

# Queensland Productivity Commission Bill 2024

## Explanatory Notes

### Short title

The short title of the Bill is the Queensland Productivity Commission Bill 2024 (the Bill).

### Policy objectives and the reasons for them

The objectives of the Bill are to establish the Queensland Productivity Commission (the Commission) as an independent statutory body, formalising its operational independence from Government. Re-establishment of the Commission was a commitment of the Queensland Government during the 2024 Queensland State Election.

The Bill enumerates the functions of the Commission and provides it with the powers necessary for it to perform its functions effectively. The Bill also sets the corporate governance framework for the Commission, including provision for the appointment of the Productivity Commissioner and up to three additional commissioners to the board by the Governor in Council.

The core business of the Commission is to conduct formal public inquiries, reviews and investigations into complex economic and social issues, regulatory matters and/or legislation as referred to it by direction of the responsible Minister. Inquiries will be conducted via a public process involving in-depth stakeholder consultation to ensure all views are taken into account and properly tested.

The resulting recommendations will be independent, of high quality and have the capacity to contribute significantly to the policy development process.

Outside of its formal inquiry role, the Minister will be able to request advice or research from the Commission on matters without the need for a public inquiry process. In undertaking these functions, the Commission will nonetheless be required to operate and report independently.

The Commission will also be able to initiate its own research and analysis into economic and social issues, regulatory matters and/or legislation. Where it intends to publish that research, it will require the approval of the Minister to undertake the research.

Finally, the Commission will be able to be directed by the Minister to administer, monitor or review regulatory matters or government policies or processes related to regulatory matters, such as, for example, the Queensland Government's regulatory impact analysis system and regulator performance framework.

In all of its functions, the Commission's role is advisory only. It will have no decision-making capacity. Any policy action arising from the recommendations of the Commission will ultimately be a matter for Government.

## **Achievement of policy objectives**

To achieve the policy objectives, the Bill will establish the Commission and define its powers and functions. The Commission will assist the Queensland Government in improving the productivity and economic performance of the economy by providing independent, expert policy advice on issues relating to productivity. This advice will further inform government policy decision-making.

The Bill achieves the Government's policy objectives by allowing the Commission to:

- undertake inquires into economic and social issues, regulatory matters or legislation as directed by the Minister; and
- undertake research into economic and social issues, regulatory matters or legislation as directed or approved by the Minister or on its own initiative;
- administer, monitor and review regulatory matters as directed by the Minister; and
- provide advice to the Minister as requested.

In performing its functions, the Bill states that the Commission should have particular regard to productivity and economic growth and improving living standards in Queensland.

Finally, the Bill will support the policy objective of reducing the regulatory burden in Queensland by enabling the Commission, via a direction from the responsible Minister, to be given the responsibility of administering, monitoring and reviewing regulatory matters. This may include Queensland Government policies such as the Government's regulatory impact analysis requirements and regulator performance framework, and may include the Commission providing training, guidance and advice in relation to those policies.

## **Alternative ways of achieving policy objectives**

The establishment of the Commission is a key election commitment. Legislation is required to formally establish the commission as an independent statutory body. There are no alternative ways of achieving this policy.

## **Estimated cost for government implementation**

The Commission (including staffing costs, salaries of commissioners, accommodation and overhead costs) will be funded through the re-allocation of existing resources from within the Queensland Treasury portfolio.

## Consistency with fundamental legislative principles

The Bill has been drafted having regard to the fundamental legislative principles in the *Legislative Standards Act 1992*. Potential breaches of fundamental legislative principles are considered justified and are addressed below.

### **Legislation has sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992*, section 4(2)(a) – disclosure of personal information**

The Bill allows the commission to request and have access to information, including confidential information, about individuals. This represents a potential departure from the fundamental legislative principle that legislation have sufficient regard to the rights and liberty of individuals, including privacy and confidentiality. The departures are considered to be justified, as outlined below.

#### Power to require information

Clause 35 of the Bill provides that the commission will be able to request, and have access to, information (defined to include documents) from government agencies, including local governments and government owned corporations (relevant entities). This may require the disclosure of personal information by the relevant entities.

An individual's personal information may be disclosed to the commission to the extent it forms part of information requested by the commission without their consent. It is not anticipated that personal information will be a significant element of information requested by commission given its focus on productivity but the disclosure of personal information may be necessary or unavoidable as part of some requests.

The relevant entities subject to the requirement are limited to government agencies and a relevant entity may refuse to give the commission the information to the extent that:

- it is subject to legal professional privilege, parliamentary privilege or public interest immunity; or
- giving the information to the commission is prohibited under an Act; or
- giving the information to the commission could reasonably be expected to prejudice the investigation of a contravention, or possible contravention, of a law.

