



# **Parliament of Queensland and Other Acts Amendment Bill 2015**

**Report No. 2, 55<sup>th</sup> Parliament  
Finance and Administration Committee  
May 2015**

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## Finance and Administration Committee

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### Acknowledgements

The Committee thanks those who briefed the Committee, made submissions, gave evidence and participated in its inquiry. In particular the Committee acknowledges the assistance provided by the Department of the Premier and Cabinet.

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## Abbreviations

ALA	Australian Lawyers Alliance
ART	Accountability Round Table
CLA	Committee of the Legislative Assembly
DPC	Department of the Premier and Cabinet
FAC	Finance and Administration Committee
FLP	Fundamental Legislative Principles under the <i>Legislative Standards Act 1992</i>
LOTH	Leader of the House
MP	Member of Parliament
OQPC	Office of the Queensland Parliamentary Counsel
SLC	Former Scrutiny of Legislation Committee

## Glossary

Acts	All Acts referred to in this report refer to Queensland Acts unless otherwise specified
citations used in this report	The citations and hyperlinks used in the report are all current as at 6 May 2015.
cross bench Member	means a member of the Assembly who is neither a government member nor an opposition member
the Bill	<i>Parliament of Queensland and Other Acts Amendment Bill 2015</i>
the Committee	Finance and Administration Committee
the Tribunal	Queensland Independent Remuneration Tribunal





## Chair's Foreword

This report presents a summary of the Committee's examination of the *Parliament of Queensland and Other Acts Amendment Bill 2015*.

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

The public examination process allows the Parliament to hear views from the public and stakeholders, which should make for better policy and legislation in Queensland.

The objective of the Bill, as outlined in the Premier's introductory speech, has the following three major purposes:

- the first is to restore autonomy to the position of Speaker within the parliament by returning responsibility for the management of the Parliamentary Service to the Speaker;
- the second is to enable a crossbench member to be included on the membership of the Committee of the Legislative Assembly and to provide the Speaker with a deliberative vote on all questions at CLA meetings and a casting vote in the case of a tied vote;
- and the third is to retrospectively revoke determination 7/2015 of the Queensland Independent Remuneration Tribunal and to outline a new process for the tribunal to follow in making determinations about salary entitlements for members of the Legislative Assembly.

The Bill amended the four Acts – *Financial Accountability Act 2009*; *Parliamentary Service Act 1988*; *Parliament of Queensland Act 2001*; and *Queensland Independent Remuneration Tribunal Act 2013*.

The Committee worked diligently and with good will on all sides in order to try to achieve consensus agreement on all aspects of the Bill. However, during its consideration of the Bill it became apparent that the Committee would be unable to reach agreement on all issues, including whether to recommend whether the Bill be passed. The government members accepted the Bill should pass with amendments. The non-government members considered that additional amendments would be required before they could support the Bill.

The Committee was able to reach consensus agreement on the amendments to three of the four Acts but did not reach agreement on the proposed amendments to the Queensland Independent Remuneration Tribunal Act.

The Committee has made two recommendations. These recommendations are related to cross bench Member representation on the CLA.

After lengthy discussion and consideration, the Committee was also able to agree on the contents of the report, which contains details of the evidence provided to the Committee and the views of both government and non-government Members, for consideration by the Parliament during the second reading debate.

For the benefit of Members, the Committee has included, in section 6.1 of the report, a brief history of the Queensland Independent Remuneration Tribunal, its Act and motives for its inception in 2013 as the Committee felt that these provide an important context to the considerations of this Bill.

On behalf of the Committee, I would like to thank those that took the time to provide submissions, who met with the Committee and provided additional information during the course of this inquiry. I would also like to thank the departmental officers for their cooperation in providing information to the Committee on a timely basis.

Finally, I would like to thank the other Members of the Committee for both their active participation and willingness to think critically through the all of the issues raised in the Bill.



Di Farmer MP  
Chair

May 2015

## Recommendations

The Committee has made the following recommendation:

### **Recommendation 1**

**13**

The Committee recommends that, should the Bill reach the second reading stage in the Parliament, clause 24 be amended to reflect that the cross bench Members are to select their representative on the CLA, in consultation with the LOTH; but it needs to be explicit that the LOTH has no vote in this process; however, in the event that the cross bench Members are unable to reach agreement, by majority, on who that representative is, then the LOTH has the power to make the decision.

### **Recommendation 2**

**13**

The Committee recommends that, should the Bill reach the second reading stage in the Parliament, it should be amended to reflect the intention that the cross bench Member would be an additional member of the CLA to make it an eight member committee.



## 1 Introduction

### 1.1 Role of the Committee

The Finance and Administration Committee (the Committee) is a portfolio committee established by the *Parliament of Queensland Act 2001* and the Standing Orders of the Legislative Assembly on 26 March 2015.<sup>1</sup> The Committee's primary areas of responsibility are:

- Premier, Cabinet and the Arts; and
- Treasury, Employment, Industrial Relations, Aboriginal and Torres Strait Islander Partnerships.

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio area to consider –

- a) the policy to be given effect by the legislation;
- b) the application of fundamental legislative principles to the legislation; and
- c) for subordinate legislation – its lawfulness.

Standing Order 132(1) provides that the Committee shall:

- a) determine whether to recommend that the Bill be passed;
- b) may recommend amendments to the Bill; and
- c) consider the application of fundamental legislative principles contained in Part 2 of the *Legislative Standards Act 1992* to the Bill and compliance with Part 4 of the *Legislative Standards Act 1992* regarding explanatory notes.

Standing Order 132(2) provides that a report by a portfolio committee on a bill is to indicate the Committee's determinations on the matters set out in Standing Order 132(1).

Standing Order 133 provides that a portfolio committee to which a bill is referred may examine the Bill by any of the following methods:

- a) calling for and receiving submissions about a bill;
- b) holding hearings and taking evidence from witnesses;
- c) engaging expert or technical assistance and advice; and
- d) seeking the opinion of other committees in accordance with Standing Order 135.

### 1.2 Referral

The Premier and Minister for the Arts introduced the *Parliament of Queensland and Other Acts Amendment Bill 2015* (the Bill) to the Legislative Assembly on 27 March 2015. The Bill was referred to the Committee. The Legislative Assembly agreed to a motion requiring the Committee to report to the Legislative Assembly by Friday 8 May 2015.

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<sup>1</sup> *Parliament of Queensland Act 2001*, s88 and Standing Order 194

### 1.3 Committee Process

The Committee's consideration of the Bill included calling for public submissions, a public departmental briefing and a public hearing. The Committee also sought additional written advice from the department.

The Committee considered expert advice on the Bills' conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

### 1.4 Submissions

The Committee advertised its inquiry into the Bill on its webpage on 27 March 2015. The Committee also wrote to stakeholder groups inviting written submissions on the Bill.

The closing date for submissions was Monday 27 April 2015. The Committee received five submissions. A list of those who made submissions is contained in Appendix A. Copies of the submissions are published on the Committee's website and are available from the Committee secretariat.

### 1.5 Public departmental briefing

The Committee held a public departmental briefing on the Bill with officers from the Department of the Premier and Cabinet on Friday 10 April 2015. A list of officers who gave evidence at the public departmental briefing is contained in Appendix B. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat. The Committee also sought additional written information from the department subsequent to the briefing.

### 1.6 Public hearing

On Monday 27 April 2015, the Committee held a public hearing on the Bill with representatives from individuals and organisations who provided submissions. A list of representatives who gave evidence at the hearing is contained in Appendix C. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat.

### 1.7 Policy objectives of the Parliament of Queensland and Other Acts Amendment Bill 2015

The Bill will amend the following Acts:

- *Financial Accountability Act 2009*
- *Parliamentary Service Act 1988*
- *Parliament of Queensland Act 2001*
- *Queensland Independent Remuneration Tribunal Act 2013*

The objective of the Bill, as outlined in the explanatory notes, is to:

- *restore autonomy to the position of Speaker by making the Speaker, rather than the Committee of the Legislative Assembly (CLA), responsible for the management of the Parliamentary Service, including its budget;*
- *provide the Speaker with a deliberative vote at CLA meetings on questions regarding all of the CLAs remaining responsibilities and a casting vote in the case of a tied vote;*
- *provide that the Speaker, rather than the Leader of the House, is responsible for calling CLA meetings and setting the agenda;*
- *allow a cross bench member to be included on the membership of the CLA;*
- *increase the quorum at a CLA meeting from four to five members;*

- *give the CLA responsibility for any matter referred to it by the Speaker;*
- *retrospectively overturn Determination 7/2015 of the Queensland Independent Remuneration Tribunal (the Tribunal) which grants a 2.58% salary increase to members of the Legislative Assembly (MPs) from 6 April 2015;*
- *allow the Clerk of the Parliament (the Clerk) to recover the salary overpayments to MPs that will accrue until such time as the Tribunal's determination is overturned;*
- *place a limit on the Tribunal so that it cannot determine percentage salary increases to MPs greater than percentage salary increases received by public servants; and*
- *provide that within 90 days of a public service salary increase being announced, the Tribunal must make a decision on the extent of any salary increase for MPs and that if an increase is determined by the Tribunal for MPs, it must take effect from the same date as the public service salary increase.<sup>2</sup>*

## 1.8 Outcome of Committee deliberations

Standing Order 132(1)(a), requires that the Committee examine the Bill and determine whether to recommend that the Bill be passed. During its consideration of the Bill it became apparent that the Committee would be unable to reach agreement on this issue. The government members accepted the Bill should pass with amendments. The non-government members considered that additional amendments would be required before they could support the Bill.

Whilst the Committee did not reach agreement on whether to recommend that the Bill be passed, it reached consensus agreement on the proposed amendments to the *Financial Accountability Act 2009*, the *Parliamentary Service Act 1988* and the *Parliament of Queensland Act 2001*, subject to the recommendation included in section 5.5 of this report.

The Committee did not agree on the proposed amendments to the *Queensland Independent Remuneration Tribunal Act 2013*. The reasons for this are outlined in section 6 of this report.

## 2 Examination of the *Parliament of Queensland and Other Acts Amendment Bill 2015 – Preliminary*

### 2.1 Background

When the Premier and Minister for the Arts, Hon A Palaszczuk MP, introduced the legislation, she stated:

*The bill has three major purposes: the first is to restore autonomy to the position of Speaker within the parliament by returning responsibility for the management of the Parliamentary Service to the Speaker; the second is to enable a crossbench member to be included on the membership of the Committee of the Legislative Assembly and to provide the Speaker with a deliberative vote on all questions at CLA meetings and a casting vote in the case of a tied vote; and the third is to retrospectively revoke determination 7/2015 of the Queensland Independent Remuneration Tribunal and to outline a new process for the tribunal to follow in making determinations about salary entitlements for members of the Legislative Assembly.<sup>3</sup>*

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<sup>2</sup> *Parliament of Queensland and Other Acts Amendment Bill 2015*, Explanatory Notes, March 2015: 1-2

<sup>3</sup> Queensland Legislative Assembly, Hon A Palaszczuk MP, Premier and Minister for the Arts, Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 231-232



The explanatory notes identify that during the election campaign, the Australian Labor Party released a policy which included a commitment that the autonomy of the Speaker in Parliament would be restored.<sup>4</sup>

The explanatory notes also state that the Premier and Minister for the Arts, then as Leader of the Opposition, announced:

*...under a Labor Government future salary increases for MPs would be linked to salary increases for public sector employees.<sup>5</sup>*

The Premier and Minister for the Arts, in her introduction speech confirmed that she committed, in a letter to the Speaker dated 5 February 2015, to amending the Parliament of Queensland Act to ensure that the membership of the CLA includes a member from the cross benches.<sup>6</sup>

In regard to the proposed amendments to the Queensland Independent Remuneration Tribunal Act, the Premier and Minister for the Arts stated:

*I advocated for the establishment of a tribunal when the issue of members' salaries became quite a topic of public debate in 2013. The principle of linking MPs' salary increases to that of public sector employees was enshrined in a policy that I announced during the election campaign, and today I intend to honour this pledge and commitment to Queenslanders. While the tribunal's determinations are legally binding and are not subject to disallowance or amendment by the parliament, the parliament can overturn a tribunal determination by a retrospective act of parliament. This was outlined to the parliament by the former Premier when the tribunal's legislation was introduced in 2013 and reflects that the parliament is the supreme lawmaking body of this state.*

*The tribunal's recent determination of a 2.58 per cent salary increase for members from 6 April 2015 does not accord with the next salary increase that public sector employees in core departments of the government are scheduled to receive. As I have said, I have made a commitment to Queenslanders that future salary increases for members will be linked to public sector employees, and I intend to keep this pledge. To this end, the bill provides for the retrospective revocation of determination 7/2015 made by the tribunal on 5 March 2015. Once the bill becomes law, the determination will be taken to never have had effect.<sup>7</sup>*

## 2.2 Alternative ways of achieving policy objectives

The explanatory notes state that there is no alternative method of achieving the policy objectives as each objective requires the amendment of existing legislation.<sup>8</sup>

With regard to the amendments to the Queensland Independent Remuneration Tribunal Act, the Tribunal itself proposed what it considered to be an alternate way of achieving the policy objectives would be to amend section 29 of the Act. The Tribunal advised the Committee:

*The Tribunal suggests there is perhaps another way to enshrine the intent of the Government's policy reform. The benchmark of the public service wage conditions could be embedded with section 29 of the Act which deals with the principles and factors the Tribunal must have regard to when making decisions.<sup>9</sup>*

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<sup>4</sup> Parliament of Queensland and Other Acts Amendment Bill 2015, Explanatory Notes, March 2015: 2

<sup>5</sup> Parliament of Queensland and Other Acts Amendment Bill 2015, Explanatory Notes, March 2015: 3

<sup>6</sup> Queensland Legislative Assembly, Hon A Palaszczuk MP, Premier and Minister for the Arts, Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 232

<sup>7</sup> Queensland Legislative Assembly, Hon A Palaszczuk MP, Premier and Minister for the Arts, Introduction, *Parliamentary Debates (Hansard)*, 27 March 2015: 232

<sup>8</sup> Parliament of Queensland and Other Acts Amendment Bill 2015, Explanatory Notes, March 2015: 4

<sup>9</sup> Submission 2: 2

At the Committee's hearing, the Tribunal confirmed that:

*Section 29 of the act basically directs the types of factors that the tribunal must take into account when reaching a decision. We have already implicitly been considering where Public Service salaries have been in our determinations to date and, indeed, I think if you have a look at determination 1 there is a very extensive discussion and comparison in there. Section 29 would provide explicit direction to the tribunal in that regard. It would not necessarily guarantee the outcome, which I understand the current legislation is seeking to do, but it would certainly put in very bright lights the need to explicitly consider public sector salary rises as future determinations are made. I think it is a softer way, perhaps, to achieve the objective.*

This issue will be considered further in section 6 of this report.

