

Police Service Administration Amendment Bill 2006

Explanatory Notes

General Outline

Objective of the Legislation

The objective of the *Police Service Administration Amendment Bill 2006* (the Bill) is to amend the *Police Service Administration Act 1990* (the PSAA) to remove any doubt about the legal basis on which the Queensland Police Service (QPS) discloses certain types of information in the following specific circumstances:

- the disclosure of criminal history information, with the consent of the relevant person, to the national CrimTrac Agency or another police service for subsequent release to third parties for employment screening purposes;
- the disclosure of police dispatch information to media organisations;
- the disclosure of criminal history information, with the consent of the relevant person, to an entity for the purposes of assessing prospective participants in government sponsored diversion programs.

Reasons for the Legislation

The purposes for which QPS information is being sought by the community has over time extended to matters which may be considered by some to be beyond the scope of traditional law enforcement functions. For example, the CrimTrac Agency has expanded its National Criminal History Record Checking (NCHRC) service to the private sector (including criminal history brokers) on a commercial basis for employment screening, and asks for QPS and other jurisdictions' criminal history information to provide the service.

QPS provision of criminal history information to CrimTrac for such purposes is considered to be justified on the basis that the community now expects that persons engaged in financial and other positions of trust, including in the private sector, should be properly screened for previous criminal behaviour for the overall protection of the community.

Notwithstanding that all criminal history checks conducted as part of the NCHRC service on a commercial basis are only done with the written consent of the relevant person, there is some uncertainty as to whether the existing legislation allows for this extension to occur lawfully. This situation is also highlighted in the context of two other circumstances involving the QPS:

- implementation of the recommendations of the Crime and Misconduct Commission (CMC) Report: *Striking a balance: an inquiry into media access to police radio communications*, in particular, the establishment of the Media access to Computer Aided Dispatch (MatCAD) system; and
- development of a range of court ordered and other diversion programs.

Means of Achieving Policy Objectives

The Bill will achieve this objective under the following scheme:

- the disclosure of criminal history information, with the written consent of the relevant person, to the CrimTrac Agency or another police service for subsequent release to third parties for employment screening purposes where there is, or is likely to be a benefit to the community from the disclosure;
- the disclosure of police dispatch information to media organisations;
- the disclosure of criminal history information, with the written consent of the relevant person, to an entity for the purposes of assessing prospective participants for government sponsored diversion programs;
- the Bill will ensure that existing statutes prohibiting, restricting, regulating or requiring the disclosure of information in the possession of the QPS will continue to apply;
- the Bill will be retrospective in so far as it applies to the release of criminal history information to CrimTrac or a police service for employment screening purposes and MatCAD, to remove any doubt about the legality of past releases of information under the Commissioner's discretion; and
- the Bill will include an offence provision to protect against inappropriate use of criminal history information disclosed for employment screening purposes and government sponsored diversion

programs, and will be used as a template for negotiation with other jurisdictions for a nationally consistent offence provision.

Alternative means of achieving policy objectives

There are no other viable alternatives that would achieve the policy objectives other than the amendments proposed in the Bill.

Costs for Government of implementation

No cost increases to Government are anticipated as a consequence of the implementation of this Bill. However, the Queensland Police Service may experience an increase in workload and costs resulting from the legislation once passed by Parliament. These additional costs will be funded from within existing agency allocations.

Consistency with Fundamental Legislative Principles

Limited retrospective application of the proposed amendments

Legal opinions received by the QPS differ in whether the release of information to CrimTrac for the purpose of NCHRC servicing as part of a commercial or other arrangement for employment screening purposes and MatCAD, has always been done in the proper exercise of the Commissioner's discretion under the PSAA. In this regard, out of an abundance of caution, the amendments will have retrospective effect to remove any doubt about the past release of information under the Commissioner's discretion for the purpose of NCHRC servicing as part of a commercial or other arrangement for employment screening purposes and MatCAD. The validation is considered to be reasonable, necessary and justified.

Privacy Implications

The general right to privacy by individuals is recognised by Government and the QPS. This right is supported by the introduction of the Information Privacy Principles (IPP) as an administrative scheme pursuant to Information Standard 42 (IS 42), under the authority of the *Financial Management Standard 1977*. As an administrative scheme, IS 42 is subject to any overriding legislative authority.