The power to require information can only be exercised by the commission when it is directed by the Minister to conduct an inquiry, undertake research or provide advice and only in relation to information relevant to the direction. The Bill also includes protections to ensure the preservation of confidential information by requiring persons who carry out functions under this Act to not disclose confidential information to anyone else, or use the information, other than where authorised under clause 39 of the Bill. The maximum penalty for failing to comply with these requirements is 100 penalty units.

A key function of the commission is to conduct inquiries and provide advice to government in order to facilitate and promote productivity in Queensland. The ability to access a wide range of information is integral to support these functions, as it will enable the commission to ascertain the facts of particular issues and make findings and recommendations and provide advice on proposed actions and reforms to the government to drive economic growth, lift productivity and improve living standards. It is considered necessary to allow the commission to request access to confidential information, where it is relevant to an inquiry or advice requested by the Minister. The ability of a relevant entity to refuse access to information, except where there is a reasonable excuse, would frustrate the ability of the commission to exercise its functions and powers. Therefore, it is considered necessary and appropriate to compel particular entities to provide information to the commission.

The Bill achieves an appropriate balance between ensuring that the commission has access to relevant information, including confidential information, to support its functions, and protecting an individuals' privacy and information relating to a party's commercial affairs. This is achieved by providing a mechanism for the relevant entities to refuse to provide information with a reasonable excuse, the confidentiality provisions which prevent disclosure of confidential information except in specific circumstances, and provisions which allow an interested party to request that potentially commercially damaging information not be disclosed. As such, the legislation is considered to have sufficient regard to the rights and liberties of individuals and any potential infringement of fundamental legislative principles is considered justifiable.

#### Request for criminal history information

Clause 27 of the Bill provides that the Minister will be able to request and receive from the Police Commissioner the criminal history of a person who is, or who is seeking to be appointed as, a commissioner with the consent of that person. In addition, the Bill outlines that a commissioner will be required to disclose to the Minister if the person has been convicted of an indictable offence, is insolvent under administration or is disqualified from managing corporations because of the requirements of the Corporations Act.

Similarly, the commissioners will be required to disclose personal information as part of their terms of employment in order to establish that they meet the eligibility criteria for appointment.

Any potential breach of fundamental legislative principles is mitigated by the requirement for the request to only be made with the person's consent. Allowing the Minister to undertake criminal history checks of the commissioners is important to ensure the integrity and appropriateness of appointments as a head of a statutory authority or member of a government board. Criminal history reports are protected from unlawful use or disclosure by clause 29(2) of the Bill. Additionally, clause 29(4) of the Bill requires the destruction of criminal history reports once they are no longer needed. Therefore, any departure from fundamental legislative principles is considered to be justified.

### Conflicts of interest disclosures

Clause 25 of the Bill also requires that commissioners disclose to the Minister the nature of any direct or indirect financial or personal interest in a matter that could conflict with the performance of the commissioner's duties.

Any potential breach of fundamental legislative principles is justified as the conflicts of interest disclosure is necessary to ensure conflicts of interest are appropriately managed, which is necessary to ensure the commission carries out its functions fairly and impartially.

### Disclosure of changes in criminal history

Clause 28 of the Bill will require the commissioners to disclose to the Minister if they are convicted of an indictable offence. Failing to disclose such matters to the Minister will be considered an offence and subject to a penalty unless the person has a reasonable excuse.

As with criminal history disclosures, any potential breach of fundamental legislative principles is justified to ensure the continuing integrity and appropriateness of the holding of appointments by the commissioners as a head of a statutory authority or member of a government board.

As stated above, clause 29(2) of the Bill mitigates any potential breach of fundamental legislative principles in relation to these disclosures of personal information by providing protections to ensure the preservation of criminal history information by requiring persons to not disclose criminal history information to anyone else, or use the information, other than where authorised under clause 29(3) of the Bill. Criminal history information must also be destroyed as soon as possible after it is no longer needed under section 29(4).

### Transfer of employee records to the commission

Clause 49 of the Bill transfers records relating to employees transferring from the department to the commission.

Any potential breach of fundamental legislative principles is justified as this transfer of personal information is necessary to enable the commission to manage the employment of these employees and ensure that the rights and entitlements of these employees are appropriately maintained as required by clause 47 of the Bill.

### Penalty for offence – Unlawful disclosure of confidential information

The proposed offence under clause 39 will apply to a person who has acquired or has access to confidential information by being the Minister administering the Act, a commissioner, staff member or contractor of the commission or any other person performing functions under or relating to the administration of the Act.

The proposed offence for unlawfully using or disclosing confidential information, will carry a maximum penalty of 100 penalty units. Similar offences are included across

the Queensland statute book, including section 95 of the *Victims' Commissioner and Sexual Violence Review Board Act 2024* and section 57 of the *Brisbane Olympic and Paralympic Games Arrangements Act 2021* which provide similar protections to prevent confidential information from unauthorised use or disclosure.

Given the breadth of information to which the commission, its commissioners and staff will have access that could identify an individual or damage the commercial activities of an entity, the creation of this offence is justified to ensure that this information is only used for proper and lawful purposes and therefore is not a breach of the fundamental legislative principles.