### **2.3 Committee comments – Alternate ways of achieving policy objectives**

The Committee acknowledged that legislation was the only way of achieving the policy objectives. However, the Committee considered the Tribunal's suggestion that a compromise solution was to amend section 29 of the Act to embed the requirement that the Tribunal have regard to the benchmark of the public service wage conditions when making determinations.

The government Members considered that Tribunal's suggestion did not ensure that the intent of the government's commitment would be adhered to.

The non-government Members considered that embedding this requirement in section 29 was a good compromise solution as it would address the Premier's election commitment without impacting on the independence of the Tribunal. The non-government Members also noted that witnesses at the Committee's public hearing agreed that this was a good solution.

The non-government Members suggested that the wording of section 29 could be amended to replace the word 'may' with 'will' in terms of what the Tribunal has regard to. They considered that, together with the above, this amendment would sufficiently strengthen the requirement.

### **2.4 Stakeholder consultation**

The explanatory notes state that the following were consulted during the drafting of the Bill:

- Clerk of the Parliament
- QSuper
- Queensland Independent Remuneration Tribunal (the Tribunal)
- Queensland Treasury<sup>10</sup>

The Committee sought additional information regarding the results of the consultation. The department provided a summary of the feedback it received. A copy of this information is included in Appendix D.

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<sup>10</sup> *Parliament of Queensland and Other Acts Amendment Bill 2015, Explanatory Notes, March 2015: 4*

## 2.5 Estimated Cost of government Implementation

The explanatory notes identify that the Bill will:

*...result in relatively minor cost, if at all, given the potential for an additional salary to have to be paid to the cross bench member appointed to the CLA.<sup>11</sup>*

The explanatory notes further identify that, if necessary, the funding matter will be dealt with as part of the 2015-16 Budget process.<sup>12</sup>

The Committee was advised that by ‘relatively minor costs’ it is meant that the additional salary for a committee member is approximately \$23,000 a year and the department deemed this amount to be a relatively minor cost. The department advised that in consultations with the Clerk it found that these costs could be met within the existing budget allocated for the Parliament.<sup>13</sup>

The department also advised that it was considered likely that the alternate would already hold another position and would already be receiving an additional salary and therefore would not have to be paid for their representation on the CLA.<sup>14</sup>

## 2.6 Consistency with legislation of other jurisdictions

The explanatory notes state that the Bill is specific to the State of Queensland.<sup>15</sup>

## 2.7 Commencement

The Bill does not specify a commencement date.

# 3 Examination of the *Parliament of Queensland and Other Acts Amendment Bill 2015 – Amendments to Financial Accountability Act 2009 – Clauses 2 and 3*

The Bill amends Part 2 of the *Financial Accountability Act 2009* by omitting reference to the ‘Committee of the Legislative Assembly under the Parliamentary Service Act 1988’ as the Committee of the Legislative Assembly (CLA) will no longer have administrative powers under the *Parliamentary Service Act 1988*, thus rendering mention in this section redundant.

## 3.1 Committee comments – Clauses 2 and 3

The Committee considers the proposed amendment to the *Financial Accountability Act 2009* to be of a technical nature and relate to the proposed amendments to the *Parliamentary Service Act 1988*.

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<sup>11</sup> *Parliament of Queensland and Other Acts Amendment Bill 2015*, Explanatory Notes, March 2015: 4

<sup>12</sup> *Parliament of Queensland and Other Acts Amendment Bill 2015*, Explanatory Notes, March 2015: 4

<sup>13</sup> Mr Timperley, Transcript 10 April 2015: 3

<sup>14</sup> Mr Timperley, Transcript 10 April 2015: 3

<sup>15</sup> *Parliament of Queensland and Other Acts Amendment Bill 2015*, Explanatory Notes, March 2015: 4

#### **4 Examination of the *Parliament of Queensland and Other Acts Amendment Bill 2015 – Amendments to Parliamentary Service Act 1988 – Clauses 4 to 20***

The Bill amends Part 3 of the *Parliamentary Service Act 1988*. The proposed amendments will:

- omit the definitions of the CLA and the Office of the Speaker as these definitions will be no longer required as the Speaker rather than the CLA, will be responsible for the management of the Parliamentary Service;
- omit sections 4A and 4B which contain the roles and functions of the CLA, Speaker and Clerk and details of the requirements with respect to the performance of the CLA's functions after expiry or dissolution of the Legislative Assembly;
- replaces Part 2 which contains the Administrative functions of the CLA and Speaker;
- amends various sections to omit references to the CLA and replaces those references with the Speaker in order to reflect that the Speaker rather than the CLA has certain functions and responsibilities under the Act; and
- puts in place transitional provisions.

The department advised the Committee that the proposed amendments transfer the powers and responsibilities under the *Parliamentary Service Act 1988* back to the position of Speaker as they were vested in the Speaker before the parliament transferred them in August 2011. The exception to this is that the Clerk of the Parliament will remain the employing authority for Parliamentary Service officers and employees.<sup>16</sup>

The Australian Lawyers Alliance (ALA) advised the Committee that they respect the government's decision that the Clerk of the Parliament should remain as the employing authority for the CLA, Parliamentary Service officers and employees as has been the case since 2011.<sup>17</sup>

The Hon Jim Fouras AM, former Speaker of the Queensland Parliament, advised the Committee that he enthusiastically supports both the first and second primary objectives of the Bill as outlined by the Premier in her introductory speech.<sup>18</sup> Hon Fouras advised the Committee:

*The separation of the powers and functions of the parliament, executive government and the judiciary provides the fundamental checks and balances in any truly democratic society.*<sup>19</sup>

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<sup>16</sup> Mr Craig, Transcript 10 April 2015: 2

<sup>17</sup> Submission 1: 4

<sup>18</sup> Submission 3: 1

<sup>19</sup> Submission 3: 7

The Accountability Round Table (ART) also welcomed the legislation stating that it is:

*...designed to restore the traditional role of the Speaker in the administration and management of the Parliament, its buildings and ancillary services. The previous legislation that displaced Speaker from this role and gave it instead to the Committee of the Legislative Assembly (CLA) in fact gave the government of the day control over the management and operations of the Parliament, because of the way the CLA was then structured. Removal of the Speaker from this role was never justified. It was contrary to the historical role of the Speaker and provided the executive government with control of the seat of the legislature. The new amendments will fortify the autonomy of the Speaker and provide an important element of the separation of the powers of the government and the legislature – one of the few such remaining in our modern parliaments.<sup>20</sup>*

The Clerk of the Parliament's submission identifies that structures for the administration of parliaments are varied and usually moulded around the nature of the parliament itself. He advised that, in theory, given the Queensland Parliament is unicameral and medium in size its management structure should be relatively simple. He noted that whilst a management committee comprising the most senior members of the government and opposition is arguably not an effective use of the time of those members, it does have some significant potential to enable long term planning and funding for the parliamentary service with bipartisan support.<sup>21</sup>

The Clerk advised the Committee that one of the positive aspects from the 2011 reforms, which has been maintained, is that the Clerk is the primary employing authority for the Parliamentary Service. He advised that:

*There were a number of difficulties with the Speaker being the employing authority under the pre 2011 structure. For example, under the pre-reform structure, the Clerk could not suspend or dismiss officers (the majority of staff including electorate officers). The power to suspend or dismiss officers lay with the Speaker. The difficulty with this was that the Speaker was also the body to whom appeals regarding promotions and disciplinary action lay. Furthermore, under the pre 2011 structure, the Clerk could not deal effectively with disputations without the Speaker's approval. There were instances where resolution of disputations became irregular because of this cumbersome process and there was potential for escalation of matters.<sup>22</sup>*

#### **4.1 Clause 7 – Replacement of part 2 (Administrative functions of the CLA and Speaker)**

Clause 7 proposes to omit Part 2 and replace it with a new Part 2. Clause 7 inserts new sections 5, 6, 7, 8, 9 and 10 as follows:

##### **Part 2 Administrative functions of the Speaker**

##### **5 Administration under Speaker's control**

The Speaker has the control of—

- (a) accommodation and services in the parliamentary precinct; and
- (b) accommodation and services supplied elsewhere by the Legislative Assembly for its members.

##### **6 Speaker's role for parliamentary service**

The general role of the Speaker in relation to the parliamentary service is to—

- (a) decide major policies to guide the operation and management of the parliamentary service; and
- (b) prepare budgets; and

<sup>20</sup> Submission 4: 1

<sup>21</sup> Submission 5: 1-2

<sup>22</sup> Submission 5: 2

(c) decide the size and organisation of the parliamentary service and the services to be supplied by the parliamentary service; and

(d) supervise the management and delivery of services by the parliamentary service.

**7 Speaker's powers for administrative functions**

(1) This section declares the powers and legal capacity of the Speaker in performing the administrative functions of the Speaker's office, including the Speaker's role in relation to the parliamentary service.

(2) The powers include all the powers, and the legal capacity, that an individual has in a private capacity.

(3) The powers may be exercised at any place.

(4) The powers are exercised for the Legislative Assembly.

(5) This section does not limit the Speaker's powers.

*Example—*

This part does not affect any power the Speaker has apart from this section to bind the Legislative Assembly by contract.

**8 Delegation by Speaker**

The Speaker may delegate the Speaker's functions under this Act to the Deputy Speaker, the Clerk or a parliamentary service officer or employee.

**9 Advisory committee to Speaker**

(1) The Speaker may establish a committee of members of the Legislative Assembly (the **advisory committee**) to advise the Speaker on issues arising under this Act referred to it by the Speaker.

(2) The advisory committee consists of the members appointed by the Speaker.

(3) This section is subject to the standing rules and orders.

**10 Speaker's annual report**

As soon as possible after the end of each financial year, the Speaker must prepare, and table in the Legislative Assembly, a report on this Act's operation during the year.

The explanatory notes identify that the new Part 2 provides for the administrative functions of the Speaker and reflects that the CLA will no longer have administrative functions under the Act.

The department confirmed that the general role of the Speaker under the Parliamentary Service Act will be to:

- decide major policies;
- guide the operation and management of the Parliamentary Service;
- prepare budgets;
- decide the size and organisation of the Parliamentary Service;
- decide the services to be supplied by the Parliamentary Service; and
- supervise the management and delivery of services by the Parliamentary Service.<sup>23</sup>

The ALA, in their submission, welcomed and supported the implementation of the amendments proposed in clause 7. They stated that these sections reinstate the Speaker's powers in relation to the administration under the Speaker's control. They advised that these powers have traditionally been held by the Speaker and the transfer of these responsibilities from the CLA reaffirms the independence and autonomy of the Speaker.<sup>24</sup>

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<sup>23</sup> Mr Craig, Transcript 10 April 2015: 2

<sup>24</sup> Submission 1: 4

The ALA supported the CLA retaining its other responsibilities including policy regarding the ethical conduct of representatives, parliamentary powers, rights and immunities, Standing Orders and monitoring and reviewing the business of the House and committees.<sup>25</sup>

#### 4.2 Committee comments – Clause 7

The Committee supports the proposed changes to the *Parliamentary Service Act 2001*. The Committee supports the transfer of the powers and responsibilities under the Act back to the Speaker. The Committee also supports the intention that the Clerk is the primary employing authority for the Parliamentary Service.

## 5 Examination of the *Parliament of Queensland and Other Acts Amendment Bill 2015 – Amendments to Parliament of Queensland Act 2001 – Clauses 21 to 28*

Part 2 of the *Parliament of Queensland Act 2001* relates to the CLA including establishment, membership, chair, meetings, role and areas of responsibility.

The Bill proposes to amend the Act to allow for a cross bench member to be included in the membership of the CLA.

### 5.1 Clause 23 – Amendment of section 79 (Definitions for Chapter 5)

Clause 23 proposes to insert the following definitions:

- **cross bench member** means a member of the Assembly who is neither a government member nor an opposition member.
- **government member** means a member of the Assembly who is a member of a political party recognised in the Assembly as being in government.
- **non-government member** means an opposition member or a cross bench member.
- **opposition member** means a member of the Assembly who is a member of a political party recognised in the Assembly as being in opposition.

It should be noted that clause 28 amends the schedule (Dictionary) to include the definitions for the above and referencing section 79. The definitions for government member and non-government member are omitted under clause 27 which omits section 90.

The department confirmed that the changes to the definitions were made to include a new definition of cross bench member'. They noted that it was not something that was previously countenanced in the Parliament of Queensland Act.<sup>26</sup>

### 5.2 Clause 24 – Amendment of section 81 (Membership)

Section 81 of the Act sets out the Membership of the CLA. The CLA currently comprises:

- the Leader of the House or alternate;
- the Premier or alternate;
- the Deputy Premier or alternate;
- the Manager of Opposition Business or alternate;

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<sup>25</sup> Submission 1: 4

<sup>26</sup> Mr Timperley, Transcript 10 April 2015: 5

- the Leader of the Opposition or alternate;
- the Deputy Leader of the Opposition or alternate;
- the Speaker or alternate.

Clause 24 proposes to amend section 81 to allow for a cross bench member to be included in the membership of the CLA. The amendment to insert additional subsections (h) and (i) as follows in section 81:

- (h) if there are 2 or more members of the Assembly who are cross bench members—
  - (i) a cross bench member nominated by the Leader of the House; or
  - (ii) another cross bench member nominated by the cross bench member mentioned in subparagraph (i) to be that member's alternate;
- (i) if there is 1 and only 1 member of the Assembly who is a cross bench member—that member.

It should be noted that section 81(2) includes the definition of 'alternate', in relation to this section, to be as follows:

***alternate**, in relation to a member, means another member of the Assembly nominated by the first member to perform the first member's role as a member of the committee.*

The explanatory notes confirm that the cross bench member appointed to the CLA will be able to nominate another cross bench member to be that member's alternate on the CLA.