IPP 11 is relevant to the disclosure of information in the possession of the QPS for the purposes of NCHRC arrangements, MatCAD and government sponsored diversion programs. IPP 11 prohibits the disclosure of records containing personal information to a person, body or agency, other than the

individual concerned unless certain circumstances exist, in particular where:

- the individual concerned has consented to the disclosure; or
- the disclosure is required or authorised by or under law.

An individual's criminal history record would clearly be considered personal information and thus, subject to disclosure requirements under IPP 11. However, there is justification for displacing this right. These restrictions have to be balanced against the community benefit that flows from ensuring that persons who are engaged in positions of trust are adequately screened for previous criminal behaviour, through an efficient and cost effective process.

Further, under the proposal, the current national criminal history checking guidelines and the accreditation contract, criminal history checks can only be undertaken with the consent of the relevant person. The legislative requirement for consent to be provided by the relevant person as well as the legislative authorisation for the disclosure will reinforce this policy, and will accord with the disclosure of personal information pursuant to IPP 11.

In relation to MatCAD, the CMC sought to achieve a balance between the competing considerations of operational safety, public safety and individual privacy. The CMC ultimately formed the view that providing the media with access to police communications, with certain private information excluded, was an acceptable and desirable balance between the public interest in disclosure and accountability, and the public interest in protecting the privacy of some categories of vulnerable individuals. As the IPP currently do not recognise the public interest as a ground for disclosure, the proposed amendments will provide legislative authorisation for the disclosure of police information via MatCAD.

In relation to diversion programs, the displacement of a participant's right to privacy concerning their criminal history is justified by the community benefits that will flow from the reduction of participants' levels of re-offending. The consent of each participant is required before they are considered for the program and assessment of their criminal histories is a prerequisite entry condition. The proposed amendments to provide legislative authorisation for such disclosures will operate in the best interests of the individual participants in the program and those of the wider community.

In terms of QPS information provided to third parties, they are also required to comply with the IPP (in the case of private agencies, the National Privacy Principles) within their respective State or Territory. In

the case of criminal history records, this requirement is recognised in the national criminal record checking guidelines

Consultation

In September/October 2006, consultation was undertaken with key government departments including:

- Department of the Premier and Cabinet;
- Queensland Treasury;
- Department of Justice and Attorney-General;
- Queensland Health; and
- Department of Industrial Relations.

Notes on Provisions

Part 1 Preliminary

Clause 1 - Short title

Clause 1 specifies the short title of the Bill.

Clause 2 - Commencement

Clause 2 provides for commencement by proclamation.

Clause 3 – Act amended in pt 2

Clause 3 provides that Part 2 of the Act amends the *Police Service Administration Act 1990*.

Clause 4 – Amendment of s 1.4 (Definitions)

Clause 4 amends the definition of criminal history in the Act. The definition of criminal history will now include, in relation to part 10,

division 1, the same meaning given by s 3 of the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Clause 5 – Amendment of s 5A.20 (Test result evidence generally inadmissible)

Clause 5 amends s 5A.20 for consistency with the *Evidence Act 1977*. The provisions mentioned in s 5A.20 have been replaced and the certificate now required under those provisions is a witness identity protection certificate.

Clause 6 – Insertion of new pt 10, div 1 hdg and pt 10, div 1, sdiv 1.

Clause 6 inserts a new part 10, division 1 heading ‘Division 1 Provisions about information disclosure’.

Clause 6 also inserts a new part 10, division 1, subdivision 1 heading ‘Subdivision 1 Information disclosure generally’.

Clause 7 – Amendment of s 10.2 (Authorisation of disclosure)

Clause 7 amends s 10.2 of the Act and provides that the disclosure of information under the new sections 10.2A, 10.2B and 10.2D of the Act are specific stand alone circumstances, and are excluded from the general operation of s 10.2 of the Act.

Clause 7 ensures that the existing general ability of the Commissioner to authorise disclosure of information in the possession of the Service under s 10.2 of the Act remains unaffected. This includes the continuation of the disclosure of criminal history information to a government agency in another State under s 10.2 of the PSAA, via the NCHRC process, for purposes that are consistent with the functions of the Service.

Clause 8 – Insertion of new pt 10, div 1, sdivs 2-4 and pt 10, div 2, hdg

Clause 8 inserts a new part 10, division 1 subdivision 2 to 4 and new part 10, division 2 heading ‘Subdivision 2 Criminal history disclosure provisions’.

