

CLAUSE NOTES

INTEGRITY COMMISSION AMENDMENT BILL 2011

- Clause 1: Short title**
sets out the name of the proposed Act – *Integrity Commission Amendment Bill 2011*
- Clause 2: Commencement**
provides that the Bill will commence on the day of Royal Assent.
- Clause 3: Principal Act**
identifies that the *Integrity Commission Act 2009* is being amend by this Act.
- Clause 4: Section 4 (of the 2009 Act) amended (Interpretation)**
the definition of “investigator” is amended to include references to investigations under ss 45, 87, 88, 89 as well as s 44;
the definition of “public authority is amended to refer to subsection 5(1) (which is itself being amended to clarify the defn of “public authority”).
the definition of “public officer” is amended to clarify that certain persons in section 5(2) (Judges, Magistrates etc) are not “public officers” for the purposes of the Act (as they are not “public officer” they will not be “designated public officers” either).
- Clause 5: Section 5 amended (Public authorities)**
amends paras (f) and (g) of s 5(2) to clarify that it is only the members of a tribunal or the Industrial Commission who are excluded from the definition (s 4(2) could otherwise mean all the staff etc of a tribunal or the Industrial Commission were excluded).

Clause 6: Section 6 amended (Designated public officers)

amends the section by omitting subsection (2) – this matter is now covered by the redefinition of “public officer” above (those listed in s5(2) are now neither “public officers” nor “designated public officers” for the purposes of the Act.

Clause 7: Section 33 amended (Complaints)

adds a new subsection (1A) allowing anonymous complaints to be lodged with the Commission.

Clause 8: Section 37 amended (Report of assessor)

Words have been added to align the report of the assessor with the actions of the CEO after receipt of the report (see s 38(1)). After formal assessment the assessor reports to the CEO who may take a range of steps including to dismiss or not accept the complaint.

Clause 9: Section 45 amended (Own motion investigations)

The changes to section 45 are to align the processes of “own motion” investigations with investigations initiated by a complaint and to make the process clearer as to the appointment of the investigator. Under the changes, the Board would make the decision to conduct an investigation then the CEO would appoint the investigator (as the CEO does for complaints in s 44).

(a) the change means that the Board is determining that an investigation should be conducted leaving the actual administrative processes (appointing investigator etc) to the CEO to carry out;

- (b) this change is merely to clarify the process after the Board determines to conduct the investigation;
- (c) this is to clarify that the investigation is into whether misconduct has occurred not into whether misconduct is merely suspected;
- (d) this is merely to enable the addition of para (d);
- (e) new para (d) has been added to align the investigator's role with the matters that the Board might seek to have investigated in subsection (1)(d) (subsec 1(a), (b)& (c) are replicated in subsection (2) but (1)(d) was omitted.

Clause 10: Section 51 amended (Search warrants)

The Act provides that a range of notices are to be treated as confidential documents which means they can be revealed to third parties only in limited circumstances (s 98). To be treated as a confidential document the investigator, Commission or Tribunal has to include in the document a statement to that effect. Warrants issued under s 51 are issued by the court and not by the Commission so it is not possible for the Commission to include the additional statement in the notice.

Clause 11: Part 6 Division 2 Heading amended

The heading of the Divisions has been amended to reflect minor changes made in s 57.

Clause 12: Section 56 amended (Opportunity to provide comment)

The Act does not deal clearly with the need for some difference in the processes of investigations based on whether they arise from a complaint or an own motions determination. In a number of places the Act refers to "the person subject to the

complaint” which does not pick up persons subject to “own motion” investigations against whom no complaint (which is defined in s 4) has been made under s 33. This change (and subsequent changes) is to ensure that persons who are investigated on an own motion determination are dealt with similarly in terms of being advised of the investigation, being able to make submissions and being given details of the outcome.

Clause 13: Section 57 amended (Report by chief executive officer)

As with cl 12 the changes to s 57(2)(b) & (d) are to clarify that persons whose conduct is being investigated on the basis of an own motion determination (s 45) are dealt with similarly to persons subject to a s 33 complaint.

This section currently deals with the actions of the CEO after he/she receives the investigator’s report. The addition of new subsection (3) is to cover the provision in s 35(1) which provides that the CEO may make such a recommendation to the Board after receiving the complaint and without seeking a report from an assessor or investigator.

Clause 14: Section 58 amended (Determination of the Board)

As noted under cl 12 there is a need to align the processes of own motion investigations, reports etc. The changes to section 58 are to clarify that not only the person about whom a complaint has been lodged but a person being investigated on an own motion determination are to be treated similarly.