The Committee sought additional information from the department regarding payment of alternate members of the CLA. The department advised that alternate member is entitled to a salary as a member of the Committee. However if the member who becomes an alternate already holds another position that member is only entitled to one additional payment.<sup>27</sup>

The Committee queried whether cross bench members could nominate an existing member of the CLA to represent them on the Committee. The department advised that it is anticipated that the cross bench member would be an additional member of the CLA to make it an eight member committee.<sup>28</sup>

The Committee also sought additional information regarding whether the CLA has a right of veto over the nominated cross bench member of the Committee. The department confirmed that the CLA does not have this power.

The department confirmed that the cross bench member is nominated by the Leader of the House (LOTH) and a motion would be put to the House so the Parliament would have an opportunity to decide this issue. The department confirmed that whilst the nomination is made by the LOTH, it is expected that there would be a discussion with the cross bench members for them to advise which member they wished to have appointed to the committee. The department advised that the nomination by the LOTH is a mechanism to enable the LOTH to have the capacity to organise the business and move business or procedural motions.<sup>29</sup>

The ALA's submission stated that it respects political diversity and commends the Bill on its inclusion of cross benchers in the CLA. The ALA supported Clause 24 as an invitation to cross benchers for participation in the CLA as important members of parliament.<sup>30</sup>

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<sup>27</sup> Mr Timperley, Transcript 10 April 2015: 3

<sup>28</sup> Ms Francis, Transcript 10 April 2015: 4

<sup>29</sup> Ms Francis, Transcript 10 April 2015: 5

<sup>30</sup> Submission 1: 5



The ART's submission highlighted their concern with the reorganisation of the CLA. They advised:

*While the addition of a member of the cross-bench members of the House is welcome, we consider that this person should be a representative of those members, and not a person selected (for whatever reason) by the Leader of the House. We consider that the cross-bench members should decide for themselves (by lot if necessary) who should be chosen from among their number to sit on the committee.<sup>31</sup>*

In response to this issue, the government advised:

*...Clause 24 has been drafted to reflect parliamentary practice that the Leader of the House (LOTH) generally moves all procedural motions such as motions to appoint members to committees.*

*In practice, where there are two or more cross bench members, the LOTH will discuss with the cross bench members which member they would like the LOTH to nominate to the House for appointment to the CLA. The House as a whole will then agree or disagree to this motion.<sup>32</sup>*

The Committee asked the ART to elaborate on the reasons for their concerns on this issue. They advised:

*The legislation envisages that there should be a crossbench member. It seems to me that when there is more than one crossbench member, it should be the crossbenchers themselves who decide who should represent them and not the Leader of the House. The Leader of the House might be motivated by fixing the numbers, for example. I think the crossbenchers should be entitled to determine their own representation on the committee.<sup>33</sup>*

The Committee sought the Clerk's comment on this issue. He advised that if the rationale behind the amendment is to ensure the crossbenchers have representation on the Committee then what the ART is proposing makes sense and would achieve this with the crossbenchers actually getting the representative they want.<sup>34</sup> Hon Fouras also agreed with this suggestion.<sup>35</sup>

### 5.3 Committee comments – Clause 24

The Committee agreed that, as a general principle, the cross bench Members of the Queensland Parliament should have the ability, independently of both the government and opposition, to select which Member will represent them on the CLA.

The proposed amendments allow for the cross bench Member to be nominated by the LOTH. The department advised the Committee that the nomination by the LOTH was a mechanism to enable the LOTH to have the capacity to organise the business of the House. They advised that of the LOTH would consult with the cross bench Members regarding who they wished to have appointed to the position. The proposed amendments do not currently include any requirement to consult.

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<sup>31</sup> Submission 4: 1

<sup>32</sup> Correspondence to FAC from Director-General, DPC, dated 27 April 2015: 5

<sup>33</sup> Dr Solomon, Transcript 27 April 2015: 8

<sup>34</sup> Mr Laurie, Transcript 27 April 2015: 8

<sup>35</sup> Hon Fouras, Transcript 27 April 2015: 8

The Committee identified a number of concerns with the proposed amendments. Whilst the Committee expects that the current LOTH will consult with and consider the opinions of the cross bench Members in selecting their representative, the proposed amendments do not sufficiently elucidate these expectations. The Committee considers that the amendments, as they currently stand, are open to abuse by a future LOTH who may seek to appoint a Member that may be more favourably disposed towards the government. Whilst the Committee accepts that any debate on the motion to appoint will be debated in the Parliament, this still does not ensure that the Member selected by the cross bench Members will be appointed.

The Committee considered alternative methods of appointing the cross bench Members' representative, including that proposed by the ART. It noted that the size and make-up of the cross bench may vary significantly from Parliament to Parliament. The Committee was cognisant of the need for a mechanism to break any deadlock should the cross bench Members be unable to agree on the person to be appointed to the CLA.

The Committee considers that the amendments should reflect the right of cross bench Members to choose their own representative in the first instance. This should be done in consultation with the LOTH. However, it should be explicit that the LOTH does not have a vote in this process. If the cross bench Members are unable to agree, then the representative should be selected by the LOTH. The Committee considers that this agreement should be by majority in order to prevent one Member being in the position to obstruct the intentions of the majority of cross bench Members. Allowing the LOTH to make the decision in the event of a deadlock would ensure that any decision could be facilitated in a timely manner.

**Recommendation 1**

The Committee recommends that, should the Bill reach the second reading stage in the Parliament, clause 24 be amended to reflect that the cross bench Members are to select their representative on the CLA, in consultation with the LOTH; but it needs to be explicit that the LOTH has no vote in this process; however, in the event that the cross bench Members are unable to reach agreement, by majority, on who that representative is, then the LOTH has the power to make the decision.

The Committee noted the department's response to its questions regarding whether the cross bench members could nominate an existing member of the CLA to represent them on the Committee. The Committee noted the department's advice that it is anticipated that the cross bench member would be an additional member of the CLA to make it an eight member committee. The Committee considers that if this is the intent, then the Bill should be amended to reflect that objective.

**Recommendation 2**

The Committee recommends that, should the Bill reach the second reading stage in the Parliament, it should be amended to reflect the intention that the cross bench Member would be an additional member of the CLA to make it an eight member committee.

#### 5.4 Clause 25 – Replacement of section 83 (Meetings)

The Bill proposes to omit existing section 83 and replace it with a new section 83 as follows:

##### **83 Meetings**

- (1) This section applies to a meeting of the committee.
- (2) The Speaker is responsible for calling the meeting and setting the agenda.
- (3) A quorum is 5 members.
- (4) A question is decided by a majority of the votes of the members present and voting.
- (5) Each member present has a vote on each question to be decided and, if the votes are equal, the Speaker has a casting vote.

The proposed amendment increases the number of members required for a quorum from four members to five members.

The Committee questioned the department about the reasons for the Speaker having a casting vote on the CLA. The department advised that the reason for this is to implement the election commitment to provide autonomy to the Speaker and allow the Speaker to have a casting vote. They explained that this is considered to be strengthening the autonomy of the Speaker in managing the Parliamentary Service.<sup>36</sup>

The ART welcomed the restructuring of the CLA and the enhancement of the role and power of the Speaker. The ART submission identified that the Speaker will now have a primary role in the work of the CLA, be able to set its agenda, and have a deliberative as well as a casting vote.<sup>37</sup>

#### 5.5 Committee comments – Clause 25

The Committee is satisfied with the proposed amendment.

#### 5.6 Clause 26 – Amendment of section 84 (Areas of responsibility)

The Bill proposes to insert an additional subsection (e) which allows for the Speaker to refer matters to the CLA. The clause also omits the note regarding the Parliamentary Service Act. Proposed section 84, after amendment, would read as follows:

##### **84 Areas of responsibility**

The committee has the following areas of responsibility—

- (a) the ethical conduct of members;

*Note—*

However, under section 104C(2), a complaint about a particular member not complying with the code of ethical conduct for members may be considered only by the Assembly or the Ethics Committee.

- (b) parliamentary powers, rights and immunities;
- (c) standing rules and orders about the conduct of business by, and the practices and the procedures of, the Assembly and its committees;
- (d) any other matters for which the committee is given responsibility under the standing rules and orders.
- (e) any matter referred to the committee by the Speaker.

<sup>36</sup> Ms Francis, Transcript 10 April 2015: 4

<sup>37</sup> Submission 4: 1

The department confirmed that the CLA's functions subsequent to the amendments, whilst losing responsibility for the management of the Parliamentary Service, will include the ethical conduct of members, except for the hearing of complaints; parliamentary powers, rights and immunities; standing orders; and monitoring and reviewing the business of the House and committees. The department also confirmed that under the proposed amendments, the CLA will also be responsible for any matter that is referred to it by the Speaker.<sup>38</sup>

The Committee asked the Clerk to outline the advantages and disadvantages of the make-up of the CLA. He advised:

*Unlike most other committees, the legislation sets out who will be the membership of the committee via their office holdings—so, the Premier, Leader of the Opposition, et cetera, et cetera. It allows a delegation and sometimes that has been exercised. For example, the delegate for the last Premier was the Treasurer for the entire term, pretty well, of the CLA. That is unusual for parliamentary committees because usually there is another mechanism where people are appointed by nomination of the Leader of the Opposition or the Leader of Government Business. The disadvantages? Well, these are very busy people and, to be honest with you, management of the Parliamentary Service I would have thought probably does not warrant the attention of four or five of your most senior office holders of the state, in my view. We are very important, but are we that important? We have plenty of other state institutions to run.*

*That being said, one of the advantages I could see, and I think we were starting to see this through the CLA as it existed, was the beginning of a recognition of longer-term decisions that need to be made in relation to the parliamentary precinct in particular. Certainly I think having people who are the actual decision makers in that context was very helpful. I am keen, therefore, that future speakers hopefully will utilise those proposed amendments to allow matters to be referred to the CLA where there are longer-term strategic issues which at the end of the day often times means money is required.<sup>39</sup>*

## 5.7 Committee comments – Clause 26

The Committee supports the notion that the Speaker would utilise the proposed amendment to refer long term strategic issues to the CLA.

## 6 Examination of the *Parliament of Queensland and Other Acts Amendment Bill 2015 – Amendments to Queensland Independent Remuneration Tribunal Act 2013 – Clauses 29 to 34*

### 6.1 Background – Queensland Independent Remuneration Tribunal

In April 2012, the Clerk of the Parliament wrote to the then Premier, Hon Campbell Newman MP, advising that the *Parliament of Queensland Act 2001*, provided for Members to be paid \$500 per annum less than a Federal Member of the House of Representatives. He noted that the nexus between the salaries of federal and state Members of Parliament (MPs) had been maintained between 1988 and October 2010. However, in October 2010 and again in August 2011, the former Premier, Hon Anna Bligh MP, determined that increases for Federal Members would not be passed on in full to Queensland Members. This resulted in Members being paid an amount less than that provided for in the Act.<sup>40</sup>

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<sup>38</sup> Mr Craig, Transcript 10 April 2015: 4

<sup>39</sup> Mr Laurie, Transcript 27 April 2015: 7

<sup>40</sup> Correspondence dated 13 April 2012 from The Clerk of the Queensland Parliament, to Premier of Queensland, tabled 8 August 2013: 1

The correspondence noted that the Remuneration Tribunal (Commonwealth) had undertaken an extensive review which resulted in sizeable increases in the base salary of Federal Members as a number of entitlements were curtailed as a trade-off for higher base remuneration. The Clerk of the Parliament advised that the Commonwealth Remuneration Tribunal commented in its report that any linkages between State and Federal salaries should be severed as they are no longer appropriate.<sup>41</sup>

The Clerk offered four options for the Premier's consideration as follows:

- 1) Refer the matter to the Committee of the Legislative Assembly for advice;
- 2) Link Members salary rates to public service (Senior Executive Service) salary rates;
- 3) Link the base salary of a Queensland Member to a Federal Member with a greater variation;
- 4) Establish a remuneration tribunal for Members.<sup>42</sup>

The Clerk advised the Committee that at the time he provided the advice there was a situation where the legislation was linked to the federal parliament but those pay rises had not actually been passed on for quite some time for political reasons. He advised that he wrote to the new Premier because the status quo could not remain as they were not reflecting the statutory regime.<sup>43</sup>

He advised that he saw an advantage with having an independent remuneration tribunal to examine both the salary and entitlements issues. He advised that he thought that the allowances had over a very long period become de facto salary rises in order to compensate in a way that the salary was not. The Clerk noted that various changes, including those to the defined benefit superannuation for members, impacted on the circumstances of members.<sup>44</sup>

In August 2012, DPC also provided a briefing to the former Premier favouring the linkage of MPs salaries to future increases to the same percentage increases received by public servants in the Core Queensland Government Departments Certified Agreement. This was recommended on the basis that it had the advantage of keeping the percentage rate of MP salary increases in line with those in the core public service and it involved no cost to implement and maintain a remuneration tribunal.<sup>45</sup>

In June 2013, the Crown Solicitor provided advice to the government that a Member has a statutory entitlement to payment of a base salary. Under section 109 of the Act, referable to the salary of Commonwealth members of the House of Representatives, if a Member of the Legislative Assembly, whether current or former, has not been paid in accordance with their statutory entitlements, these Members would be entitled to back payment.<sup>46</sup>

Acting on the Crown Law advice, the Acting Premier, Hon Jeff Seeney MP, agreed to increase MPs wages in accordance with the Act. This increase was to be funded by a reduction in electorate allowances and public funding of political parties. The Acting Premier appealed to former MPs 'good grace and sense of fair play' to not make a claim for back pay in order to achieve a zero cost to the taxpayer.<sup>47</sup>

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<sup>41</sup> Correspondence dated 13 April 2012 from The Clerk of the Queensland Parliament, to Premier of Queensland, tabled 8 August 2013: 1-2

<sup>42</sup> Correspondence dated 13 April 2012 from The Clerk of the Queensland Parliament, to Premier of Queensland, tabled 8 August 2013: 2-3

<sup>43</sup> Mr Laurie, Transcript 27 April 2015: 3

<sup>44</sup> Mr Laurie, Transcript 27 April 2015: 3

<sup>45</sup> Briefing Note dated 22 August 2012 from Director-General, DPC to the Premier, tabled 8 August 2013: 1

