

 7/5/14

CRIME AND MISCONDUCT AND OTHER LEGISLATION AMENDMENT BILL 2014

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Jarrod Bleijie MP

Title of the Bill

Crime and Misconduct and Other Legislation Amendment Bill 2014

Objectives of the Amendments

The objective of the amendments is to address recommendations numbered two, six, seven and eight and some points of clarification made by the majority of the Legal Affairs and Community Safety Committee (the committee) in their report on the Crime and Misconduct and Other Legislation Amendment Bill 2014 (the Bill) tabled in the Legislative Assembly on 30 April 2014.

The amendments will also address some of the concerns raised in submissions made to the committee during the committee's consideration of the Bill.

The amendments being made to the Bill will:

1. amend clause 6 to remove the establishment of a primary and secondary purpose of the commission;
2. amend clause 16 that provides for complaints to be made by way of a statutory declaration to:
 - a. clarify what complaints require or do not require a statutory declaration to be made;
 - b. clarify what is information or matter as distinct from a complaint for the purposes of this section;
 - c. expand the list of examples for what are exceptional circumstances that may not require the complaint to be made by way of a statutory declaration to add:
 - a person who has a personal or physical disadvantage that makes it difficult or impossible for that person to make the complaint by statutory declaration; and

- a child;
- 3. amend clause 21 to provide that the Minister must consult with the parliamentary crime and misconduct committee prior to approving a research plan or an amendment to a research plan under the new section 52 of the Act;
- 4. insert a new amendment to section 146ZQ of the Act and amend clause 74 (new section 314A) to provide for the process in which documents referred to in those sections are to be tabled in the Legislative Assembly;
- 5. amend clause 38 to provide that the parliamentary crime and misconduct committee has a right to veto the appointment of a commissioner prior to the person being nominated for appointment by the Minister;
- 6. amend clause 87 to align the definition of confidential information as used in the new section 88M of the *Public Service Act 2008* with the definition of personal information used in the *Right to Information Act 2009* and *Information Privacy Act 2009*;
- 7. amend clause 88 (new section 219A of the *Public Service Act 2008*) to clarify that a public service employee is able to complain if they are a customer of the department, even if they are also employed by that very department; and
- 8. make minor amendments to the Schedule 2 amendments.

Achievement of the Objectives

Primary and secondary purpose of the commission

Concerns were raised in several of the submissions made to the committee about clause 6 of the Bill to amend section 4 of the Act to provide for a primary purpose (major crime) and secondary purpose (corruption) of the commission.

The categorisation of the commission's purposes in this way was not intended to mean the corruption function of the commission is not important; but rather to confirm the commission's important role in fighting major crime.

However, given the concerns that have been raised, clause 6 of the Bill will be amended to remove the establishment of a primary and secondary purpose of the commission in section 4. Clause 6 will now just amend section 4(1)(b) of the Act to remove any references to the prevention function of the commission.

Complaints made by way of a statutory declaration

Clause 16 is also amended to expand the list of examples for what are exceptional circumstances that may not require the complaint to be made by way of a statutory declaration to add:

- a person who has a personal or physical disadvantage that makes it difficult or impossible for that person to make the complaint by statutory declaration; and
- a child.

This amendment implements recommendation six of the committee report that was based on the submission of the Queensland Law Society to the committee.

The majority of the committee sought clarification about when a statutory declaration was required when making a complaint to the commission and also what is information or matter.

Clause 16 is amended to provide that the requirement for a statutory declaration is not required when:

1. the complaint is made as a disclosure or a referral of a disclosure to the commission under the *Public Interest Disclosure Act 2010*;
2. the complaint about, or information or matter involving corruption is given to the commission as a referral, notification or recommendation under another law; or
3. the information or matter involving the corruption is given to the commission under the new subsection (5) of section 36 of the Act being inserted by the amendment to clause 16.

The new subsection 36(5) provides that a statutory declaration is not required if a person gives information or matter to the commission and provides a list of examples of what is information or matter.

Consultation on the commission's research plan

Clause 21 is amended to provide the Minister must consult with the Parliamentary Crime and Misconduct Committee prior to approving a research plan or an amendment to the research plan.

This amendment implements recommendation 7 of the committee report.

Process for tabling certain documents

Recommendation 8 of the Committee report proposed amendments to set out the process for the parliamentary commissioner documents to be tabled in the Legislative Assembly.

A new clause is inserted in the Bill to amend section 146ZQ to deal with the documents under that section. Clause 74 of the Bill is also amended to implement this recommendation.