#### Penalty for offence – Unlawful disclosure of criminal history information

Clause 29(2) of the Bill contains an offence, which gives rise to the consideration of whether the penalty is proportionate to the offence. The Bill prescribes that it is an offence for a person to unlawfully disclose a person's criminal history information. It is expected that the Minister or a member of the Minister's staff may receive criminal history information as part of their role in determining the eligibility of a person to be appointed as a commissioner.

The Bill makes it an offence for a person, who becomes aware of criminal history information by virtue of their position or otherwise, to use or disclose the information unless the use or disclosure is permitted in the limited circumstances. The offence for using or disclosing, whether directly or indirectly, criminal history information to another person, carries a maximum penalty of 100 penalty units.

Similar offences are included across the Queensland statute book, including section 30 of the *Brisbane Olympic and Paralympic Games Arrangements Act 2021*, section 25 of the *Queensland Veterans' Council Act 2021* and the section 97 of the *Victims' Commissioner and Sexual Violence Review Board Act 2024* which provide similar protections to prevent criminal history information from unauthorised use or disclosure.

This offence is included in the Bill to protect the rights of the person about whom the information relates and provide an important safeguard against the unnecessary disclosure of a person's protected information. The penalty is set at a level to provide the appropriate deterrence and is consistent with the similar offences in Queensland legislation. On this basis, the inclusion of the offence in the Bill is considered appropriate and reasonable and not a breach of the fundamental legislative principles

#### Transfer of employees

Clause 47 of the Bill empowers the chief executive in the department administering the Act (Queensland Treasury) to approve a register of transferring employees and that the employment of these employees will be transferred from the department to the newly established commission. The intention is to transfer employees of Queensland Treasury who are currently carrying out roles in relation to productivity and regulatory matters within Queensland Treasury.

The Bill has regard to the rights and liabilities of those individuals whose employment is being transferred by preserving their existing rights and entitlements (including

superannuation and leave) and ensuring that their current conditions of employment under the applicable industrial instruments, directives and fixed term contracts continue after their transfer to the commission.

Any potential breach of fundamental legislative principles is justified as the employment of these staff is necessary to enable the newly established commission to function effectively. Alternatively, the commission would need to recruit staff with the necessary skills and experience, who may be difficult to find outside Queensland Treasury, which would lead to a delay in the commission commencing its work under the Act. Similar transfer provisions were included when the Queensland Productivity Commission was established in 2015 in the *Queensland Productivity Commission Act 2015* and in other legislation transferring employees as part of establishing or restructuring public sector entities, such as the *Economic Development Act 2012*, *Government Owned Corporations (Generator Restructure-CleanCo) Regulation 2019*, and *Government Owned Corporations (Pumped Hydro Energy Storage Restructure) Regulation 2022*.

***Legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation is consistent with the principles of natural justice - Legislative Standards Act 1992, section 4(3)(b)***

Disclosure by a person convicted of an indictable offence

Clause 28 of the Bill will require commissioners who are convicted of an indictable offence to immediately notify the Minister of the offence, unless the person has a reasonable excuse. The requirement to notify the Minister is not viewed as breaching fundamental legislative principles as it only requires a person to notify of a specific event, namely being convicted of an indictable offence and the circumstances surrounding the event.

The Bill will require the relevant person to notify the Minister of the existence of the conviction, details adequate to identify the offence for which the person was convicted, when the offence was committed and the sentence that was imposed. The person will have been afforded all rights in relation to natural justice and procedural fairness in relation to the conviction. Therefore, the requirement to notify the Minister is not considered to infringe a person's rights of natural justice or procedural fairness in responding to the matter.

Requiring the notice to be given 'immediately' is an appropriate timeframe. While 'immediately' is a subjective term, it is a stronger expression than 'as soon as practicable'. This is an appropriate timeframe for compliance with this requirement, particularly given that clause 20 of the Bill operates to automatically end the person's term of appointment, should such circumstances arise.

The rights and liberties of the person are protected because the provision allows for the person to have a reasonable excuse for non-compliance. The information in the notice is also required to be kept confidential by a person who may have access to the information under clause 29, including the Minister or a member of the Minister's staff or other prescribed persons. The notice must also be destroyed as soon as it is no

longer needed under clause 29. The proposed maximum penalty where a person fails to notify the Minister of being convicted of an indictable offence is 100 penalty units. The obligation for commissioners to disclose if they are convicted of an indictable offence reinforces the expectation that directors are to behave ethically and legally and ensures that the Minister is aware of matters that may impact on the integrity of the commission. Imposing such an obligation on commissioners is reasonable and there is a strong public interest in ensuring that there is appropriate oversight and accountability imposed on people who seek appointment, or are appointed, as commissioners.

Similar offences are included across the Queensland statute book, such as the *Health and Wellbeing Queensland Act 2019*, *Racing Integrity Act 2016* and *Brisbane Olympic and Paralympic Games Arrangements Act 2021* which all impose penalties where a person fails to disclose a conviction relating to an indictable offence.