<sup>46</sup> Correspondence dated 28 June 2013 from Acting Crown Solicitor to the Hon the Attorney-General and Minister for Justice, tabled 8 August 2013: 2

<sup>47</sup> Hon J Seeney MP, Acting Premier, Ministerial Media Statement 1 July 2013: 1

On 11 July 2013, the former Premier announced that an independent tribunal would determine future remuneration and allowances for State MPs to reform the Queensland Parliament's entitlements system. He announced that the Tribunal would be headed by Bond University Vice Chancellor Professor Tim Brailsford. Other members of the Tribunal would be former AMWU secretary David Harrison and Multicap CEO Joanne Jessop.<sup>48</sup>

The *Queensland Independent Remuneration Tribunal Bill 2013* was introduced by the former Premier on 6 August 2013 and declared urgent to enable the bill to be passed through all remaining stages in that week's sittings.<sup>49</sup>

When introducing the *Queensland Independent Remuneration Tribunal Bill 2013*, the then Premier acknowledged the advice from the Clerk of the Parliament and stated that:

*The bill implements my five-point plan to reform the Queensland parliament's entitlements system. The bill –*

- *breaks the legislative nexus between the salaries of Queensland and Commonwealth members;*
- *formally establish the Queensland Independent Remuneration Tribunal under legislation;*
- *provides that determinations of the tribunal are independent, binding and are not subject to change by members;*
- *legislates to ensure that back pay for current and former members is only applicable from 1 July 2013; and*
- *provides that the tribunal must ensure that any allowances are to reflect the amount of reasonable expenses incurred by a member in servicing their electorate and that the allowances are not a substitute for other remuneration.*<sup>50</sup>

During the debate on the Bill, the then Leader of the Opposition moved the following amendment:

*Clause 30 (Requirements for making determination)*

*Page 18, after line 8 –*

*insert –*

*(aa) ensure that the financial position of the State and the State's fiscal strategy are taken into account; and*

The government opposed the amendment proposed by the opposition on the basis that the government considered the existing clause was sufficiently broad and it considered that the legislation should be less prescriptive and enable the Tribunal to take into consideration whatever it thinks necessary. The division on the amendment was resolved in the negative.

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<sup>48</sup> Hon C Newman MP, Premier, Ministerial Media Statement 11 July 2013: 1

<sup>49</sup> Queensland Legislative Assembly, Hon C Newman MP, Premier, Introduction, *Parliamentary Debates (Hansard)*, 6 August 2013: 2294

<sup>50</sup> Queensland Legislative Assembly, Hon C Newman MP, Premier, Introduction, *Parliamentary Debates (Hansard)*, 6 August 2013: 2291

The Member for Mt Isa, also moved an amendment as follows:

*Clause 30 (Requirements for making determination)*

*Page 18, after line 18 –*

*insert –*

*(2) A determination must not increase the salary of a member of the Assembly for a year by more than the greatest of the following –*

*(a) the percentage increase for an ambulance officer's wage or salary for that year;*

*(b) the percentage increase for a fire service officer's wage or salary for that year;*

*(c) the percentage increase for a police officer's wage or salary for that year.*

*(3) In this section –*

***ambulance officer*** means a person appointed as an ambulance officer under the Ambulance Service Act 1991, section 13.

***fire service officer*** means a person appointed as a fire service officer under the Fire and Rescue Service Act 1990.

***percentage increase, for wage or salary,*** means the percentage by which the wage or salary increases under a certified agreement under the Industrial Relations Act 1999.

The government chose not to respond to the amendments and the division on the amendment was resolved in the negative.

The then Leader of the Opposition also moved the following amendment:

*After Clause 41*

*Page 23, after line 4 –*

*insert –*

*41A Limitation on annual salary*

*(1) A determination can not, in relation to any 1 year, increase the annual salary of a member by more than the relevant amount for the member.*

*(2) A determination that contravenes subsection (1) is of no force or effect.*

*(3) For subsection (1), the annual salary of a member before the first determination is the 30 June salary for the member.*

*(4) In this section –*

***30 June salary, for a member,*** means the annual base salary for the member stated in schedule A of the Members' Entitlements Handbook as in effect at 30 June 2013.

***certified agreement*** means a certified agreement under the Industrial Relations Act 1999 that applies to departmental employees.

***departmental employee*** means a public service employee who is employed to work in the administrative stream in the department.

***Members' Entitlement Handbook*** see section 62.

**public service increase**, for a year, means the percentage increase, under a certified agreement, by which the salary or wage of a departmental employee is increased in the year.

**relevant amount**, for a member for a year, means an amount worked out by multiplying the member's annual salary for the year by the public service increase for the year.

The government advised that they would be opposing the amendment. The division on the amendment was resolved in the negative.

The Bill included provisions (Part 6) that affirmed the remuneration that had been paid to Members between 1 September 2009 and 30 June 2013 and stopped the effect of any changes to remuneration from 1 July 2013 until the first determination by the Tribunal had been made. It also enabled the recovery of any overpayments.

The Bill was passed on 8 August 2013.

The Tribunal was established on 16 July 2013 under an administrative arrangement. On 9 August 2013, the Tribunal was established as an independent statutory authority under the *Queensland Independent Remuneration Tribunal Act 2013*. Its current members, Professor Tim Brailesford (Chair), Ms Joanne Jessop (Member) and Mr David Harrison (Member), were appointed by Governor in Council on 15 August 2013. The Act sets out the functions of the Tribunal are to:

- review remuneration in connection with members and former members of the Assembly; and
- make determinations under the Act about remuneration.<sup>51</sup>

The Act also specifies that in performing or exercising its functions or powers, the Tribunal and its Members must act independently, impartially and is not subject to direction or control by any entity, including any Minister.<sup>52</sup>

Section 28 of the Act sets out the procedures for making determinations. It requires that in making a determination, the Tribunal:

- may inquire into, and inform itself, of anything in the way it considers appropriate; and
- may seek and receive written or oral statements from any entity it considers appropriate; and
- may act with as little formality as it considers appropriate; and
- must have regard to effective and efficient processes in carrying out its functions; and
- is not bound by the rules of evidence.<sup>53</sup>

The Act also sets out the general principles that the Tribunal may have regard to, for making a determination as follows:

- the value to the community of a member of the Assembly carrying out the member's role, functions and responsibilities;
- the importance of a member being appropriately remunerated for carrying out the member's role, functions and responsibilities;

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<sup>51</sup> *Queensland Independent Remuneration Tribunal Act 2013*, s7

<sup>52</sup> *Queensland Independent Remuneration Tribunal Act 2013*, s9

<sup>53</sup> *Queensland Independent Remuneration Tribunal Act 2013*, s28



- relevant laws applying to members; and
- other matters the Tribunal considers appropriate, for example the size of a member's electorate.

The Tribunal made its first Determination on the salaries, allowances and entitlements of MPs on 15 October 2013. It noted in that report that:

*The history of MP salaries, allowances and entitlements in Queensland is a complex one that has proceeded in an incremental fashion over many years. At various times the base salary has been set by legislation; linked to certain classifications in the State Public Sector Award; increased by former Cabinets using indexing to the average minimum weekly wage or CPI; and linked to an amount that is \$500 less than the annual base salary of a Commonwealth MP. A comprehensive review of an MP's remuneration has not been undertaken for around 50 years.*<sup>54</sup>

In issuing the determination the Tribunal noted:

*The Determination has been reached after taking a holistic view of MPs remuneration that includes a balance between salaries and allowances, consistent with the provisions of the Act.*<sup>55</sup>

The first Determination set MPs base salary but deferred the consideration of the relative levels of additional salary provided to undertake additional formal roles within the Parliament or Executive government. The first Determination also abolished a range of allowances and entitlements effective from 1 January 2014 with a further range of allowances to be abolished effective from 30 June 2014. The abolished allowances were replaced by a simpler and more transparent system of allowances which map expenditure with the nature of the activity in three categories – electorate allowances; information and communication allowance and general travel entitlement. The Tribunal made no changes to the superannuation allowances.<sup>56</sup>

The Tribunal made its second Determination on 14 November 2013 to address some minor technical and administrative issues arising during development of the new *Members' Remuneration Handbook* following Determination 1/2013. Determination 2/2013 also set new rates for the Daily Travel Allowance effective from 1 January 2014.<sup>57</sup>

The Tribunal made its third Determination on 27 March 2014 to set the additional salary levels for office holders of the Queensland Parliament.<sup>58</sup> The Tribunal determined that the additional salary of each office holder would sit in ten bands relative to the additional salary of the Premier.<sup>59</sup> On 27 March 2014 the Tribunal issued Determination 4/2014 to make minor amendments to the definition of 'Parliamentary Business'.<sup>60</sup>

<sup>54</sup> Queensland Independent Remuneration Tribunal, *Building a new remuneration structure for Members of the Queensland Parliament, Determination 1/2013*, 15 October 2013: i-ii

<sup>55</sup> Queensland Independent Remuneration Tribunal, *Building a new remuneration structure for Members of the Queensland Parliament, Determination 1/2013*, 15 October 2013: 105

<sup>56</sup> Queensland Independent Remuneration Tribunal, *Building a new remuneration structure for Members of the Queensland Parliament, Determination 1/2013*, 15 October 2013: 103

<sup>57</sup> Queensland Independent Remuneration Tribunal, *Determinations*, <http://www.remunerationtribunal.qld.gov.au/determinations.aspx>

<sup>58</sup> Queensland Independent Remuneration Tribunal, *Determinations*, <http://www.remunerationtribunal.qld.gov.au/determinations.aspx>

<sup>59</sup> Queensland Independent Remuneration Tribunal, *Building a new remuneration structure for Members of the Queensland Parliament – Part 2, Determination 3/2013*, 27 March 2014: 70

<sup>60</sup> Queensland Independent Remuneration Tribunal, *Determinations*, <http://www.remunerationtribunal.qld.gov.au/determinations.aspx>

On 30 September 2014 the Tribunal issued Determination 5/2014 to address matters relating to former Member of Parliament entitlements. On 11 November 2014 the Tribunal issued Determination 6/2014 to make minor amendments to the allowances system following a review of the first six months' operation of the system.<sup>61</sup>

On 5 March 2015 the Tribunal issued Determination 7/2015 to set the new base salary for an MP and make consequent adjustments to the additional salary of office holders, effective from 6 April 2015.<sup>62</sup> Determination 7/2015 allowed for the annual base salary for an MP to increase by 2.58% thereby setting the annual base salary at \$152,688 effective from 6 April 2015. The Determination also provided that the additional salary for the most senior office holder (the office of Premier) will also be increased by 2.58% effective from 6 April 2015. The Tribunal confirmed that the relativities decided in Determination 3/2014 for each office holder, relative to the additional salary of the most senior office holder, remain unchanged.<sup>63</sup>

## 6.2 Proposed amendments

Part 3 (Division 1) of the *Queensland Independent Remuneration Tribunal Act 2013* sets out the provisions relating to the Making of the Tribunal's determinations. Clauses 30 and 31 amend provisions in Part 3 (Division 1)

The current provisions are as follows:

### **Division 1 Making determinations**

#### **27 Power to make determination**

The tribunal has the power to make determinations about remuneration in connection with members and former members of the Assembly.

#### **28 Procedures for making determination**

In making a determination, the tribunal—

- (a) may inquire into, and inform itself, of anything in the way it considers appropriate; and
- (b) may seek and receive written or oral statements from any entity it considers appropriate; and
- (c) may act with as little formality as it considers appropriate; and
- (d) must have regard to effective and efficient processes in carrying out its functions; and
- (e) is not bound by the rules of evidence.

#### **29 General principles for making determination**

(1) In making a determination, the tribunal may have regard to the following—

- (a) the value to the community of a member of the Assembly carrying out the member's role, functions and responsibilities;
- (b) the importance of a member being appropriately remunerated for carrying out the member's role, functions and responsibilities;
- (c) relevant laws applying to members;
- (d) other matters the tribunal considers appropriate.

*Example of a matter for paragraph (d)—*

the size of a member's electorate

(2) A determination may provide for different remuneration in connection with different members and different former members of the Assembly.

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<sup>61</sup> Queensland Independent Remuneration Tribunal, *Determinations*, <http://www.remunerationtribunal.qld.gov.au/determinations.aspx>

<sup>62</sup> Queensland Independent Remuneration Tribunal, *Determinations*, <http://www.remunerationtribunal.qld.gov.au/determinations.aspx>

<sup>63</sup> Queensland Independent Remuneration Tribunal, *Review of Salary Levels of Members of the Queensland Parliament, Determination 7/2015*, 5 March 2015: 12

**30 Requirements for making determination**

In making a determination, the tribunal must—

- (a) consult with, and consider the views of, the Clerk; and
- (b) ensure that any allowances to be paid to a member of the Assembly reflect the amount of reasonable expenses incurred by a member in servicing the member's electorate; and
- (c) ensure allowances mentioned in paragraph (b) are not a substitute for other remuneration; and
- (d) ensure that accommodation, services or other entitlements mentioned in section 55 are not taken into account.

**31 When determination to be made**

- (1) The tribunal must make its first determination by 15 October 2013.
- (2) Each subsequent determination must be made within 1 year after the previous determination.

Clauses 32 and 34 amend section 68 and Schedule 1 (Dictionary) to move the definition of 'prescribed rate of interest' from the section to the Schedule. It should be noted that section 68 only applies to Members who were Members on 1 July 2013 and relates to payment of overpayments made prior to the Tribunal's first determination. However, the definition of 'prescribed rate of interest' to be included in Schedule 1 will be required for the proposed amendments included in Clause 33. Clause 33 relates to the revocation of the Tribunal's Determination 7/2015.

**6.3 Clause 30 – Amendment of section 31 (When a determination to be made)**

Clause 30 amends section 31 of the Act to insert a new subsection (3) that states that section 31(2) does not apply to a determination about a members' salary entitlements.

