosure is required is the only means of ensuring the policy objectives of the amendments.

The amendments have been drafted in such a way as to minimise their risk of impacting adversely on affected persons' privacy and reputation beyond achievement of their intended purpose. In particular, the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 contains appropriate safeguards to protect a person's privacy regarding the provision of information about charges. Firstly, the Director-General or Clerk must ensure the relevant notice regarding the charge is destroyed after it is no longer required for the purpose it was obtained. Secondly the unauthorised disclosure of the information would be an offence punishable by up to \$13,345 (100 penalty units).

Criminal history checks are a common employment requirement and the sourcing of such information by the Director-General or the Clerk regarding an employee under the *Ministerial and Other Office Holder Staff Act 2010* or the *Parliamentary Service Act 1988* is justifiable to

ensure safety, security and public confidence and should not be considered unreasonable, unnecessary or disproportionate.

Amendments to the *Queensland Independent Remuneration Tribunal Act 2013*

The amendments proposed to the *Queensland Independent Remuneration Tribunal Act 2013* do not affect any human rights under the *Human Rights Act 2019*.

Conclusion

Amendments to the *Ministerial and Other Office Holder Staff Act 2010* and the *Parliamentary Service Act 1988*

In my opinion, the amendments to be moved during consideration in detail to the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 are compatible with human rights under the *Human Rights Act 2019* because they limit a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the *Human Rights Act 2019*.

Amendments to the *Queensland Independent Remuneration Tribunal Act 2013*

In my opinion, the amendments to the *Queensland Independent Remuneration Tribunal Act 2013* are compatible with human rights under the *Human Rights Act 2019* because the amendments do not limit a human right.

THE HONOURABLE YVETTE D'ATH MP
ATTORNEY-GENERAL AND MINISTER FOR JUSTICE
LEADER OF THE HOUSE

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