The offence and its penalty are justified because the penalty reinforces the expectation that the commissioners are to uphold ethical and legal standards in carrying out their functions. The offence is considered to have a penalty which is proportionate to the offence.

#### Removal and disqualification from office

Clause 23 of the Bill provides that the Governor in Council may remove a commissioner from office on the recommendation of the Minister. The Minister may recommend a commissioner's removal only if:

- the Minister is satisfied the commissioner has engaged in:
  - inappropriate or improper conduct in an official capacity; or
  - inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the office; or
- the Minister is satisfied that the commissioner:
  - is incapable of performing the functions of the commissioner because of a physical or mental incapacity or for some other reason; or
  - has neglected, or incompetently performed, the duties of the commissioner.

Clause 21 of the Bill provides that the office of a commissioner becomes vacant if the person completes a term of office and is not reappointed, is disqualified from continuing in the office, resigns by notice or is removed from office.

Clause 20 of the Bill prescribes that a person is disqualified from appointment, or continuing to be appointed as a commissioner, where the person:

- is an insolvent under administration;
- is disqualified from managing corporations because of the Corporations Act;
- has a conviction, other than a spent conviction, for an indictable offence;
- is a member of the commission's staff or a contractor of the commission; or
- the person does not consent to a criminal history check by the Minister under clause 27 of the Bill.



These grounds for removal and disqualification raise the issue of whether the proposed Bill has sufficient regard for the rights of individuals consistent with natural justice principles. It is considered that, having regard to the significance of the role of the commissioners and the responsibilities this role entails, natural justice principles are not breached in this case.

To ensure public confidence in the role of the commissioners, these offices should be held to high standards of integrity and propriety, and the removal or automatic disqualification of a person from office where they meet one of these criteria is appropriate and consistent with other legislative approaches taken across the Queensland statute book.

**Legislation allows the delegation of administrative power only in appropriate cases and to appropriate persons, allows the delegation of legislative power only in appropriate cases and to appropriate persons and sufficiently subjects the exercised of a delegated legislative power to the scrutiny of the Legislative Assembly – *Legislative Standards Act 1992*, sections 4(3)(c), 4(4)(a) and 4(4)(b)**

As discussed above, clause 47 of the Bill allows the chief executive of the department administering the Act (the Under Treasurer) to approve a register of transferring employees, with the affect being that the employment of Queensland Treasury employees listed in the register will be transferred to the commission. This delegates the power to determine the employees transferring under the Act to the Under Treasurer rather than it being determined by Parliament through the Act itself.

This delegation of legislative power in this instance is regarded as appropriate as the scope of the exercise of the power is limited to employees of the administering department (Queensland Treasury) and can only be exercised by the chief executive of the department. The chief executive is considered an appropriate person to exercise this power given their level of seniority and responsibility.

Additionally, the inclusion of the names of transferring employees in the Act itself is not appropriate as it may infringe their rights to privacy. Transfers of employees by legislation are usually managed in this way, including when the Queensland Productivity Commission was established in 2015 under the *Queensland Productivity Commission Act 2015*, the transfer of employees to Queensland Titles Registry Pty Ltd in 2021 under the *Debt Reduction and Savings Act 2021* and when employees are transferred to and between GOCs as in the *Government Owned Corporations (Generator Restructure-CleanCo) Regulation 2019* and *Government Owned Corporations (Pumped Hydro Energy Storage Restructure) Regulation 2022*.

Clause 42 of the Bill provides for the delegation of powers and functions under the Act in that the commission may delegate any of its functions (including powers) to the board, a commissioner, or to an appropriately qualified member of the commission's staff.

The Bill enables the delegation of powers for the purpose of supporting the day-to-day operations of, and the exercise of functions and powers by, the commission. The powers are limited to only allow for a delegation of a function or power to the board of

the commission or a person who is appropriately qualified to discharge the function or power and employed within the commission or appointed as a commissioner. By limiting the scope of the delegation powers in this way, there is no ability for decisions to be made in respect of the law or the operation of the commission outside of the scrutiny of the Legislative Assembly.

Based on these limitations to the delegation of powers by the commission, the delegation of administrative powers and legislative powers in the way proposed in the Bill is considered to be appropriate.

## **Consultation**

No community consultation has occurred on the Bill as the Bill implements a clear election commitment. Extensive consultation will be undertaken by the Commission as part of each public inquiry.

## **Consistency with legislation of other jurisdictions**

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

# Notes on provisions

## Part 1 Preliminary

### 1 Short title

*Clause 1* states that the Act will be cited as the *Queensland Productivity Commission Act 2024*.

### 2 Commencement

*Clause 2* states that the Act is intended to commence on a day fixed by proclamation.