The Tribunal's submission identified that the intent of these amendments is to put into force the Premier's pre-election policy statement. The Tribunal stated that it:

*...notes the subsequent policy stance on this matter taken by the Government and respects the Government's intent.<sup>64</sup>*

However, with regard to the general policy matter, the Tribunal advised caution on the basis that the development of the Act that established the Tribunal arose as a direct response to previous government intervention in member salaries and entitlements. The Tribunal noted that it understands that whilst the amendments are well intentioned, the reality is that the history of government decision-making and intervention in this area has been fraught with difficulty.<sup>65</sup>

As previously mentioned, the Tribunal's submission suggested that another way to enshrine the intent of the government's policy reform is to embed the benchmark of the public service wage conditions within section 29 of the Act which deals with the principles and factors the Tribunal must have regard to when making decisions.<sup>66</sup>

The Tribunal advised the Committee that they already consider where public service salaries have been in the determinations to date. They advised that an amendment to section 29 would provide explicit direction to the Tribunal in this regard.<sup>67</sup>

<sup>64</sup> Submission 2: 1

<sup>65</sup> Submission 2: 2

<sup>66</sup> Submission 2: 2

<sup>67</sup> Professor Brailsford, Transcript 27 April 2015: 6

The Clerk advised the Committee that he considered the Tribunal's suggestion to be a reasonable solution. He advised that there is no suggestion that there would be interference with the independence of the Tribunal but it is merely setting down a benchmark that would be considered amongst other things they can consider. He noted that it is not too dissimilar to what the Premier, when she was Leader of the Opposition, put forward in her amendments to the original bill in 2013.<sup>68</sup>

The government response to this suggestion was that it is the government's policy position that the percentage rate of any future MP salary increase not be able to exceed the rate of a corresponding public service salary increase. The government believes that simply embedding public sector wage conditions in the Act as a principle or factor that the Tribunal is to have regard to in making a determination does not guarantee the delivery of this policy.<sup>69</sup>

At the Committee's hearing the Clerk provided information to the Committee that sets out over a 20 year period, a comparison between the core public service increases and members' increases. A copy of this information is contained in Appendix E. The Clerk noted that over this period there has not been much variance between the two.<sup>70</sup> The Clerk advised that the table demonstrates that over the long term there has not been a differential between public service salaries and members' salaries, it is just the perception that there is.<sup>71</sup> Hon Fouras agreed that politics is about perception and the most important thing in politics is perception.<sup>72</sup>

The Clerk's submission references the correspondence to the former Premier which canvassed four options for mechanisms to set members' salaries. He noted that one of those options was to create an independent remuneration tribunal and another was to link the salary to members of the public service. The Clerk's submission states:

*This Bill essentially seeks to restrict the ability of the independent remuneration tribunal to make determinations regarding salary in that it cannot determine percentage salary increases to members greater than percentage salary increases received by public servants.*

*In principle, I can see no reason why members' salary cannot be linked to public service salary rises – as per my correspondence to the former Premier in April 2012.*

*However, there are, I believe further implications to be considered if this mechanism is to be adopted. I appreciate that the matters in the Bill reflect a clear election commitment by the government and is the government's clear policy. However, on reflection, it occurs to me that if the tribunal is to be restricted in the manner proposed it raises questions as to whether the tribunal should continue to be involved in determining salary and why the statute is not altered to simply link increases in the 'core public service enterprise bargaining agreement' to members salary. Without any inference, imputation or discourtesy to the tribunal, the further question that follows is whether the remaining functions of the tribunal (adjusting allowances) can be delegated to another body (for example, the CLA). In other words, given part of the role of the tribunal is to be limited, whether there is significant ongoing justification for the tribunal.<sup>73</sup>*

The Clerk, whilst acknowledging the right of political parties during campaigns to make political election commitments and the right of incoming governments to implement those, reiterated his concern that the legislation provides for an independent tribunal but at the same time it is capping or limiting it to some degree.<sup>74</sup>

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<sup>68</sup> Mr Laurie, Transcript 27 April 2015: 6

<sup>69</sup> Correspondence to FAC from Director-General, DPC, dated 27 April 2015: 3

<sup>70</sup> Mr Laurie, Transcript 27 April 2015: 2

<sup>71</sup> Mr Laurie, Transcript 27 April 2015: 4

<sup>72</sup> Hon Fouras, Transcript 27 April 2015: 5

<sup>73</sup> Submission 5: 2-3

<sup>74</sup> Mr Laurie, Transcript 27 April 2015: 3

The Tribunal noted in its submission that:

*The principle of independence of decision-making is a foundation on which the Tribunal was established and this principle is underscored by safeguards which are contained in the current legislation that governs the Tribunal. Since its inception, the Tribunal has had continual regard to the principle of independence in all of its deliberations. The Tribunal believes that its actions and decision have been consistently unbiased, neutral and apolitical.*<sup>75</sup>

Hon Fouras advised the Committee that, whilst he did not address the issue of the Tribunal in his submission, he considered that if there is to be an independent tribunal it should be independent.<sup>76</sup>

The Tribunal advised the Committee that the legislation introduces an element of direction and the challenge for the Tribunal is that, under the current Act, they are required to act without direction or influence. Professor Brailsford noted:

*Taken as a philosophical stance it then becomes quite difficult to honour the true spirit of what that means if the act is changed such that there is direction over explicit benchmarks.*<sup>77</sup>

At the Committee's public hearing, the Clerk advised that with the structures that the Tribunal has put in place in regard to both salaries and allowances a lot of the 'hard yards' have been done. He reiterated his question about the need for the tribunal continuing if the salaries are to be linked.<sup>78</sup> However, the Tribunal pointed out that, whilst they have addressed the four key matters they sought to address and their work plan, going forward, is less onerous, potentially if the focus on salaries is removed then there may well be a shift in focus towards allowances. Professor Brailsford noted that if allowances are determined by anything other than an independent body, it creates a spectre and leads to questions as to motives and incentives for those allowances.<sup>79</sup>

The Chair of the Tribunal, Professor Tim Brailsford, advised the Committee that when the Tribunal was initially established they saw that there were four key tasks that they needed to undertake quickly. He advised that:

*The first was in relation to resetting the base salary, the second was a complete overhaul of the allowances system, the third was a review of the additional salaries payable to office holders and the fourth was a review of the entitlements available to former members. Those four key tasks were undertaken very diligently and they were published. The three main determinations are: determination 1 that deals with the base salary reset and the review of the allowances system; determination 3 that deals with the additional salaries for the office holders and determination 5, which deals with the former members.*<sup>80</sup>

Professor Brailsford noted that, whilst their work has been challenging, they consider that they have achieved much in the 20 months since they were established. He also noted that this is a topic that is not easily digested by the public.<sup>81</sup>

Professor Brailsford also advised the Committee that they have found that their work has assumed some national leadership. He advised that their work tends to lead those of other jurisdictions to extend where their advice is sought.<sup>82</sup>

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<sup>75</sup> Submission 2: 1

<sup>76</sup> Hon Fouras, Transcript 27 April 2015: 3

<sup>77</sup> Professor Brailsford, Transcript 27 April 2015: 4

<sup>78</sup> Mr Laurie, Transcript 27 April 2015: 5

<sup>79</sup> Professor Brailsford, Transcript 27 April 2015: 5

<sup>80</sup> Professor Brailsford, Transcript 27 April 2015: 2

<sup>81</sup> Professor Brailsford, Transcript 27 April 2015: 2

<sup>82</sup> Professor Brailsford, Transcript 27 April 2015: 2

#### 6.4 Committee comments – Clause 30

The Committee agreed that it is important that the Tribunal is retained in its current form and that its independence should be maintained. The Committee agreed that the proposed amendments will place a ceiling on MP salary increases and that the Tribunal will retain discretion regarding the quantum of any increases below this ceiling. The Committee considered that the retention of the Tribunal's ability to determine allowances and additional salaries to be important.

Although the Committee agreed about the importance of maintaining the independence of the Tribunal, it was unable to agree on whether the proposed amendments did in fact impact on that independence.

The government Members of the Committee argued that the proposed amendments do not impact on the Tribunal's independence because they still allow the Tribunal discretion in its determinations of future MP salary increases up to the ceiling.

The non-government Members of the Committee argued that the proposed amendments limit the Tribunal's independence and that they have a philosophical opposition to this. They noted that the definition of independent includes: free from outside control and not depending on another's authority; and not influenced or controlled by others in matters of opinion or conduct. They considered the proposed amendments would impinge on the Tribunal's independence in terms of that definition.

The government Members expressed the view that that the Tribunal itself agreed that the proposed amendments do not remove the Tribunal's independence. They noted that when it was put to Professor Brailsford that *'the legislation effectively removes the independence of the Tribunal'*<sup>83</sup> he responded:

*To be clear, we did not actually say that the legislation removes the independence but there is an element in terms of the direction in which that is headed. The challenge for the Tribunal is that under the current act we are required to act without direction or influence. Taken as a philosophical stance it then becomes quite difficult to honour the true spirit of what that means if the act is changed such that there is direction over explicit benchmarks.*<sup>84</sup>

The government Member's assertion that the legislation does not remove the Tribunal's independence was refuted by the non-government Members on the basis that the Tribunal had stated in its submission that:

*The fundamental principle of independence of the Tribunal is arguably challenged by the proposed reform as it has the effect of directing or at least influencing the Tribunal's decision-making.*<sup>85</sup>

In considering the Tribunal's suggestion that a compromise solution was to amend section 29 of the Act to embed the requirement that the Tribunal have regard to the benchmark of the public service wage conditions when making determinations, the Committee did not reach agreement.

Non-government Members supported this solution, whereas government Members did not.

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<sup>83</sup> Miss Barton, Transcript 27 April 2015: 4

<sup>84</sup> Professor Brailsford, Transcript 27 April 2015: 4

<sup>85</sup> Submission 2: 2

The non-government Members considered that embedding this requirement in section 29 was a good compromise solution as it would address the Premier's election commitment without impacting on the independence of the Tribunal. The non-government Members also noted that the witnesses at the Committee's public hearing agreed that this was a good solution. The non-government Members further suggested that the wording of section 29 could be amended to replace the word 'may' with 'will' in terms of what the Tribunal has regard to. They considered that these amendments would sufficiently strengthen the requirement.

The non-government Members articulated the view that the Committee should not ignore the advice of eminently qualified and independent witnesses. However, the government Members considered that the witnesses, whilst supporting the amendment of section 29 as a possible solution, did not indicate that the government's proposed amendments were deficient.

The government Members considered that Tribunal's suggestion that section 29 be amended to include the public service award increases did not ensure that the intent of the government's commitment would be adhered to. The government Members also considered that the proposed the government's amendments express a strong statement to the public that Members of Parliament are serious about protecting against any excess.

The government Members also noted that Professor Brailsford agreed that the amendment of section 29 would not necessarily guarantee the outcome, which the legislation is seeking to do.

The government Members also considered that there was community sentiment to curtail excessive MP salary increases. The non-government Members disagreed with this. They thought that community sentiment reflected that the establishment of the Tribunal in 2013 had resolved any community sentiment issues. They stated that there was no evidence brought to the Committee that reflected negative community sentiment.

The non-government Members considered that the Tribunal had done an excellent job and questioned the need to place a limit on the Tribunal. They disagreed with the argument that there was a need for the Tribunal to have limits placed on it and argued instead that the Tribunal was an independent body capable of considering a wide range of issues when making its determinations.

The non-government Members noted that the information provided by the Clerk showed that there were only a few times that MP salary increases have increased beyond public sector salary increases and therefore questioned why there was a need for the proposed cap included in the legislation. However, the government Members identified that political decisions had been made which reduced the quantum of some of the proposed increases that otherwise would have occurred over this period. The government Members articulated the view that the proposed amendments were about limiting any excessive increases in the future.

The non-government members also expressed their concern that the passage of the proposed amendments sets a precedent. The non-government Members considered that it was important that the Tribunal maintained its separation from government and any interference, whether the inference is either real or perceived. They considered that MPs should have no role in determining future salary increases.

## 6.5 Clause 31 – Insertion of new subsection 31A and 31B

Clause 31 proposes to insert a new section 31A and a new 31B. Proposed section 31A is as follows:

### **31A Determinations about salary entitlements following public service salary decisions**

- (1) The tribunal may not make a determination about a member's salary entitlement unless a public service salary decision is made.
- (2) Within 90 days after a public service salary decision is made, the tribunal must make a determination about members' salary entitlements.
- (3) The determination may not increase a member's salary entitlement by a rate that is higher than the rate of increase to the salary or wage of a departmental employee under the public service salary decision.
- (4) If the determination increases a member's salary entitlement, the determination must provide for the increase to take effect, or to have taken effect, on the same day the increase to the salary or wage of a departmental employee takes or took effect under the public service salary decision.

(5) In this section—

**departmental employee** means a public service employee employed to work in the administrative stream in the department.

**directive** see the *Public Service Act 2008*, schedule 4.

**industrial instrument** see the *Public Service Act 2008*, schedule 4.

**public service salary decision** means an industrial instrument or directive that includes provision about the salary or wage of a departmental employee.

**salary entitlement** means an entitlement to—

- (a) an annual salary under section 41; or
- (b) an additional salary under section 42.

### 6.5.1 Proposed new subsection 31A

The explanatory notes state that proposed section 31A is to specify how the Tribunal is to make determinations about the salary entitlements of members. Proposed section 31A provides that the Tribunal must, within 90 days after a public service salary decision is made, make a determination about members' salary entitlements. The proposed section does not allow the Tribunal to make a determination about a member's salary entitlement unless a public service salary decision is made.

The proposed amendments require that a determination may not increase a member's salary entitlement by a rate that is higher than the rate of increase to the salary of a departmental employee under the public service salary decision. Any increase is deemed to take effect from the date of the public service salary decision.

