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Department of the
Premier and Cabinet

28 MAY 2018

Mr Linus Power MP
Chair
Economics and Governance Committee
egc@parliament.qld.gov.au

Dear Mr Power

Thank you for your letter of 18 May 2018 concerning the Economics and Governance Committee's (the Committee) inquiry into the Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 (the Bill).

As requested, please find enclosed a written briefing on the Bill for the Committee's consideration.

The Department of the Premier and Cabinet will be pleased to provide a briefing to the Committee on 4 June 2018. Details of the departmental officers attending the briefing have been provided to the Committee Secretariat by email.

The Acting General Manager (Government Services), [REDACTED], is the Department of the Premier and Cabinet's contact for the Bill. [REDACTED] can be contacted on telephone [REDACTED] or by email at [REDACTED].

Yours sincerely

Dave Stewart
Director-General

***Encl**

Briefing for the Economics and Governance Committee (the Committee)

Ministerial and Other Office Holder Staff and Other Legislation Amendment Bill 2018 (the Bill)

Background and policy intent

In December 2017, administrative procedures were implemented by the Director-General of the Department of the Premier and Cabinet (the Director-General) and the Clerk of the Parliament (the Clerk) to conduct criminal history checks for ministerial and Parliamentary Service staff. However, this has been considered an interim arrangement pending legislative changes to provide a specific head of power to conduct the checks.

The extent of the legislative power to be provided to the Director-General and the Clerk is similar to that currently provided to chief executive officers for Queensland Government departmental employees under the *Public Service Act 2008*.

Policy objectives

The policy objectives of the Bill are to:

- provide the Director-General 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
- provide the Clerk with explicit power to conduct criminal history checks to assess the suitability of a person to be engaged in the Parliamentary Service (including in an Electorate Office)
- amend the plan details of the parliamentary precinct outlined in the *Parliamentary Service Act 1988*
- make some minor updates to references in the *Parliament of Queensland Act 2001*.

Amendments in the Bill

To achieve the policy objectives the Bill amends:

- the *Ministerial and Other Office Holder Staff Act 2010* to provide the Director-General 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
- the *Parliamentary Service Act 1988* to provide the Clerk with explicit power to conduct criminal history checks to assess the suitability of a person to be engaged in the Parliamentary Service
- the plan details of the parliamentary precinct outlined in the *Parliamentary Service Act 1988*
- the *Parliament of Queensland Act 2001* to replace a reference to ‘Votes and Proceedings’ with ‘Record of Proceedings’ and to reflect that the monitoring of form making by the Parliament’s portfolio committees relates to provisions in the *Acts Interpretation Act 1954*.

Additional information is provided below on the specific matters raised by the Committee.

Committee comment

The Bill provides that the Clerk may ask the Police Commissioner or another entity for a written report about a person's criminal history. Information given to the Police Commissioner to request a report must not be accessed, disclosed or used for any purpose other than a purpose under the relevant provisions or relevant to law enforcement. If after asking the Police Commissioner for a report the Clerk decides it is no longer required, he must tell the Police Commissioner in writing, and the Police Commissioner must not provide the report. There are no provisions regarding the access, disclosure or use of information by another entity or to tell another entity that a report is no longer required. Can you please provide the Committee with examples or who 'another entity' may be and what safeguards will apply to protect personal information provided to the entity.

Department of the Premier and Cabinet (DPC) response

In late 2017, the Clerk was made aware that a person with previous convictions had been employed by the Parliamentary Service. Following the incident, the Clerk instituted administrative policies and procedures to provide for voluntary criminal history checking for Parliamentary Service staff (including Electorate Office staff), with an entity other than the Police Commissioner.

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 NPCS in order to provide criminal history reports.

In accordance with the contract, the Clerk has conducted criminal history checks, with the consent of each person, on all Parliamentary Service staff employed since 1 January 2017. The Clerk is also conducting checks, again with consent, on all prospective Parliamentary Service staff.

In the development of the Bill, the Clerk informed DPC that he wished to be able to:

- ask the Police Commissioner for a report about a person's criminal history or
- continue to use the services of the accredited agency under the amendments to the *Parliamentary Service Act 1988*.

This would give the Clerk flexibility to ask the Police Commissioner or an accredited entity for a person's criminal history report. The Government agreed to the Clerk's requests and provision has been made in the Bill.

DPC 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.

Committee comment

The Bill provides that the prosecuting authority must give the Director-General or Clerk notice in a range of circumstances and prescribes the information that must be given. If a prosecution for an indictable offence ends without the person being convicted of the offence the Bill provides that among other information the prosecuting authority must provide ‘the date of committal’ and ‘the court to which the person was committed’. The requirement to provide this information appears inconsistent with the intent of the provision and is inconsistent with the equivalent provision in the *Public Service Act 2008* (the PSA), which requires the provision of the ‘date the prosecution process ended’. Can you please advise if there is a drafting error, or provide the rationale for the difference between the equivalent provisions in the Bill and the PSA?

DPC’s response

DPC acknowledges that there is an 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.

Committee comment

The PSA requires a public service employee who is charged with an indictable offence to immediately give the chief executive notice of the charge, however, there are no equivalent provisions proposed in the Bill for ministerial and other office holder staff. As there may be a substantial delay between the time a person is charged with an offence and the time they are committed to stand trial, if there is no obligation to notify the Director-General or Clerk of the charge a person may continue to perform relevant duties without the Director-General or Clerk being aware of the charge and having the option to take appropriate steps. Can you please explain how this will be managed in practice, and provide the rationale not including requirements equivalent to those in the PSA for ministerial and other office holder staff to notifying if they are charged with an indictable offence?

DPC’s response

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.

The Bill also contains a requirement for the Police Commissioner or the Director of Public Prosecutions to notify the Director-General or the Clerk if a person employed as a staff member is charged with an indictable offence.