### 3 Main purpose

*Clause 3* states the main purpose of the Act is to establish the Queensland Productivity Commission to undertake inquiries and research and provide independent advice to the Minister in relation to economic and social issues, regulatory matters or legislation having particular regard to productivity and economic growth and improving living standards.

### 4 Definitions

*Clause 4* references the dictionary in schedule 1.

## Part 2 Queensland Productivity Commission

### Division 1 Establishment

#### 5 Establishment

*Clause 5* states the Queensland Productivity Commission is established.

#### 6 Legal status

*Clause 6* sets the legal status of the commission as a body corporate that can sue and be sued in its name.

#### 7 Commission represents the State

*Clause 7* provides that the commission represents the State and has the status, privileges and immunities of the State.

#### 8 Application of other Acts

*Clause 8* states that the commission is a statutory under the *Financial Accountability Act 2009* and *Statutory Bodies Financial Arrangements Act 1982*, and a unit of public administration under the *Crime and Corruption Act 2001*.

## **Division 2 Functions and powers**

### **9 Functions**

*Clause 9* states the functions of the commission, are to:

- undertake inquiries into economic and social issues, regulatory matters or legislation as directed by the Minister; and
- undertake research into economic and social issues, regulatory matters or legislation as directed or approved by the Minister, or on its own initiative; and
- administer, monitor and review regulatory matters as directed by the Minister; and
- provide advice to the Minister as requested.

The clause further states the commission has any other function given to it under this Act or another Act.

### **10 Powers**

*Clause 10* provides that the commission has all the powers of an individual and the powers given to it under this Act or another Act, and may do anything necessary or convenient to be done in the performance of its functions.

### **11 Authentication of documents**

*Clause 11* states that a document made by the commission is sufficiently made if it is signed by the productivity commissioner or another person authorised by the board.

## **Division 3 Board**

### **12 Establishment**

*Clause 12* establishes the board as the governing body of the commission.

### **13 Functions**

*Clause 13* states that the board's functions are to ensure the commission performs its functions in a proper, effective and efficient way.

### **14 Powers**

*Clause 14* states the board has the powers to do anything necessary or convenient to be done in the performance of its functions, including any other power given to it by an Act. This clause also provides that anything done in the name of, or for, the commission by the board is taken to have been done by the commission.

## **15 Composition**

*Clause 15* states that the board consists of at least 1 but not more than 4 persons appointed by the Governor in Council on the recommendation of the Minister under the provisions of this Act.

One of those persons must be appointed as the productivity commissioner.

The board is to be composed of the productivity commissioner and may also include up to 3 other commissioners.

The clause further provides that the Minister may recommend a person for appointment only if the Minister is satisfied the person is appropriately qualified to perform the functions of the commissioner.

“Appropriately qualified” is as defined in the *Acts Interpretation Act 1954*.

## **16 Term of appointment**

*Clause 16* states that the term of appointment for commissioners is as stated in the instrument of appointment, but must not be longer than three years. A commissioner can be reappointed at the end of their term.

## **17 Conditions of appointment**

*Clause 17* provides a commissioner is to be paid the remuneration, allowances and holds the office on conditions decided by the Governor in Council, to the extent they are not provided for in this Act.

## **18 Productivity commissioner**

*Clause 18* states the Governor in Council may appoint a commissioner to be the productivity commissioner on the recommendation of the Minister. A person may be appointed as the productivity commissioner at the same time as they are appointed as a commissioner. The productivity commissioner’s appointment ends if the person stops being a commissioner or if they resign from the office of productivity commissioner.

The person’s appointment as a commissioner does not end if they resign as productivity commissioner, as these are separate appointments under this Act (noting that a person resigns as a commissioner under clause 22).

Clause 18 also sets out the responsibility of the productivity commissioner in managing and directing the commission. The clause further provides that a person may be reappointed as productivity commissioner.

## **19 Preservation of rights**

*Clause 19* provides that if a person who is a public service officer is appointed as commissioner, that person keeps all rights accrued or accruing as a public service

officer as if their service as commissioner was a continuation of service as a public service officer. The clause also provides that at the end of the person's term as commissioner, their service as commissioner is to be taken to be service of a like nature in the public service for the purpose of deciding the person's rights as a public service officer.

## **20 Disqualification**

*Clause 20* provides for conditions where a prospective or current commissioner member may be disqualified from becoming or continuing as a commissioner. Paragraphs (a), (b) and (d) are standard provisions. Paragraph (c) ensures commissioners are not also staff members or contractors of the commission while paragraph (e) enables the Minister to disqualify a person from being a commissioner if they don't consent to a criminal history report.

## **21 Vacancy in office**

*Clause 21* states that the office of a commissioner becomes vacant if: the commissioner completes a term of office and is not reappointed; is disqualified from continuing; resigns by notice or is removed from office.

## **22 Resignation**

*Clause 22* provides that a commissioner may resign by giving the Minister a signed notice. The clause further provides that the resignation takes effect when the Minister receives the resignation, or on the day stated in the notice if a later day.