For the purposes of new section a departmental employee means a public service employee employed to work in the administrative stream in the department. The explanatory notes confirm that in accordance with section 33 of the Acts Interpretation Act 1954, 'the department' means DPC. The explanatory notes state:

*Reference to DPC is included as it is deemed that DPC and the public service employees employed in DPC in the administrative stream would be part of a directive or industrial instrument as outlined under the Public Service Act 2008, that covers what is generally regarded in the public service as being the 'core public service' or the 'core public service agreement'.*

*A past example of the core public service agreement is the State Government Departments Certified Agreement 2009, and it is the equivalent agreements to this agreement, which include DPC, to which new section 31A should be read.*



The Committee queried what rate would be used in the event that there were a variety of percentage increases awarded within the administrative stream of the department. The department advised that the advice they have received is that it is unlikely that there will be variations within streams.<sup>86</sup>

The department provided the following additional information on this issue:

*Recent salary increases granted to public servants in the core public service under State Government Departments Certified Agreements or the most recent increase granted under Directive 16/13 made under the Public Service Act 2008, have specified that the same percentage rate of salary increases is to apply to all levels within the administrative stream. An occurrence where different percentage rates of salary increase within the administrative stream have been granted is not known.*

*In any event, new sections 31A(3) of the Queensland Independent Remuneration Act 2013, (the Act) at Clause 31 of the Bill, provides that ‘a determination may not increase a member’s salary entitlement by a rate that is higher than the rate of increase to the salary or wage of a departmental employee under the public service salary decision’.*

*The intent of this section is that the Tribunal cannot increase the salary of a member of the Legislative Assembly by a rate that is higher than the rate of increase of a departmental employee under a public service salary decision.*

*While DPC considers it highly unlikely that a public service salary decision would specify different rates of salary increase for different levels within the administrative stream, not the least because of the effect such a decision would have on the salary relativities between each of the levels, DPC is of the view that new section 31A(3) of the Act as drafted prevents the Tribunal from determining a rate of salary increase for members which exceeds the least rate of salary increase received by the department employee.<sup>87</sup>*

The explanatory notes also state that if the public service decision under section 31A includes more than one salary increase over one or more years for the departmental employee under the public service salary decision and also contains multiple commencement dates, then the Tribunal is to consider each salary increase in its one determination to be made under the new Section 31A.

### **6.5.2 Committee comments – proposed new subsection 31A**

The Committee noted that proposed new sections 31A(1) and (2) set out the process for when the Tribunal can make a determination. The proposed provisions allow that the Tribunal is to make a determination within 90 days of a public service salary decision being made. The Committee noted that the existing provisions (section 31(2)) require the Tribunal to make determinations within one year of the previous determination.

The Committee noted that the proposed new section 31A(3) states that the determination may not increase a member’s salary entitlement by a rate that is higher than the rate of increase to the salary or wage of departmental employee under the public service salary decision. The definition of salary entitlement includes an annual salary and an additional salary. Therefore it follows that the Tribunal can make a determination about both the base salary and the additional salary but both can not be increased by more than the departmental employee rate. For example under the current agreement the base rate can be increased by up to 2.2 per cent and the additional salary can be increased by up to 2.2 per cent.

<sup>86</sup> Mr Craig, Transcript 10 April 2015: 5

<sup>87</sup> Correspondence to FAC from Director-General, DPC, dated 21 April 2015: 2

The government Members supported the amendment to insert a new section 31A.

Whilst noting that the Tribunal is required under the current legislation to provide future determinations within one year of the last determination, the non-government Members accepted that a change to require the Tribunal to make a determination within 90 days of a public service salary decision, as an alternative, would serve the same purpose. On this basis, with the exception of proposed new section 31A(3), the non-government Members do not find the proposed amendments offensive. The non-government Members arguments against section 31A(3) are as articulated in section 6.4 of this report and relate to a preference for an amendment to section 29 as an alternative.

### 6.5.3 Proposed new subsection 31B

Proposed section 31B is as follows:

**31B Particular determinations about additional salary entitlements**

- (1) The tribunal may make a determination about the additional salary entitlement for an office if—
- (a) it is the first determination about the entitlement since the office was approved by resolution of the Assembly to be an office to which section 42 applies; or
  - (b) the tribunal is satisfied—
    - (i) there has been a change to the role, functions or responsibilities of a member holding the office; and
    - (ii) the current additional salary entitlement for the office, relative to the current additional salary entitlements for other offices to which section 42 applies, is no longer appropriate.
- (2) Section 31A does not apply to a determination under subsection (1).
- (3) In this section—
- additional salary entitlement**, for an office, means the entitlement of a member holding the office to an additional salary under section 42.

Proposed section 31B provides that the Tribunal may make determinations about the additional salary entitlement for an office if it is the first determination about the entitlement since the office was approved by resolution of the Assembly to be an office to which section 42 of the Act applies or if the Tribunal is satisfied that there has been a change to the role, functions or responsibilities of an office. The current additional salary relativities were included in Determination 3/2014 issued on 27 March 2014.

The department advised the Committee that the reason proposed section 31B was included is to make it very clear what the Tribunal can and can not make determinations about. They advised that, in drafting the Bill, they had to specify when the Tribunal could make determinations and it was left a little ambiguous as to whether or not it could continue with its existing ability to determine a salary for an additional salary holder.<sup>88</sup> The department provided the following example:

*An example of this is one which is happening at the moment in that last sitting there was a motion moved to provide for an additional position which was the Deputy Opposition Whip, so it is those sorts of circumstances. That is a new position and therefore the tribunal has to maintain its ability to be able to determine a salary for those additional positions. It was just to clarify basically that it could continue to have that existing function, so basically as it stands now it will look at the Deputy Opposition Whip salary. Had that happened in three months time, the tribunal would still have the ability to determine a salary for that position.<sup>89</sup>*

<sup>88</sup> Ms Francis, Transcript 10 April 2015: 6

<sup>89</sup> Ms Francis, Transcript 10 April 2015: 6

The department also confirmed that the Tribunal will have the ability to make a determination about an additional salary should the duties of that role change. The department advised:

*...if the tribunal—and it will still be the tribunal that will be making these decisions—determined that the functions of an office within the parliament had changed which may require, in its view, an additional salary relative to the other additional salaries that members are receiving, the tribunal still has that function if it so determines to, in a sense, reclassify an office holder position. For instance, if committee chairs in the tribunal’s view had taken on more responsibilities, then the tribunal could, if it felt that to be the case, recommend a higher additional salary for, say, the office of committee chair.<sup>90</sup>*

Clause 34 proposes to insert a definition of ‘salary entitlement’ applicable under proposed section 31A in the Schedule.

The Committee sought additional information from the Clerk regarding the issue of allowances on which the Tribunal also makes determinations. The Clerk advised that at the time he wrote the letter to the previous Premier, allowances were not a pressing issue. He advised that allowances had been dealt with over the years by other mechanisms including the handbook and the operation of allowances. He advised that there is not as much political odium around allowance issues as they are essentially acquitted.<sup>91</sup>

#### 6.5.4 Committee comments – proposed new subsection 31B

The Committee noted that proposed new section 31B provides for the Tribunal to make determinations on additional salary entitlements where a new office is created or where there has been a change to the role, functions and responsibilities of an office and where relativities between offices is no longer appropriate.

#### 6.6 Clause 33 – Insertion of new Part 6, Division 4 (Revocation and transitional provisions for Parliament of Queensland and Other Acts Amendment Act 2015)

Clause 33 proposes to insert new sections 71, 72, 73, 74 and 75 in the *Queensland Independent Remuneration Act 2013*. These new sections provide for the revocation and transitional provisions for the Bill.

The proposed new sections are as follows:

**Division 4 Revocation and transitional provisions for Parliament of Queensland and Other Acts Amendment Act 2015**

**71 Definitions for div 4**

In this division—

**member** means a member of the Assembly.

**public service salary decision** see section 31A(5).

**72 Retrospective revocation of Determination 7/2015**

Determination 7/2015 made by the tribunal on 5 March 2015 is of no effect and is taken to have never had effect.

<sup>90</sup> Mr Timperley, Transcript 10 April 2015: 6

<sup>91</sup> Mr Laurie, Transcript 27 April 2015: 3-4

**73 Liability to repay overpayment**

(1) The purpose of this section is to enable the recovery of any overpayments made to members for the period from 6 April 2015 until the day this section commences (the **transitional period**), consequent on the retrospective revocation of Determination 7/2015 under section 72.

*Note—*

Determination 7/2015 stated that it took effect on 6 April 2015.

(2) For this section—

(a) a member's **actual remuneration** is the amount of remuneration received by the member for the transitional period; and

(b) a member's **entitlement** is the amount of remuneration to which the member was entitled, under this Act as affected by section 72, for the transitional period; and

(c) an **overpayment** is an amount by which a member's actual remuneration is more than the member's entitlement.

(3) A person who was a member at any time during the transitional period is liable to repay any overpayment received by the person.

(4) The Clerk may recover the overpayment by deducting the amount, or the amount in instalments, from the fortnightly salary payable to the person.

(5) If the person stopped or stops being a member on or after 6 April 2015 and any part of the overpayment is unpaid after the day (the **relevant day**) that is 6 months after the day the person stopped or stops being a member, the prescribed rate of interest is payable on the unpaid amount on and from the day after the relevant day.

(6) The overpayment together with any interest payable under subsection (5) may, with the Premier's approval, be recovered by the Clerk as a debt owing to the State.

(7) A certificate signed by the Clerk stating any of the following is evidence of the matter stated—

(a) that a person was a member who had received an overpayment of a stated amount in relation to a stated period;

(b) that under this section the person is liable to repay a stated amount of the overpayment and any accrued interest;

(c) that the person at a stated date had not paid a stated amount the person is liable to repay under this section.

**74 Determination about salary entitlements in response to particular decision before commencement**

(1) This section applies if a public service salary decision was made on or after the introduction day and before the day this section commences.

(2) The tribunal must make a determination about members' salary entitlements under section 31A as if the public service salary decision were made on the day this section commences.

(3) In this section—

**introduction day** means the day on which the Bill for the *Parliament of Queensland and Other Acts Amendment Act 2015* was introduced into the Assembly.

**75 Determination about salary entitlements in response to Directive 16/13**

(1) This section applies if Directive 16/13 is still in effect on 1 December 2015.

(2) The tribunal must make a determination about members' salary entitlements under section 31A as if Directive 16/13 were made on 1 December 2015.

(3) For subsection (2), any provision of Directive 16/13 for a salary increase that applies to a period before 1 December 2015 is to be disregarded.

(4) In this section—

**Directive 16/13** means the directive of that name made under the *Public Service Act 2008*, section 54(1).

Proposed section 72 provides for the retrospective revocation of Determination 7/2015 of the Tribunal made on 5 March 2015.

Proposed section 73 allows for the Clerk to recover from members any overpayments of salary that are made from 6 April 2015 until the day the Bill commences. Proposed 74 sets out the process for the Tribunal to follow if a public service salary decision is made before the Act commences.

Proposed section 75 provides that if Directive 16/13 made under the Public Service Act 2008 published on 13 December 2013 is still in effect on 1 December 2015, the Tribunal must make a determination about members' salary entitlements under that Directive. Directive 16/13 entitles employees who are covered by the directive the following salary increases:

- 1 December 2013 – 2.2%
- 1 December 2014 – 2.2%
- 1 December 2015 – 2.2%<sup>92</sup>

However proposed section 75(3) provides that any provision of Directive 16/13 for a salary increase that applies to a period before 1 December is to be disregarded.

The Committee sought additional information regarding the proposed revocation of Determination 7/2015. The department confirmed that the next Public Service salary increase is effective in December 2015 and the Tribunal will have 90 days from that date to make their determination.<sup>93</sup>

In relation to the revocation of Determination 7/2015, the Tribunal noted that the matter is complex but considered that the determination is consistent with the underlying intent of the government's policy. In its submission, the Tribunal provided the following:

*To explain, Public Service Directive 16/13 provides for the annual wage increases for certain employees in the public service and is generally regarded as the document that gives force to the 2.2% annual increase granted for each of 2013, 2014 and 2015. In this Directive, the applicable date each year is 1 December.*

*The Tribunal did not hand down a determination on or around 1 December 2014 (as it was not required to do so). In this sense, Determination 7/2015, which came into effect on 6 April 2015, may be thought of as being four months 'late' in relation to the alignment of timing with the Public Service Directive. While the decision in Determination 7/2015 to increase the base salary of an MP by 2.58% contains a margin above the Public Service Directive of 2.2%, this margin is insufficient to compensate MPs for the 125 day lag between 1 December 2014 and the effective date of Determination 7/2015. That is, when the full period in the context of the amendments of the Bill is considered (ie successive years using 1 December as the anniversary date), Determination 7/2015 will have delivered an outcome whereby the effective periodic increase in the base salary of an MP from 1 December will be less than that corresponding increase awarded to the public service.<sup>94</sup>*

The Tribunal made the point that if Determination 7/2015 is revoked, the implication is that the base salary of an MP will not have been adjusted since the 1 July 2013, which was the effective date included in Determination 1/2013. The next public service salary increase is not scheduled until 1 December 2015.<sup>95</sup>

The Tribunal noted its concern that, while they have made adjustments to the additional salaries of office holders and implemented changes to the allowances system over the period, the creation of long gaps and sporadic adjustments to member base salaries has been criticised in the past and is generally regarded as being inconsistent with good policy.<sup>96</sup>

<sup>92</sup> Public Service Commission, *Directive 16/13 – Directive of the Minister Assisting the Premier: Remuneration for Certain Employees*, <http://www.psc.qld.gov.au/publications/directives/assets/2013-16-Remuneration-for-Certain-Employees.pdf>

<sup>93</sup> Mr Craig, Transcript 10 April 2015: 3

<sup>94</sup> Submission 2: 2

<sup>95</sup> Submission 2: 3

<sup>96</sup> Submission 2: 3

The government's response to this states:

*The Premier's election commitment regarding the salaries of MPs related to future pay rises for MPs i.e. any pay rise from the election onwards.*<sup>97</sup>

The Committee notes that the Tribunal provided the following advice to government during the consultation on the Bill:

*Generally, the revocation of Determination 7-2015 would appear to be inconsistent with the principles of the Act.*

*Specifically, the Tribunal draws attention to section 37 of the Act which deals with review and appeal of decisions of the Tribunal. Of note, section 37 states that decisions cannot be 'set aside' including by the Supreme Court or another court, a tribunal or another entity. The revocation of Determination 7-2015 would appear to be inconsistent with this provision in the Act. Of course, legislation is decided by Parliament and legislation can always be amended. However the Tribunal raises the issue to ensure that there are no unintended consequences of the proposed retrospective change and notes the apparent inconsistency with the underlying premise that the Tribunal is an independent statutory body.*<sup>98</sup>

The Tribunal advised the Committee at the public hearing that they have always considered that the increase rate percentage number needs to be seen in context and that is primarily why they went through an extensive analysis in their first determination. They noted that people tend to become fixated on what the number is. They argued:

*...if you were to take into account the effect of determination 7, which provides for a salary increase of 2.58 per cent, and you were to look at the effective wage rise since 1 December last year, that an MP's salary over that 12-month equivalency period from December to December, the 2.58 per cent on an annualised basis is actually less than the 2.2 per cent. That is the irony here. Our argument in relation to that is that we have already delivered the intent of the policy change for 2015. We have delivered on an MP salary increase effective from December to December which is less than 2.2 per cent which was the Public Service wage increase awarded in December last year.*<sup>99</sup>

The Clerk also raised the issue that by statutorily overriding the last determination and replacing it with a new formula, the argument is forever lost that the government cannot do something about an unpalatable decision of the Tribunal. The Clerk stated:

*The part that concerns me a little in the current legislation and bill by effectively statutorily overriding the last determination and replacing it with a new formula is that the argument is forever lost now that government cannot do something about unpalatable decisions of the tribunal. There is a bit of a precedent here, is what I am saying, in the sense that now when the tribunal makes a determination—let's say it makes a determination that the allowances are insufficient and they need a 10 per cent increase—the first thing that will be said by those constant critics will be, 'You can override that by legislation; you have done it before.'*<sup>100</sup>

## 6.7 Committee comments – Clause 33

The Committee did not agree on the revocation of Determination 7/2015.

