

POLICE SERVICE ADMINISTRATION AMENDMENT BILL 1993

EXPLANATORY NOTE

GENERAL OUTLINE

Objective of the Legislation

The objective of this Bill is to implement personnel practices recommendations and changes designed to enhance organisational efficiency through effective deployment of personnel, as identified by the Public Sector Management Commission in the course of the Review of the Queensland Police Service (1993).

In particular, the Bill aims to achieve the objective by restricting the right of review (in respect of “lateral transfers”) to the transferred officer and providing the Commissioner with an express authority to effect such “lateral transfers”.

Reasons for the Bill

The Police Service Administration Act 1990 provides (inter alia) for the powers of the Commissioner of the Police Service, including control of the Service’s human resources. However legal opinions conflict regarding the existence and extent of a general transfer power in the office of the Commissioner.

The Public Sector Management Commission reported in its Review of the Police Service, that the ability to effect “lateral transfers” was desirable, and further that the right to review such “lateral transfers” should be restricted to the transferred officer.

With regards to the minor amendments and amendments by way of statute revision, the Office of the Parliamentary Counsel has been instructed to review and update current legislation in Queensland by correcting any out of date references and removing any references that are now redundant or

unnecessary due to the Acts Interpretation Act 1954 or the Statutory Instruments Act 1992.

Estimated Cost for Government Implementation

There will be no cost for Government.

Consultation

The Queensland Police Union of Employees and the Queensland Police Officers Union of Employees have been consulted, as have the Public Sector Management Commission, the Criminal Justice Commission, the Commissioner for Police Service Reviews, the Department of Justice and Attorney-General, and the Office of the Cabinet.

NOTES ON PROVISIONS

Clause 1 sets out the short title of the Bill.

Clause 2 states that the Police Service Administration Act 1990 is amended as set out in this Act.

Clause 3 provides that all appointments of police recruits and police officer positions must be made on the basis of fair and equitable procedures which prevent unjust discrimination (whether in favour of or against a person).

In addition most appointments will require the inviting of applications and selection on the basis of merit; the only appointments which will not be subject to these two requirements will be transfers made 'on a basis prescribed by regulation'.

The Police Service Administration Regulation 1990 is to be amended to provide that the 'prescribed basis' is a basis specified in an industrial agreement between the Commissioner, the Queensland Police Union of Employees, and the Queensland Police Officers' Union of Employees.

The relevant industrial agreement then effectively provides that the "basis" for a lateral transfer will be a response to one or more 'operational factors', namely:

- (a) organisational restructuring;
- (b) management of staffing issues;

- (c) health or compassionate grounds;
 - (d) service in isolated or difficult postings;
 - (e) redeployment to/from surplus;
 - (f) redeployment after extended leave or return from secondment (does not include leave entitlements e.g. annual leave, long service leave);
- and
- (g) assistance in meeting E.E.O. requirements.

The industrial agreement also provides for the establishment of a Transfer Advisory Committee comprising representatives of the Service and the police unions. Applications for transfers to “non-advertised” positions, (whether initiated by management or the individual) will be considered by the Committee. The Committee will then provide the Commissioner with advice regarding the relative merits of each application. Where appropriate the positions may then be filled by the transfer of an officer without the position being advertised as vacant. In all other circumstances the vacant position will be advertised.

Clause 4 is in three parts. The first provision will require officers to accept transfers - even where they have not applied for the position. However where the officer did not apply for the transfer they may either make application to the Commissioner for Police Service Reviews for a review of the decision, or lodge an objection to the transfer (with the Commissioner).

The second provision allows for an officer to object to an ‘unapplied for’ transfer by giving the Commissioner written reasons for the objection (within 14 days of receiving written notice of the transfer). If the Commissioner rejects the officer’s objection, the Commissioner must give the officer written reasons for that rejection.

The third provision imposes a general restriction upon the Commissioner’s ability to direct an officer to take up a transfer position. The effect of that restriction is to prevent the Commissioner from giving the direction to attend for duty until at least the expiry of the 14 day period in which an officer may lodge an objection and, (if the officer does object), then not for a period of 14 days after giving the officer written reasons for rejection the objection. However this general restriction may be overridden

where the Commissioner considers that ‘urgent circumstances’ exist which necessitate the immediate movement of the officer.