## **23 Removal**

*Clause 23* states the circumstances in which a commissioner may be removed from office by the Governor in Council on the recommendation of the Minister. Grounds for the Minister making the removal recommendation include: inappropriate or improper conduct in an official or private capacity; the person is incapable of performing the functions of the office; or the person has neglected or incompetently performed their duties as commissioner. This clause further provides that it does not limit section 25 of the *Acts Interpretation Act 1954*, which, among other provisions, provides that the power to appoint a person includes the power to suspend a person appointed to an office and to reappoint a person.

## **24 Acting commissioner**

*Clause 24* provides for the Minister to appoint a person to be an acting commissioner. The period of appointment must be for a period of not longer than 6 months but the Minister can extend the appointment for a further period of up to 6 months.

## **25 Disclosure of interests**

*Clause 25* states that a commissioner must notify the Minister of any conflict of interest that may arise in the commissioner's duties. Unless the Minister directs otherwise, the commissioner must then remove themselves from involvement in the matter.

Non-disclosure under this section does not automatically invalidate a board decision or the commissioner concerned.

This clause seeks to maintain the integrity and impartiality of the board's decisions.

## **26 Meetings and minutes**

*Clause 26* sets out how the board of the commission is to meet and how those meetings are to be conducted, including that the board must keep minutes of all board meetings.

## **Division 4 Criminal history**

### **27 Criminal history report**

*Clause 27* provides that, in deciding if a person is disqualified from becoming or continuing as a commissioner, the Minister may ask the police commissioner for a criminal history report on the person, provided the person has consented to the request being made. The clause further states that, before using such information, the Minister must disclose the information to the person and allow them a reasonable opportunity to make representations to the Minister about the information.

### **28 Changes in criminal history must be disclosed**

*Clause 28* requires commissioners to immediately give notice to the Minister if they are convicted of an indictable offence during their term of appointment. Failure to give notice is an offence with a maximum penalty of 100 penalty units.

### **29 Confidentiality of criminal history information**

*Clause 29* makes it an offence for a person who possesses criminal history information to use or, directly or indirectly, disclose to another person the criminal history information unless the use or disclosure is permitted under subsection (3). Subsection (4) requires a person who possesses a report or notice given to the Minister under clause 27 or clause 28 to destroy the report or notice as soon as practicable after it is no longer needed for the purpose for which it was given.

The word disclose is defined to include "give access to".

## **Division 5 Staff**

### **30 Staff of commission**

*Clause 30* states that the commission may employ the staff it considers appropriate to perform its functions. The clause also provides that these staff are employed under this Act and not the *Public Sector Act 2022* and that the commission's staff members are not subject to direction, about the way in which the commission's functions are to be performed, by any person other than a commissioner or a person authorised by a commissioner.

Subject to this Act (specifically clauses 47 and 48 that specify the terms and conditions of employment for transferring employees), any other Act, and any applicable industrial instruments under the *Industrial Relations Act 2016*, the conditions of employment of the staff are decided by the commission, as the occasion requires, under section 23(1) of the *Acts Interpretation Act 1954*.

## **Division 6 Miscellaneous**

### **31 Committees**

*Clause 31* provides that the commission may establish committees and decide their membership and functions. Once established, a committee may conduct its proceedings as it considers appropriate, subject to the directions of the board.

## **Part 3 Inquiries, research and administration of regulatory matters under a direction**

### **Division 1 Preliminary**

#### **32 Application of part**

*Clause 32* provides that the part applies if the Minister directs the commission under section 38 to:

- undertake an inquiry into an economic or social issue, regulatory matter or legislation; or
- undertake research into, and give advice about, an economic or social issue, regulatory matter or legislation; or
- to administer, monitor or review a regulatory matter .

### **Division 2 Inquiries and research**

#### **33 Public consultation required for inquiry**

*Clause 33* states that some type of public consultation must be undertaken by the commission in relation to an inquiry but this is subject to any requirements in the Minister's direction about the type of public consultation to be undertaken.

#### **34 Minister's response to and public availability of report for inquiry**

*Clause 34* applies if the commission gives the Minister a report about an inquiry undertaken by the commission. *Clause 34* requires the Minister to give the commission a written response to a report about an inquiry within 3 months after receiving it and that, as soon as practicable after receiving the Minister's response to the report, the commission must publish the report on its website.



### **35 Power to require information for inquiries and research**

*Clause 35* gives the commission the power to require information from relevant entities if the commission has been directed by the Minister to undertake an inquiry or undertake research and give advice.

Information is broadly defined under clause 35 to include a document or other information, but must be information that is (a) in the possession or under the control of the entity and (b) relates to the entity or a business carried out by the entity and (c) is relevant to the matter the subject of the Ministerial direction. However, a relevant entity may refuse to comply with the request if the information is subject to legal professional privilege, parliamentary privilege or public interest immunity; disclosure is prohibited under an Act; or disclosure of the report or information could reasonably be expected to prejudice the investigation of a contravention or possible contravention of a law in a particular case.