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<sup>97</sup> Correspondence to FAC from Director-General, DPC, dated 27 April 2015: 4

<sup>98</sup> Correspondence to FAC from Director-General, DPC, dated 21 April 2015: 7

<sup>99</sup> Professor Brailsford, Transcript 27 April 2015: 6

<sup>100</sup> Mr Laurie, Transcript 27 April 2015: 5

The Committee did note that it is important to consider that MPs salaries are different to public service salaries. The Committee identified that public sector award agreements often articulated non-remuneration based benefits which were not reflected in the final agreed percentage rate number. As such, the non-government Members questioned whether it was appropriate to use public service payment structures as the basis for determining MP salary rates.

The Committee also noted the Tribunal's comments that the proposed 2.58 per cent increase was in fact less than the 2.2 per cent increase awarded to public servants, effective from 1 December 2014, when timing differences were taken into account. The Committee agreed that the Tribunal's determinations contain an extensive amount of supporting information and the final percentage number should not be the only focus and that determinations need to be read in context.

The Committee further noted that under the proposed amendments there was no scope for the Tribunal to make a determination before December 2015. This effectively means that MPs will not have had any increase since the Tribunal's first Determination which allowed for a 3.02 per cent increase effective from 1 July 2013.

The non-government Members argued that the revocation actually reintroduces one of the reasons for the creation of the Tribunal in 2013. The Committee noted that large gaps between salary increases had previously led to a situation where anecdotal evidence suggested that allowances were being used as de facto salary increases and the Committee agreed that the new allowance system developed by the Tribunal would prevent this occurring in the future. However, the non-government Members believed that allowing large gaps between increases was bad policy.

The non-government Members argued that this revocation established a precedent which could impact on the Tribunal's independence in the future. The non-government Members further argued that the revocation is a continuing theme of ignoring what the Tribunal has determined to be appropriate and therefore reinforces the impact on the Tribunal's independence.

The government Members argued that the revocation was merely a continuation of the commitment to keep MP salary increases at a rate of not more than the public sector award increases.

This issue is discussed further in section 7.4 of this report.

## **6.8 Committee comments – Amendments to *Queensland Remuneration Tribunal Act 2013***

Firstly the Committee wishes confirm that it has the utmost respect for the Tribunal and the work it has undertaken since its inception in July 2013. The Committee considers that the Tribunal has undertaken its work in a truly independent manner. It has consulted widely and the results of its determinations are a positive reflection of both the substantial experience and skill of its Members. The Committee considers that the extensive work the Tribunal has undertaken has provided a sound platform for MPs salaries and allowances into the future. The Committee wishes to express its appreciation for the Tribunal's efforts in achieving such an extensive amount of work. The Committee also acknowledges that the Tribunal is well regarded in other jurisdictions.

The Committee identified a number of significant issues on which it did not come to a consensus. These issues related to the question of whether the proposed amendments impacted on the Tribunal's independence by placing a cap on future MP salary determinations, whether an alternative method of amendment could achieve the government's intentions of fulfilling an election commitment and revocation of Determination 7/2015.

The government Members considered that the propose amendments did not impact on the Tribunal's independence as it can still make determinations about MPs salary entitlements and allowances. The proposed amendments merely put in place a reasonable upper limit in order to ensure that excesses do not occur in the future. The government Members also did not support the alternative method of amending section 29 of the Act proposed by the Tribunal on the basis that it would not ensure that government's intent would be adhered to in the future. The government members supported the revocation of Determination 7/2015 as they considered it to be a continuation of the commitment to keep MP salary increases at a rate of not more than the public sector award increases.

The non-government Members considered that the proposed amendments did impact on the Tribunal's independence and instead proposed that, in order to achieve the government's commitment, section 29 be amended. The non-government Members of the Committee did not support the revocation of Determination 7/2015 as it established a precedent which could impact on the Tribunal's independence in the future. The non-government Members' view is that the issue of Members' salaries should never again be addressed for politically motivated purposes and the goal of the Committee should be to ensure appropriate amendments to ensure that this issue is not raised in the future. The non-government Members consider that the proposed amendments are likely to give rise to future amendments.

The government Members recommend that that the amendments to the Queensland Independent Remuneration Tribunal Act 2013 be passed.

The non-government Members recommend that clauses 30 to 33 not be passed. However they recommend that section 29 of the Act be amend as to replace the word 'may' in the first line of 29(1) and include an additional item to benchmark the rate of increase to the salary or wage of a departmental employee under the public service salary decision.

## 7 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* states that fundamental legislative principles (FLPs) are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

The Committee examined the Bill's consistency with FLPs. This section of the report discusses potential breaches of the FLPs identified during the Committee's examination of the Bill and includes any reasons or justifications contained in the explanatory notes and provided by the department.

The explanatory notes state that:

*The Bill is considered to be consistent with the fundamental legislative principles set out in the Legislative Standards Act 1992.*

This report makes reference to the former Scrutiny of Legislation Committee (SLC). By way of background, two reviews conducted by the Electoral and Administrative Review Commission (EARC) in 1991 and 1992 recommended Queensland replace its then Committee of Subordinate Legislation with a Scrutiny of Legislation Committee with an expanded remit to allow it to review both primary legislation (Bills) and subordinate legislation (regulations and statutory instruments).



The *Legislative Standards Act 1992* saw FLPs enshrined into law and the Committee of Subordinate Legislation then began scrutinising subordinate legislation to ensure there had been sufficient regard given to the newly enacted FLPs.

The *Parliamentary Committees Act 1995* established a new SLC to ‘examine all Bills and subordinate legislation to consider the application of FLPs to particular Bills and subordinate legislation, and the lawfulness of particular subordinate legislation’.

A review of Queensland’s Parliamentary committee system in 2010 led to the abolition of the dedicated SLC in favour of the current system of portfolio-based committees that have operated since mid-2011. Pursuant to section 93 of the *Parliament of Queensland Act 2001* it is now the role of each portfolio committee to consider any FLP’s issues contained in Bills and subordinate legislation within its portfolio area. The Committees are assisted in this work by a dedicated secretariat which performs a very similar role to the former SLC by examining bills and subordinate legislation for FLP compliance.

The considerable body of work generated by the former SLC and its predecessor Committee regarding FLP issues remains a valuable source of information for the current portfolio committees when considering bills and sub-ordinate legislation. Similarly, the Office of Parliamentary Counsel (OQPC) frequently references the findings of the former SLC in its work *Fundamental Legislative Principles: The OQPC Notebook*, a very detailed and evolving examination of FLP issues.

#### **7.1 Legislation should not prejudice the independence of the judiciary – Section 4(1) *Legislative Standards Act 1992***

Section 4(1) of the *Legislative Standards Act 1992* provides that FLPs are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.

An independent judiciary is recognised as an essential element of a parliamentary democracy based on the rule of law. As a matter of FLPs, legislation should not, therefore, prejudice the independence of the judiciary.

It is arguable that, by specifying when a quasi-judicial body such as the Tribunal must make (or not make) certain determinations, clauses 31 and 33 fetter the Tribunal’s discretion and may thereby prejudice its independence. It is noted, however, that this approach is not unusual.

A significant amount of other legislation specifies matters and set guidelines to which courts and tribunals must have regard when reaching decisions. For example, see the following legislation regarding compensation – the *Workplace Health and Safety Act 2011* (section 184), *Hospital and Health Boards Act 2011* (section 251) and *Transport Operations Road Use Management Act 1995* (section 64).

The Tribunal is itself already subject to mandatory direction under the *Queensland Independent Remuneration Tribunal Act 2013*. Section 30 of that Act already mandates that the Tribunal must, when making a determination, consult with and consider the views of the Clerk of the Parliament, as well as ensuring allowances paid reflect reasonable expenses incurred in servicing an electorate.

The Tribunal, in their submission, also argued that the fundamental principle of independence of the Tribunal is arguably challenged by the proposed reform as it has the effect of directing or at least influencing the Tribunal's decision making.<sup>101</sup> However, they noted in response to a question about the Tribunal's independence that:

*...we did not actually say that the legislation removes the independence but there is an element in terms of the direction in which that is headed.*<sup>102</sup>

The government's response on this issue is that a salary increase for MPs will only ever be payable if the Tribunal determines that one should apply and the percentage rate of any increase will still be a matter for the Tribunal to determine, noting it will be required to take into consideration the related public service salary increase that its determination cannot exceed.<sup>103</sup>

## **7.2 Rights and liberties – Section 4(1) *Legislative Standards Act 1992* – Does the Bill adversely affect rights and liberties, or impose obligations retrospectively?**

Section 4(3)(g) of the *Legislative Standards Act 1992* (the LSA) provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

Clause 33 inserts a new Part 6, Division 4 into the *Queensland Independent Remuneration Tribunal Act 2013*, which includes new section 72 that provides for retrospective revocation of Determination 7/2015 by stating that it is of no effect and is taken to have never had effect.

The Tribunal issued Determination 7/2015 on 5 March 2015 to set the new base salary for an MP and make consequent adjustments to the additional salary of office holders, effective from 6 April 2015. According to the Explanatory Notes for the Bill, Determination 7/2015 had granted a 2.58% salary increase to Members of the Legislative Assembly (MPs) from 6 April 2015.

Any (now deemed) 'overpayments' made to members between 6 April 2015 and the day section 73 commences (the transitional period), consequent on the retrospective revocation of Determination 7/2015, may be recovered by the Clerk of the Parliament under authority of new section 73.

The retrospective revocation of Tribunal's Determination 7/2015 removes any entitlement to the 2.58% salary increase that MPs were to be awarded under it from 6 April 2015. Accordingly any increase in salary payments received by MPs because of that Determination will also be retrospectively forfeited and subject to repayment. The retrospectivity of the revocation of Determination 7/2015 clearly impacts the proprietary interests of Members of Parliament who would, but for the retrospective revocation, have received at least some additional monies for the period between 6 April and commencement of this Act.

As noted above, strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively. In respect of this, the explanatory notes state that:

*During the election campaign, the Premier and Minister for the Arts, then as Leader of the Opposition, announced that under a Labor Government future salary increases for MPs would be linked to salary increases for public sector employees.*

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<sup>101</sup> Submission 2: 2

<sup>102</sup> Professor Brailsford, Transcript 27 April 2015: 4

<sup>103</sup> Correspondence to FAC from Director-General, DPC, dated 27 April 2015: 3

*Given the quantum of the salary increase determined for MPs by the Tribunal in Determination 7/2015, and the quantum of the next scheduled salary increase for public sector employees, the Government has decided that Tribunal Determination 7/2015 should be retrospectively overturned. This requires an Act of Parliament to implement, thus the Bill proposes a necessary amendment to the Queensland Independent Remuneration Tribunal Act 2013.*

The SLC considered instances where there was a reliance on an announced proposal as a basis for later retrospectivity, but did not support retrospectivity merely because a government had announced its intentions to retrospectively legislate. Whilst that Committee did not promote the practice of what it called 'legislation by press release', it did acknowledge that the practice of publicly announcing a change in legislation prior to making the change serves to forewarn affected individuals, and to decrease reliance on the existing legislation. In assessing its concerns in particular instances, the Scrutiny Committee took account of the number of persons affected, the period of notice given and the extent to which adverse effects could be avoided beforehand.

It is not clear from the above explanatory notes extract whether the Premier had specifically announced during the election campaign her intention to retrospectively overturn Tribunal Determination 7/2015 as part of ensuring future salary increases for MPs would be linked to salary increases for public sector employees. Given the publicity that accompanied the issue during the election campaign however it was likely no surprise to MPs that the Government is seeking to retrospectively overturn the Determination. In any event, even if the Determination was overturned prospectively (rather than retrospectively) the period for which Members would receive a 2.58% increase would only be from 6 April 2015 until commencement of the revocation provision, which is unlikely to be a lengthy period, consequently the amount to be 'lost' by Members would not be significant. Thus the retrospective aspect of the overturning does not have a huge impact on the amount to be lost by Members.

### **7.3 Explanatory notes**

Part 4 of the *Legislative Standards Act 1992* relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins. It should be noted, however, that neither of the potential FLP issues raised above were canvassed as such in the explanatory notes.

### **7.4 Committee comments**

The Committee wishes to express its concern that neither of the potential FLP issues identified by the Committee were examined in the explanatory notes. This could potentially lead readers of the explanatory notes to be less informed about the impact of these issues. Whilst the department may consider that these issues to be of minor consequence, the Committee wishes to remind the department of the importance of providing this type of information in explanatory notes to ensure that a thorough examination of all issues can be completed.

The Committee was unable to agree on whether the issues with the FLPs were significant enough to warrant not passing the bill.

The non-government Members considered that retrospectively revoking the Tribunal's Determination 7/2015 was imprudent. They expressed the view that any use of retrospectivity should meet the highest standards and they did not consider that the proposed amendments met that benchmark.

The government Members considered that affected Members were sufficiently aware of the proposed changes prior to the Bill's introduction and so any impact would be minimal and therefore it was justifiable to allow the FLP breach.