The intention of sub-section (4) is to enable the Commissioner to order officers to take up transfer positions immediately where ‘urgent circumstances’ exist. The type of circumstances envisaged as being ‘urgent’ include situations where the transfer of an officer is necessary to protect the physical or emotional wellbeing of any person. The power is not intended to be exercisable where the alleged ‘urgent circumstances’ are of an administrative nature or are essentially matters of departmental convenience.

Clause 5 amends the current Act to ensure that all applicants for positions filled on the basis of merit (following advertisement) will be entitled to review the selection of another officer for appointment to the position - irrespective of whether the appointment involves the promotion or transfer of an officer. However, where the selection involves the ‘unapplied for’ transfer of an officer (pursuant to section 5.2(3)) then only the transferred officer may review the selection.

Clause 6 repeals a number of Acts specified in Schedule 2.

SCHEDULE 1

MINOR AMENDMENTS

Clause 1 replaces the Act’s definition section with redrawn definitions which are simplified to accord with current drafting practices and which take account of recent amendments to the Acts Interpretation Act 1954. For example, the term “award” is inserted to give effect to the meaning of that term in the Industrial Relations Act 1990 by removing the current inappropriate reference to an “industrial award” which has the meaning ascribed in the now repealed Industrial Conciliation and Arbitration Act 1961.

Clause 2 omits section 2.2(3) as being surplusage given that section 2.5(1) also makes provision for ‘staff members’.

Clause 3 amends section 2.5 to take account of sections 27A and 36 of the Acts Interpretation Act 1954 in terms of the exercise of delegated powers, and the meaning of the expression “officer of the public service”.

This amendment makes the provision more concise yet still ensures that all staff members are subject to the authority and direction of the Commissioner (or any delegate).

Clause 4 replaces section 3.1 to restate the meaning of the expression “officer” in Part 3 of the Act to accord with current drafting practice.

Clause 5 amends section 3.3 to provide that the Oath or Affirmation of Office is prescribed by regulation, whereas the section currently only refers to the Oath or Affirmation being prescribed. This amendment will ensure that such an important matter is prescribed by regulation, thereby ensuring an appropriate degree of public scrutiny. If this amendment was not effected it may be possible for the Oath of Affirmation to be ‘prescribed’ by a statutory instrument which, (given that it does not fall within the meaning of ‘subordinate legislation’ in section 9 of the Statutory Instruments Act 1992), would not require notification in the Gazette. This amendment will ensure such notification.

Clause 6 redraws section 3.6 to refer to the ‘performance’ of duty as opposed to the current reference to ‘execution’ of duty. This amendment is necessary to ensure consistency throughout the Act, in particular to accord with new section 10.20A (‘Assault etc. of police officer’).

Clause 7 replaces section 4.2 with a provision which takes account of current drafting practice and takes account of the definition of the expression “Gazette notice” in section 36 of the Acts Interpretation Act 1954. This amendment simplifies the provision and accords with the current practice of ensuring statute consistency by taking advantage of the Acts Interpretation Act 1954 provisions wherever possible.

Clauses 8, 20 and 25 amend sections 4.3(1), 5.4(2) and 5.11(1) to take account of section 23 of the Acts Interpretation Act 1954 which provides that statutorily conferred functions and powers may be performed or exercised “as occasion requires”. Accordingly it is no longer necessary to provide that such functions and powers may be performed or exercised “from time to time”.

Clauses 9, 13 and 15 amend various sections to adopt gender neutral language by omitting the word “Chairman” and replacing it with the word “chairperson”.

Clauses 10, 16, 21, 23 and 26 amend various sections to take account of the definition of the term “award” in section 1.4 (as amended by clause 1 of this Schedule).

Clause 11 redraws section 4.4 to accord with current drafting style.

Clauses 12 and 28 amend sections 4.5(3)(d), 4.5(5) and 6.1(1)(b) to take account of the definition of the term “indictable offence” in section 36 of the Acts Interpretation Act 1954 which provides that the term includes an act or omission committed outside Queensland that would be an indictable offence if it were committed in Queensland. Accordingly the aforementioned sections are simplified by removing surplusage.

Clauses 14, 17, 29, 32, 36, 37, 40, 41, 43, 45, 46, 50, 55 and 56 amend various sections to take account of section 27A of the Acts Interpretation Act 1954 which, with reference to statutorily provided powers of delegation, specifies the manner, scope, effect and limitations of exercising such delegated powers.

Clause 18 amends section 4.10 to take account of sections 27A and 36 of the Acts Interpretation Act 1954 in terms of the exercise of delegated powers and the definition of the expression “officer of the public service”.