Parliamentary Committee's right of veto on commissioner appointments

Clause 38 is amended to implement recommendation 2 of the committee report to provide the Parliamentary Crime and Corruption Committee (title of the committee as amended by the Bill) will have a right to veto the appointment of a commissioner. The Minister is to provide notice to the parliamentary committee prior to nomination of the person for appointment and the parliamentary committee is given 14 days in which to consider the person's nomination and veto the appointment. The Minister is not able to nominate the person for appointment if he or she has been vetoed by the parliamentary committee.

Amendments to the *Public Service Act 2008*

Clause 87 is amended to clarify the definition of confidential information and personal information in the new section 88M. This amendment was recommended by the Office of the Information Commissioner to the Department of Justice and Attorney-General. Such an amendment would enhance new section 88M to create a greater alignment and consistency across the statute book in regard to the treatment of personal information, by substituting the term 'person's affairs' with 'personal information'.

Clause 88 is amended to clarify in the new section 219A that a public service employee is able to complain if they are a customer of the department, even if they are also employed by that very department. This amendment resolves the concern raised by the Queensland Ombudsman in his submission to the Committee.

Schedule 2 amendments

The *Public Safety Business Agency Bill 2014* (PSBA Bill) proposes amendments to the *Fire and Rescue Service Act 1990* and the *Prostitution Act 1999*. As a result of the PSBA Bill amendments, the proposed amendments in the Bill to these two Acts are affected because:

- *Fire and Rescue Service Act 1990* – the short title of the Act is to change; and
- *Prostitution Act 1999* – the numbering in section 102 will change.

The amendments will make the required changes to these two Acts to align with the proposed changes being made in the PSBA Bill.

Alternative Ways of Achieving Policy Objectives

There is no alternative way to achieve these objectives other than by amending the Bill.

Estimated Cost for Government Implementation

There are no costs associated with these amendments.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

The Crime and Misconduct Commission has been consulted on the amendments.

NOTES ON PROVISIONS

Amendment 1 amends clause 6 of the Bill to remove the creation of a primary and secondary purpose of the commission and to redraft section 4(1)(b) to omit references to the prevention function for corruption and use the new terminology.

Amendment 2 amends clause 16 of the Bill to redraft section 36(1) to remove references to information or matter and clarify the purpose of making a complaint is for the commission to deal with complaint under section 35.

Amendment 3 amends clause 16 of the Bill to provide for two additional examples of what may be an exceptional circumstance under the new section (3).

Amendment 4 amends clause 16 of the Bill to provide for new subsections 36(4) to (6).

Subsection 36(4) confirms the commission may only deal with a complaint made under section 36(1) if the complaint complies with the requirement in subsection (3) that it is to be made by way of a statutory declaration.

Subsection (5) provides that a person may give information or matter to the commission involving corruption, and provides examples of information or matter.

Subsection (6) confirms the situations when a statutory declaration under subsection (3) is not required.

Amendment 5 amends clause 21 of the Bill to require the Minister to consult with the parliamentary committee before the Minister approves the research plan or amendment to the research plan.

Amendment 6 inserts a new clause 24A in the Bill to provide for the process for how a report prepared by the commission under section 146ZQ (Report about authorities for assumed identities) is to be tabled in the Legislative Assembly.

Amendment 7 amends clause 38 of the Bill to insert a subsection number (1) to the proposed new section 228.

Amendment 8 amends clause 38 of the Bill to insert two new subsections (2) and (3) in the new section 228. These two new subsections provide the parliamentary committee may veto the appointment of a person as a commissioner and provide the process of how this must be undertaken.

Amendments 9 and 10 amend clause 74 of the Bill to provide for the process of how the parliamentary commissioner may cause to be tabled in the Legislative Assembly a copy of, or extract from a referral or recommendation from an own motion investigation conducted by the parliamentary commissioner.

Amendment 11 amends clause 87 of the Bill to provide for a definition of personal information in the new section 88M.

Amendment 12 amends clause 88 of the Bill to clarify in the new section 219A that a public service employee is able to complain if they are a customer of the department, even if they are also employed by that very department

Amendment 13 amends Schedule 2 of the Bill to change the title of the *Fire and Rescue Service Act 1990* to the *Fire and Emergency Services Act 1990*.

Amendment 14 amends Schedule 2 of the Bill to change the section numbering in section 102 of the *Prostitution Act 1999*.

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