## **Appendices**

**Appendix A – List of Submissions**

<b>Sub #</b>	<b>Submitter</b>
1	Australian Lawyers Alliance
2	Queensland Independent Remuneration Tribunal
3	Hon Jim Fouras AM
4	Accountability Round Table
5	The Clerk of the Parliament (Queensland)

**Appendix B – Officers appearing on behalf of the department at public departmental briefing –  
Friday 10 April 2015**

<b>Witnesses</b>
Mr Leighton Craig, Cabinet Secretary, Department of the Premier and Cabinet
Ms Shelley Francis, Parliamentary Liaison Officer, Department of the Premier and Cabinet
Mr Andrew Timperley, Principal Policy Officer (Parliament), Department of the Premier and Cabinet

**Appendix C – Witnesses appearing at public hearing – Monday 27 April 2015**

<b>Witnesses</b>
Dr David Solomon AM representing the Accountability Round Table
Professor Tim Brailsford, Chair, Queensland Independent Remuneration Tribunal
Ms Joanne Jessop, Member, Queensland Independent Remuneration Tribunal
Mr Neil Laurie, Clerk of the Parliament
Hon Jim Fouras AM, Former Queensland Speaker and Retired Member of Queensland Parliament



**Appendix D – Information from DPC regarding feedback from stakeholders consulted as part of the consultation process on the Bill**

## **What was the details of the feedback from stakeholders consulted as part of the consultation process on the Bill?**

As outlined at the public briefing, the Clerk of the Parliament, QSuper, the Queensland Independent Remuneration Tribunal and Queensland Treasury were consulted by the Department of the Premier and Cabinet (DPC) during the development of the Bill. Feedback from this consultation is as follows.

### *The Clerk of the Parliament*

As the principal officer of the Parliament and the chief executive of the Parliamentary Service, feedback from the Clerk of the Parliament (the Clerk) was sought during the consultation process.

The Clerk's feedback to DPC related to how the Bill delivered upon the Government's policy proposals. The Clerk's view was not sought about his support or otherwise for these proposals.

The Clerk provided feedback that the position of Clerk should be retained as the employing authority for the Parliamentary Service.

The Clerk also raised how the possibility for long term bipartisan planning and budgeting for the Parliamentary Service could be achieved under the current management structure for the Parliamentary Service and how this could be similarly achieved under the Government's policy proposal for the management of the Parliament.

### *QSuper*

QSuper manages the superannuation of members and former members of the Queensland Legislative Assembly.

In providing feedback on the policy decision to revoke the Queensland Independent Remuneration Tribunal's determination, QSuper advised DPC that it would be desirable, for pension reasons, that the legislative mechanism for setting members' salaries be settled before 1 July 2015.

### *Queensland Independent Remuneration Tribunal (the Tribunal)*

The Tribunal was consulted during the drafting of the Bill given the Tribunal's functions under the *Queensland Independent Remuneration Tribunal Act 2013*.

The Premier also committed to consulting with the Tribunal on the drafting of the legislation to deliver on the Government's policy for members' salaries.

On 18 March 2015, DPC forwarded a draft of the Bill to the Tribunal with a request for its feedback.

On 22 March 2015, DPC received a written response from the Tribunal about the Bill and the Premier replied to the Tribunal about the matter on 15 April 2015. Please find attached a copy of this correspondence for the information of the committee.

### *Queensland Treasury*

As a central agency of government, and also given Treasury's responsibility to advise the government on the financial and budgetary implications of all Cabinet documents, Treasury is consulted on legislative proposals as a matter of course.

In its feedback, Treasury expressed no issues with the Bill.

### **What happens if a public service salary decision grants different percentage salary increases for the various levels within the administrative stream in the department?**

Recent salary increases granted to public servants in the core public service under State Government Departments Certified Agreements or the most recent increase granted under Directive 16/13 made under the *Public Service Act 2008*, have specified that the same percentage rate of salary increase is to apply to all levels within the administrative stream. An occurrence where different percentage rates of salary increase within the administrative stream have been granted is not known.

In any event, new section 31A(3) of the *Queensland Independent Remuneration Act 2013*, (the Act) at Clause 31 of the Bill, provides that a "*determination may not increase a member's salary entitlement by a rate that is higher than the rate of increase to the salary or wage of a departmental employee under the public service salary decision*".

The intent of this section is that the Tribunal cannot increase the salary of a member of the Legislative Assembly by a rate that is higher than the rate of increase of a departmental employee under a public service salary decision.

While DPC considers it highly unlikely that a public service salary decision would specify different rates of salary increase for different levels within the administrative stream, not the least because of the effect such a decision would have on the salary relativities between each of the levels, DPC is of the view that new section 31A(3) of the Act as drafted prevents the Tribunal from determining a rate of salary increase for members which exceeds the least rate of salary increase received by a department employee.

# Queensland Independent Remuneration Tribunal

22 March 2015

Ms Shelley Francis  
Parliamentary Liaison Officer  
Department of the Premier and Cabinet  
shelley.francis@premiers.qld.gov.au

Dear Ms Francis,

We write in response to the request for feedback on the proposed legislative changes to the *Queensland Independent Remuneration Tribunal Act 2013* (the Act) received on 18 March 2015.

This response is as comprehensive as can be expected given the tight deadline to respond regarding the draft amendments. As noted below, the Tribunal considers that this is a complex matter and further consultation is desirable. The Chairperson is currently in Europe and as such the Tribunal members have not been able to have a considered discussion other than by email.

The Tribunal was only formally made aware of the intention of the Government to link changes in member salaries to public service wage determinations during the meeting with the Premier's Chief of Staff and subsequent letter from the Premier dated 4 March 2015. However, the Tribunal notes the policy stance on this matter taken by the Government and respects the Government's intent.

## Policy matters

In relation to the general policy matter, the Tribunal advises caution. First, the development of the Act that established the Tribunal arose as a direct response to previous Government intervention in member salaries and entitlements. The Tribunal urges the Government to consider the longer term consequences of its planned policy albeit well intentioned.

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Remuneration Tribunal, Secretariat

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Second, there is the potential for inherent conflict in capping member salaries to public service wage outcomes as the Government and its Ministers are involved in public service wage negotiations and their outcomes.

Third, the fundamental principle of independence of the Tribunal is challenged by the reform. It is difficult to imagine how the Tribunal can be regarded as truly independent under the proposed changes.

Fourth, and related to above, there is conflict between the proposed legislative amendments and principles underlying the Act. Such conflicts may make it difficult for the Tribunal to operate and advice will be required to operationalise some of these elements. A number of these conflicts are detailed below.

Finally, the policy itself appears to achieve little in substance. As the Tribunal has noted in its prior Determinations and public statements, public service wages are an explicit benchmark that the Tribunal already takes into account in its Determinations. For instance, the Tribunal's first Determination 1-2013 contains an extensive discussion of, and comparison to, public service wage benchmarks. Further, the recent Determination 7-2015 delivered an outcome that is close to the most immediate past public service wage directive.

There is perhaps another way to enshrine the intent of the policy reform. The benchmark of the public service wage conditions could be embedded within section 30 of the Act which deals with requirements for the Tribunal when making decisions.

A basic thrust of the new policy is to alter the independence of decision-making of the Tribunal. The difficulty is that the current legislation was drafted with an opposing intent which was to enshrine the independence of the Tribunal's decision-making. Hence, the existing Act contains a number of safeguards designed to protect the principles of independence. In the view of the Tribunal, the proposed legislative reforms conflict with a number of existing provisions – some of which are noted below.

#### Ministerial Directive

Section 9 of Act is clear that the Tribunal is not to be subject to any direction from a Minister. Further, section 9 imposes a legislative requirement that the members of the Tribunal must act independently and not be subject to direction or control. The proposed revisions are intended to direct the Tribunal in relation to its decision-making. For instance, the instrument by which a member's salary will be set is titled a "Directive of the Minister Assisting the Premier".

### Practical Considerations

The Tribunal's role also extends to determining the different additional salaries of the various office holders and in this regard refers you to the relativities decided in Determination 3-2014 (refer to pp 69-71). The Tribunal is concerned that the proposed amendments may prevent it from setting these relativities in the future. For example, if the role of a committee chairperson changes, the Tribunal understands it may unintentionally be restricted to adjusting this salary only to the extent of the relevant public service salary decision.

The Tribunal's current practice requires around three months of background work involving research, discussion and drafting to reach a Determination. In part, this reflects the very part-time nature of the Tribunal members but also reflects the Tribunal's genuine desire to ensure that it has undertaken a detailed analysis. Under the proposed revisions, the Tribunal would have only 30 days in which to reach a decision. The Tribunal argues that this is inappropriate and that a longer term of say 90 days should be granted.

The Tribunal notes that it "may not make a determination about a member's salary entitlement unless a public service salary decision is made". The Tribunal queries whether the amendment is sufficiently clear to ensure that it will be limited to making one determination only after the relevant public service salary decision is made, which it presumes is the policy intention. In addition, assuming that there is a public service salary decision which spans a three-year period (which is currently the case) does this mean that the Tribunal is limited to making only one salary entitlement determination that must cover the entire three-year period?

The Tribunal trusts that it is clearly understood by the Government that an implication of the proposed changes is that the member base salary will not have been adjusted in the period since the release of Determination 1-2013, effective 1 July 2013, and the next public service salary increase is not scheduled until December 2015. The creation of long gaps and sporadic adjustments to member salaries has been criticised in the past and generally regarded as being inconsistent with good policy. Hence, an alternative and arguably reasonable view is that the member salary should have been adjusted by up to 2.2% from December 2014 to be consistent with the overall intent and rationale for the new policy. However, this would involve retrospective application and would be administratively cumbersome given the changes to the composition of Parliament that occurred as a result of the recent election that would necessitate back pay and payments to (now) former members. The Clerk of the Parliament may also have a view on this matter.

In summary, it may be simplest to leave Determination 7-2015 in place.

Determination 7-2015

Generally, the revocation of Determination 7-2015 would appear to be inconsistent with the principles of the Act.

Specifically, the Tribunal draws attention to section 37 of the Act which deals with review and appeal of decisions of the Tribunal. Of note, section 37 states that decisions cannot be "set aside" including by the Supreme Court or another court, a tribunal or another entity. The revocation of Determination 7-2015 would appear to be inconsistent with this provision in the Act. Of course, legislation is decided by Parliament and legislation can always be amended. However the Tribunal raises the issue to ensure that there are no unintended consequences of the proposed retrospective change and notes the apparent inconsistency with the underlying premise that the Tribunal is an independent statutory body.

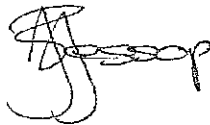
The Tribunal urges that more detailed consideration be given to the proposed changes. It is important that changes to legislation designed to capture policy intent do not carry unintended consequences. The Tribunal is open to more active consultation in relation to the proposed changes.

Yours sincerely



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**Professor Tim Brailsford**  
Chair



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**Ms Joanne Jessop**  
Member



---

**Mr David Harrison**  
Member



# Premier of Queensland

For reply please quote: *CAPS/MK - TF/15/6670 - DOC/15/54123*

15 APR 2015

Professor Tim Brailsford  
Chair  
Queensland Independent Remuneration Tribunal  
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Website [www.thepremier.qld.gov.au](http://www.thepremier.qld.gov.au)

Dear Professor Brailsford

Thank you for your letter of 22 March 2015 to the Parliamentary Liaison Officer of my department in which you provide the Queensland Independent Remuneration Tribunal's (the tribunal) feedback on proposed legislative changes to the *Queensland Independent Remuneration Tribunal Act 2013* (the Act).

I have noted the issues raised by the tribunal members on the proposed legislative changes and appreciate the tribunal's quick response to the request for comment on the draft Bill to amend the Act.

In relation to your general comment regarding policy matters, as I indicated in my previous correspondence, one of the Government's election commitments was to limit the amount of any increase to the annual salary received by Members of the Queensland Parliament to no more than that received by the public service. My Cabinet colleagues and I have been elected by the people of Queensland on the understanding that we will deliver on this commitment and the only way to guarantee this outcome is to legislate accordingly.

I respect the manner in which the tribunal has independently and impartially performed its functions under the Act, and do not believe these changes impact on the tribunal's independence.

In relation to the practical implications of the proposed legislative changes, the Bill now ensures that the tribunal is provided with up to 90 days within which to make its determinations about members' salaries following public service salary increases. The Bill will also not prevent the tribunal from determining the different additional salaries received by various office holders.

I trust this information is helpful to you and the tribunal members, and thank you again for your assistance in this matter.

Yours sincerely

**ANNASTACIA PALASZCZUK MP  
PREMIER OF QUEENSLAND  
MINISTER FOR THE ARTS**



**Appendix E – Information from the Clerk of the Parliament regarding comparative increases  
between the core public service and Queensland Members of Parliament**

Mr Neil Hairie, Clerk of  
 Tabled by: the Parliament  
 At: FAC Public Hearing  
 Date: 27 April 2015  
 Signature: 

**COMPARATIVE INCREASES**

DATE OF EFFECT OF INCREASE	CORE PUBLIC SERVICE INCREASE	MEMBERS INCREASES - Increase to base
01.05.95	1.4 %	
13.07.95		2 %
07.03.96		1.6 %
01.05.96	4 %	
17.10.96		2 %
01.01.97	2 %	
30.09.97	2 %	
30.09.98	4 %	
30.09.99	4 %	
07.12.99		4.4 %
01.01.00	1 %	
01.07.00	3 %	5.2 %
01.07.00		2.2 %
01.07.01	3 %	3.9 %
01.07.02	3 %	3.3 %
01.06.03	3.8 %	
01.07.03		4 %
01.07.04	3.8 %	3.9 %
01.07.05		4.1 %
01.08.05	3.8 %	
01.07.06		7 %
01.08.06	4 %	
01.07.07	4 %	6.8 %
01.07.08	4 %	
01.08.09	4.5 %	
01.01.10		3.1 %
01.08.10	4 %	2.5 %
01.08.11	4 %	2.5 %
01.07.13		41.9 % (paid & rescinded)
01.07.13		8.5 %
01.07.13		Increase to additional salary only - various percentages
01.12.13	2.2 %	
01.12.14	2.2 %	
06.04.15		2.5 %
01.12.15	2.2 %	
Total cumulative since 1 May 1995	<b>69.9%</b>	<b>69.5%</b>