Disclosure of criminal history for employment screening under commercial or other arrangement

Clause 8 inserts a new s 10.2A of the Act which authorises the disclosure of criminal history information for employment screening under a commercial or other arrangement. Clause 8 allows the disclosure to occur if:

- the disclosure is to the CrimTrac Agency or another police service; and
- the purpose of the disclosure is to facilitate the release of the person's criminal history record by CrimTrac or another police service, to a third party under a commercial or other arrangement; and
- the commercial or other arrangement provides for the use of the criminal history for employment screening purposes only.

Other arrangements may include criminal history checks undertaken in relation to volunteers employed by benevolent or charitable organisations who may not be operating on a strictly commercial basis.

Clause 8 provides that the disclosure for the purposes of the new s 10.2A occurs as a function of the Service.

Clause 8 provides that any disclosure of criminal history information under the new s 10.2A must only occur if the person to whom the history related has:

- provided written consent to the disclosure; and
- the disclosure is for a national criminal history check for employment screening purposes under a service provided by CrimTrac or a police service; and
- undertaking the check is or is likely to benefit the community, or a section of the community.

Clause 8 defines the terms 'arrangement' and 'employ' for the purposes of s 10.2A.

Disclosure of criminal history information for assessing suitability for diversion programs

Clause 8 inserts a new s 10.2B of the Act which authorises the disclosure of QPS information for the purpose of assisting a decision maker decide if a prospective participant is suitable to take part in a government sponsored diversion program. A diversion program is as a government sponsored

program designed to divert alleged offenders away from court proceedings and which are prescribed either in a regulation under the Act or a regulation under s 11(4) of the *Bail Act 1980*. Examples of such programs include:

- ‘The Queensland Magistrates Early Referral Into Treatment program’ (Maroochydore and Redcliffe Magistrates Courts);
- ‘The Cairns alcohol remand rehabilitation program’ (Cairns Magistrates Court); and
- ‘The homeless persons court diversion program’ (Brisbane City Magistrates Court).

Clause 8 provides that the disclosure for the purposes of the new s 10.2B occurs as a function of the Service.

Clause 8 also provides that any release of criminal history information for this section, must only occur if the person to whom the history related has provided written consent to the disclosure.

Clause 8 allows sufficient scope to allow for the development and implementation of new programs in the future.

Offence Provision in relation to proposed new section 10.2A and 10.2B of the Act

Clause 8 creates a new offence provision in the Act to protect against inappropriate use of criminal history information following the disclosure of criminal history information for the circumstances of the new s 10.2A and 10.2B of the Act only.

The offence provision is necessary to protect against the inappropriate use or disclosure of criminal history information in circumstances relating to the new s 10.2A and 10.2B of the Act. Currently, the only remedy available following the inappropriate use or disclosure of criminal history information in relation to the new s 10.2A of the Act is a breach of contract and consequently, termination of the contract and with it the privilege of providing NCHRC services on a commercial or other basis. There is also no remedy available for the inappropriate use or disclosure of criminal history information disclosed in relation to diversion programs. For this reason, it is considered necessary to provide an offence for the inappropriate use or disclosure of the criminal history information in these specific circumstances.

Information disclosure by direct data feed

Clause 8 inserts a new s 10.2D of the Act which authorises the disclosure of QPS information for the purposes certain restricted Computer Aided Dispatch information to the media to facilitate the implementation of the recommendations of the CMC Report: *Striking a balance: an inquiry into media access to police radio communications*, to help ensure open and accountable policing.

Clause 8 provides that the disclosure for the purposes of the new s 10.2D occurs as a function of the Service.

Other legislative provisions about information disclosure unaffected

Clause 8 inserts a new s 10.2E of the Act provides that the new amendments are not to modify existing legislative obligations imposed on the Commissioner under another Act that:

- requires or permits the disclosure of information in the possession of the police service; or
- prevents or restricts the disclosure of information in the possession of the police service.

For example, the *Commission for Children and Young People and Child Guardian Act 2000*, the *Child Protection Act 1999*, the *Juvenile Justice Act 1992* and the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

Declarations about particular information disclosures - retrospectivity

Clause 8 inserts a new s 10.2F of the Act which expressly provides a retrospective validation of criminal history information previously disclosed for employment screening under a commercial or other arrangement (new s 10.2A) or MatCAD (new s 10.2D).

Out of an abundance of caution, the retrospective amendments will ensure that the proposed amendments will remove any doubt about the past release of information under the Commissioner's discretion for the purpose of NCHRC servicing as part of a commercial or other arrangement for employment screening purposes, and MatCAD.