Clause 19 replaces section 4.11 with a redrawn provision to accord with current drafting style and to simplify the section by taking account of section 24B of the Acts Interpretation Act 1954 which provides for the manner of appointing a person to act in an office, the duration of such appointments, and the effect of such appointments in terms of the powers and functions associated with the relevant office.

Clauses 22 and 24 amend sections 5.5 and 5.8 to take account of section 24B of the Acts Interpretation Act 1954 and accordingly simplify sections by removing unnecessary provisions in respect of the authorisation of a person to act as an executive or commissioned officer.

Clause 27 amends section 5.15 to take account of the repeal of the Industrial Conciliation and Arbitration Act 1961-1988 with the introduction of the Industrial Relations Act 1990.

Clause 30 amends section 8.2(a) to take account of current drafting practice by removing surplus words.

Clause 31 amends section 8.3(2) (second sentence) to take account of section 36 of the Acts Interpretation Act 1954 which provides that the term

“fail” includes refuse; as such it is no longer necessary to use the expression ‘refuses or fails’.

Clause 33 inserts a new section 9.2A which provides for the nomination of Commissioners for Police Service Reviews (rather than the current definition of that office in section 1.4). This amendment ensures that a specific section is used for the purpose of creating an office, rather than the current situation whereby the office is effectively created by the definition in section 1.4.

Clauses 34 and 35 amend sections 9.4(1) and (2) and 9.5(1) to take account of the fact that there may be more than one Commissioner for Police Service Reviews.

Clause 38 amends section 10.8 to take account of the repeals effected by the Workers Compensation Act 1990.

Clause 39 amends section 10.10(1) to take account of the definition of the expression “Gazette notice” in section 36 of the Acts Interpretation Act 1954.

Clause 42 amends section 10.13(2) to accord with current drafting style. The effect of the amendment is to remove the unnecessary reference to a delegate, and to simplify the provision by expressing it in mandatory form and allowing the expression of the penalty at the end of the section to indicate that contravention constitutes an offence; (see sections 36 and 41 of the Acts Interpretation Act 1954).

Clause 44 amends section 10.14(1) to take account of the definition of the term “Magistrate” in section 36 of the Acts Interpretation Act 1954 which provides that the term means a Stipendiary Magistrate. Accordingly the word “Stipendiary” is omitted as being surplusage. In addition, the requirement for the “form” to be prescribed by statutory instrument is removed and replaced with provision for the form to be approved by the Commissioner; this is to accord with current drafting practice.

Clause 47 amends section 10.15(3)(b) to take account of the definition of the expression “Consolidated Fund” in section 36 of the Acts Interpretation Act 1954.

Clauses 48, 51, 57 and 58 amend various sections in accordance with current drafting practice. Section 10.16(2) is amended to nominate a regulation as being the appropriate form of statutory instrument for the declaration of charges for the provision of prescribed police services.

Section 10.20(2) is amended to utilise language which accords with current drafting style, section 10.24 is amended to remove the inappropriate possessive expression of the “Children’s Court”, and section 10.25 is simplified by providing that the Governor in Council may make regulations “for the purposes” of the Act.

Clause 49 amends section 10.16(3) to remove an inappropriate deeming provision in accordance with fundamental legislative principles (as per the Legislative Standards Act 1992). Accordingly the current provision whereby the Commissioner’s certificate “is evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein”, is amended to remove the element of conclusiveness and to state simply that the certificate is evidence of the matter stated.

Clause 52 inserts a new section 10.20A to make provision for the offence of assaulting or obstructing a police officer in the performance of duty. The offence was formerly provided for the section 59 of the Police Act 1937, however with the repeal of the Act (see clause 6 and Schedule 2) it is necessary to relocate the offence.

Clauses 53 and 54 amend sections 10.22(1) and 10.23(1)(a) to take account of the insertion of section 10.20A by ensuring that a power of arrest and identification are provided, and that proceedings may be taken in a summary manner under the Justices Act 1886. These authorities were formerly provided by sections 64 and 71 of the Police Act 1937.

Clause 59 relocates the amended section 10.25 (to accord with current drafting practice).

Clause 60 replaces Part 11 to take account of section 20A of the Acts Interpretation Act 1954 (regarding the continued declaratory effect of repealed transitional provisions) and to accord with current drafting style.

SCHEDULE 2

ACTS REPEALED

This schedule lists the Acts repealed by *Clause 6*.