The relevant entities subject the clause is defined to include “government agencies”, as defined in clause 35, local governments and “local government companies”, as defined in clause 35.

## **Division 3 Regulatory matters**

### **36 Publication of particular matters**

*Clause 36* applies if the Minister to directs the commission to administer, monitor or review a regulatory matter under clause 38. The clause requires the commission to publish on its website any guidelines, procedures or other documents developed in relation to the regulatory matter.

## **Part 4 Research conducted on commission’s own initiative**

### **37 Undertaking research on commission’s initiative**

*Clause 37* provides that the commission may undertake self-initiated research (noting “research” is defined to include analysis) into a matter relating to economic and social issues, regulatory matters or legislation.

However, if the Commission intends to publish the results of that research (including analysis), before undertaking such research the commission must first seek the Minister’s approval by provision of a research proposal, including information setting out whether the proposed research is relevant to economic or social issues, a regulatory matter or legislation and whether it is suitable to be undertaken by the commission. After receiving the research proposal, the Minister must consider and then decide whether to approve or refuse the commission undertaking the proposed research.

In deciding whether to approve or refuse the proposed research, the Minister may amend the research proposal.

If the Minister approves the proposed research, or amended proposed research, the commission may undertake the research and prepare a report on the research and publish the report on its website. Further, the commission must provide the chief executive of the department administering the Act a copy of the report at least 10 business days before publication.

The clause provides that the commission must not publish any research undertaken on its own initiative under this clause unless the research has been approved by the Minister under this clause.

The requirement to seek the Minister's approval applies to formal research the commission wishes to undertake with the intention to publish the results, such as research papers. It is not intended the commission would need to seek the Minister's approval to publish "business as usual" material that the commission produces to support its other functions, such as productivity lecture papers or presentations, guidance and training materials for government agencies, or where the material relates to research previously approved by the Minister, such as social media references to the approved research or routine reporting.

## **Part 5 Miscellaneous provisions**

### **38 Ministerial directions**

*Clause 38* provides for the Minister to give the commission written directions about the performance of its functions or the exercise of its powers if the Minister is satisfied it is reasonably necessary to give the direction. This includes, but is not limited to, a direction to undertake inquiries or research under the commission's functions in clause 9(1)(a), (b), or (c). The direction may be to give to the Minister, or publish, reports, advice or information within a stated period, to have regard to particular matters in complying with the direction (e.g. to have regard to particular matters in undertaking an inquiry or preparing a report), or to undertake a particular type of consultation in undertaking an inquiry. However, a direction cannot be about the content of any advice or recommendation given by the commission. The clause requires the commission to comply with the direction and publish a copy of it on its website.

Pursuant to s 24AA of the *Acts Interpretation Act 1954*, the Minister may withdraw or amend the direction at any time before the Minister receives a report.

### **39 Use or disclosure of confidential information**

*Clause 39* provides for the protection of information acquired by a person performing functions under or relating to the administration of the Act, including the Minister administering the Act, a commissioner and a member of the commission's staff or a contractor of the commission. Clause 29(2) makes an offence for these persons to disclose confidential information to anyone else, or use the information, unless the use or disclosure is permitted under subsection (3). The maximum penalty for failing to comply with this requirement is 100 penalty units. Subsection (4) defines "disclose" to include "gives access to" and "information" to include a document.

#### **40 Annual report**

*Clause 40* provides what the commission's annual report, given to the Minister under section 63 of the *Financial Accountability Act 2009*, must include. Subclause (3) requires the board to approve the annual report before it is given to the Minister. Subclause (4) requires the board to ensure the information included in the annual report does not disclose confidential information without consent of the person to whom the information relates.

#### **41 Other reporting requirements**

*Clause 41* states the commission must, if requested by the Minister, keep the Minister reasonably informed about the performance of its functions and exercise of its powers. It further requires the commission to comply with a reasonable request by the Minister to give the Minister stated information at a stated time about the functions performed and powers exercised by the commission.

#### **42 Delegations**

*Clause 42* states that the board may delegate any of its functions, including its powers, to a commissioner or an appropriately qualified member of the commission's staff.

#### **43 Protection from liability**

*Clause 43* provides that an "official" being defined as the Minister, a commissioner or a member of the commission's staff, does not incur civil liability for an act done, or an omission made, honestly and without negligence under this Act. The clause provides that if a civil liability is prevented from attaching to a person under this clause, the liability instead attaches to the State.

The clause does not apply to a person who has protection from civil liability under section 269 of the *Public Sector Act 2022* by virtue of being a protected person under section 267 of that Act.

Note that this section does not disapply the protection from civil liability in section 269 of the *Public Sector Act 2022* to the extent it applies to any person, but rather, preserves that protection.

#### **44 Approved forms**

*Clause 44* provides that the commission may approve forms for use under this Act.