Clause 15: Section 59 amended (Persons to whom notice of determination is to be given)

This again seeks to align the treatment of persons being investigated on an own motion determination with those being investigated on the basis of a complaint. The Board will be responding to the results of the investigation regardless of how the investigation was initiated – complaint or own motion.

Clause 16: Section 61 amended (Persons to whom notice of determination is to be given)

This is again to align the processes of complaint and own motion matters.

Clause 17 Section 65 amended (Notice of inquiry)

As Tribunal inquiries may result from both complaints and own motion determinations the terminology is again being varied to cover either.

Clause 18: Section 66 amended (Right of representation)

The current section provides that a person subject to a complaint (ie made under s 33) has rights to be represented at a Tribunal hearing. The amendment allows the person subject to an own motion investigation/inquiry the same rights.

Clause 19: Section 70 amended (Response to notice of inquiry)

These changes follow from the need to treat the persons subject to a complaint and a person subject to an own motion investigation/inquiry equally.

Clause 20: Section 78 amended (Determination of Integrity Tribunal)

This change is also to align the complaint based and the own motion based inquiries.

Clause 21: Section 87 amended (Investigation or dealing with misconduct by designated public officers)

The powers of investigation and inquiry are set out in Parts 6 and 7 of the Act. Those parts are specifically referenced in other similar sections (sections 45 and 88(1)(a)) so it was considered that this section should be similarly worded.

Clause 22: Section 89 amended (Own motion investigation)

The section provides for own motion investigations of police misconduct but does not specifically provide how or by whom the decision to conduct the investigation might be made. Section 7(2) defines the Integrity Commission as including the Board, CEO, staff, investigators etc. Section 45 provides that other own motion determinations are to be made by the Board and while it would have been expected that the Board would make the determination under this section the changes to this section will clarify that the Board would be the body making the decision to undertake an “own motion” investigation of police misconduct.

The second change (subclause b) is to insert a word omitted in the original Bill.

Subclauses (c) and (d) add an additional paragraph to the subsection to align it with the previous subsection of the Act ((89(1)(c)).

Subclauses (e) and (f) provide that if the Board determines to undertake an own motion investigation of police misconduct the Board (rather than CEO or staff) decides whether to notify the Commissioner of Police of the decision.

Clause 23: Section 98 amended (Certain notices to be confidential documents)

The current section makes it an offence to pass on a confidential notice except in specific circumstances.

Para 98(2)(b) implies that a person to whom the information is imparted is also constrained from passing on the information to another person but subsection (1) only allows the person on whom the notice is served to rely on the excuses.

The changes (new subsections (1) and (1A) and changes to current subsection (2)(b)) seek to ensure that both the person who receives a confidential notice from the Commission or Tribunal and any person to whom they legitimately disclose it are bound to maintain the confidentiality of the notice.

The new subsection (1B) is to ensure that not only the notice itself but anything related to the notice is also to be held as confidential. Preventing the person from disclosing that a notice has been issued is one issue but it is also necessary to constrain the person from disclosing that they have responded to the notice by providing information, giving evidence etc.

The new subclause (3) and (4) provide that obligations of confidentiality may be lifted by the Commission or Tribunal.

Clause 22: Section 101 repealed (Right to Information Act does not apply)

Section 101 provides that the RTI Act does not apply to complaints and their investigation. The Integrity Commission Bill was debated in 2009 at almost the same time as the Right to Information Bill and both contained provisions intended to provide that the Right to Information act did not apply to the Commission's dealing with misconduct. Section 6 of the RTI Act excludes from the operation of RTI Act all the Tribunal's and Commission's activities, other than their administration so this provision is no longer needed.

Part 3 – Ombudsman Act amended

Clause 25: Principal Act
Defines Ombudsman Act as the relevant Act in Part 3

Clause 26: Section 26 (of the Ombudsman Act) amended (Secrecy etc).

Amends the Ombudsman Act to allow the Ombudsman (who is a member of the Board of the Commission) to disclose information obtained as the Ombudsman to the Commission.

Part 4 – State Service Act 2000 amended

Clause 27: Principal Act
Defines State service Act 2000 as the relevant Act in Part 4.

Clause 28: Section 24 (of the SSA) amended (Relationship with Ombudsman and other persons)

Inserts a new subsection in the State Service Act to allow the State Service Commissioner to disclose information he/she has obtained as Commissioner to the Integrity Commission.

Part 5 - Repeal

Clause 29: Repeal of Act
In accordance with new drafting practice the clause provides that the Act will be repealed on the 90th day after it commences – the amendments to the various Acts will be incorporated in those Acts on commencement.