#### **45 Regulation-making power**

*Clause 45* states that the Governor in Council may make regulations under this Act.

## Part 6 Transitional provisions

### 46 Definition for part

Clause 46 provides that in this part, “transferring employee” is as defined in clause 47(1).

### 47 Transfer of employees

Clause 47 subsections (1) and (2) provide that the employment of a person (defined as a **transferring employee**) who was, immediately before the commencement of this Act, a public service employee employed by the department and who is mentioned in a register of transferees approved by the chief executive of the department, is transferred from the department to the commission.

Under subsection (2) a transferring employee becomes a member of the staff of the commission, as if the transferee staff member had been employed under clause 30, meaning the person is employed under this Act rather than the *Public Sector Act 2022*.

However, the transferring employee’s employment under subsection (2) is subject to subsections (3), (4) and (5) and clause 48. Under subsection (3), to the extent an industrial instrument (as defined in schedule 5 of the *Industrial Relations Act 2016*) applied to the transferring employee immediately before the commencement, the industrial instrument is taken to apply to the commission in place of the department.

The industrial instruments that apply to transferring employees under this clause will bind the commission under the industrial law, as defined in schedule 5 of the *Industrial Relations Act 2016*, until an industrial instrument is made following commencement that applies to transferring employees and the commission, as stated in subsection (6).

To the extent an industrial instrument that applies under this clause is amended after the commencement of the Bill, the industrial instrument applies as amended. Where an industrial instrument that applies under this clause is revoked, it will no longer apply. Where an applying industrial instrument is replaced, the industrial instrument that replaces that industrial instrument will apply under this clause.

At the time of commencement, it is understood that the industrial instruments that will apply to the transferring employees under this clause are the *State Government Entities Certified Agreement 2023* and the *Queensland Public Service Officers and Other Employees Award – State 2015*. This does not limit the industrial instruments that may be applied under this clause.

Nothing in clause 47 or clause 48 prevents a transferring employee from choosing to take up employment with the commission under different conditions of employment after the commencement. If a transferring employee chooses to be employed by the commission under different conditions, e.g. under a contract, the arrangements under clauses 47 and 48 will no longer apply to a transferring employee. However, that will only occur where the transferring employee agrees to be employed by the commission on different conditions.

Subsection (4) preserves the operation of any fixed term contract that was in effect in relation to a transferring employee immediately before the commencement.

Under subsection (5) the transfer of employment does not:

- affect the transferee staff member's benefits, entitlements or remuneration;
- prejudice the staff member's existing or accruing rights to superannuation or recreation, sick, long service or other leave;
- interrupt continuity of service, except that the staff member's is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service;
- constitute a termination of employment by the department or a retrenchment or redundancy; or
- entitle the staff member to a payment or other benefit from the State because the staff member is no longer employed by the department.

#### **48 Application of directives to transferring employees**

*Clause 48* states that it applies if an existing directive applied to a transferring employee immediately before the commencement. An existing directive includes a directive made under the *Public Sector Act 2022* and a continued directive under the *Public Sector Act 2022* sections 307 or 308 (these are directives made under the repealed *Public Service Act 2008* that continue to apply under transitional provisions in the *Public Sector Act 2022*).

Clause 48 provides that existing directives continue to apply to transferring employees until the directive is revoked or replaced by a directive made after commencement. It also provides that to the extent a change to an existing directive takes effect after commencement, the change applies for the purposes of the directive's application under the clause.

A range of directives apply to the transferring employees as public service officers. The intent of this clause is to preserve the application of those directives, to the extent those directives continue to otherwise apply (i.e. the directives no longer apply if revoked) or in the manner those directives continue to otherwise apply (i.e. the directives apply as amended if amended).

Clause 48 preserves the operation of sections 228 and 229 of the *Public Sector Act 2022* in relation to directives that apply to transferring employees under the clause. Section 228 provides that if a directive is inconsistent with an Act or subordinate legislation, the Act or subordinate legislation prevails over the directive to the extent of any inconsistency. Section 229 provides that if a directive deals with a matter all or part of which is dealt with in an industrial instrument, the industrial instrument prevails to the extent of any inconsistency. Both these sections provide that the directive should not be regarded as inconsistent to the extent the directive is at least as favourable with the Act, subordinate legislation or industrial instrument.

#### **Clause 49 Transfer of particular records to commission**

*Clause 49* requires the chief executive to give each "relevant public record" to the commission.

A “relevant public record” is defined to be a public record under section 9 of the *Public Records Act 2023* that falls under one of a number of limbs designed to capture public records relevant to the functions of the commission, including public records related to transferring employees to enable their employment to be transferred to the commission without interruption.

The clause does not limit the application of the *Public Records Act 2023* to a relevant public record (all other obligations under that Act are preserved).

## **Schedule 1 Dictionary**

This schedule contains the dictionary which defines particular words used in the Act.

*regulatory matter* may also capture within its scope relevant non-legislative rules, instruments and standards.