

Crime and Misconduct and Other Legislation Amendment Bill 2006

Explanatory Notes

for

Amendments to be moved during consideration in detail by the Honourable Linda Lavarch MP

Title of the Bill

Crime and Misconduct and Other Legislation Amendment Bill 2006

Objectives of the Amendments

The amendments are intended:

- To provide that the new section 75B requirement contained in the Bill which allows a presiding officer to require a witness at a crime investigation or misconduct hearing to immediately produce a stated document or thing will only apply when the presiding officer at a commission hearing believes on reasonable grounds that a witness at the hearing has possession of a document or thing and also believes on reasonable grounds that the document or thing is relevant to the investigation.
- To make it clear that more than one public hearing may be conducted at the same time.
- To make a statute law revision amendment to the *Police Powers and Responsibilities Act 2000*.
- To amend the *Electoral Act 1992* and the *Referendums Act 1997* to maintain consistency with changes to the *Commonwealth Electoral Act 1918* concerning prisoners and to make consequential amendments to the *Local Government Act 1993*.

- To clarify certain provisions in Part 9, Division 3 of the *Penalties and Sentences Act 1992* (inserted by the *Corrective Services Act 2006* and yet to be commenced) as they relate to the fixing of dates for release to parole or the fixing of parole eligibility dates.

A new regime with regards to parole was introduced with the passing of the *Corrective Services Act 2006*. One of the major policy objectives of that legislation is to ensure that the sentence imposed by a court operates upon a prisoner for the whole of the period of imprisonment. The Act establishes parole as the only form of early release from custody, replacing remission, conditional release and the existing post-prison community based release orders. The Act provides that either a court or a parole board will determine when a prisoner is suitable for release on parole, dependant upon the length of a prisoner's imprisonment. It was also the intention of the new parole regime that at any given time the prisoner should have one parole date relating to the entire period of imprisonment he or she is due to serve. To give effect to that new regime, amendments were also made to the *Penalties and Sentences Act 1992* setting out the circumstances in which the Court is either obliged to fix a parole release date or empowered to fix a parole eligibility date.

Currently the provisions of the *Penalties and Sentences Act 1992* as inserted by the *Corrective Services Act 2006* cater for the situation where a Court orders imprisonment on an offender for a substantive offence in addition to the activation (in part or whole) of a suspended sentence. In that circumstance the Court is either obliged to set a parole date or is empowered to set a parole eligibility date on the entire period of imprisonment imposed (depending on the nature of the charge and the length of the sentence).

There is however a gap in the provisions of the *Penalties and Sentences Act 1992* as inserted by the *Corrective Services Act 2006* whereby the Court is not obliged to make a parole order in relation to an activated suspended sentence where that activation is the only sentence order made by a Court. The legislation therefore does not contemplate the situation where an offender, for example, is sentenced to a term of imprisonment in the Magistrates Court for the substantive offence but is later dealt with by a higher Court where part or whole of the suspended term of imprisonment is ordered to be served.

The reason that this situation is not covered by the provisions of the *Penalties and Sentences Act 1992* as inserted by the *Corrective Services Act 2006* is due to the fact that the court's obligations to make orders

for parole arise when they are “*imposing a term of imprisonment*”. In the case of *R v. Waters* [1998] 2 Qd R 442, the Court of Appeal stated that activating a term of an existing suspended sentence did not constitute “*imposing a term of imprisonment*”. The Court stated that the term of imprisonment was imposed at the initial phase of sentencing when the suspended term was set.

Consequently, amendment to the *Penalties and Sentences Act 1992* provisions as inserted by the *Corrective Services Act 2006* is required to overcome the current case law and to ensure that the policy objectives of the new parole regime are realised.

Estimated Cost for Government Implementation

Nil

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

The Crime and Misconduct Commission, the Parliamentary Crime and Misconduct Committee, the Electoral Commission Queensland, the Department of Corrective Services, the Queensland Police Service and the Department of Local Government, Planning, Sport and Recreation were consulted about amendments relevant to their respective responsibilities.

Notes on Provisions

Amendment 1: Amendment 1 amends clause 2 of the *Crime and Misconduct and Other Legislation Amendment Bill 2006* to have the effect that the Bill, including these amendments, will commence upon assent.

Amendment 2: Amendment 2 amends clause 6 of the *Crime and Misconduct and Other Legislation Amendment Bill 2006*.

Clause 6 of the *Crime and Misconduct and Other Legislation Amendment Bill 2006* gives effect to recommendation 28 of the Parliamentary Crime

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and Misconduct Committee Report that presiding officers be allowed to order at a commission crime investigation hearing or misconduct hearing the immediate production of a document or thing.

Clause 6 of the *Crime and Misconduct and Other Legislation Amendment Bill 2006* inserts new section 75B which provides that the presiding officer may require a witness to immediately produce a stated document or thing that the presiding officer believes is relevant to the investigation. The presiding officer may adjourn the hearing to allow the person to comply with the requirement. This potentially could mean that a witness may be required to produce a stated document or thing that is not in his or her possession or control.

The amendment seeks to address this by providing that the new section 75B requirement will only apply when the presiding officer at a commission hearing believes on reasonable grounds that a witness at the hearing has possession of a document or thing and also believes on reasonable grounds that the document or thing is relevant to the investigation. 'Possession' is defined in schedule 2 of the *Crime and Misconduct Act 2001* to include custody and control.

Amendments 3 and 4: Amendments 3 and 4 amend clause 10 of the *Crime and Misconduct and Other Legislation Amendment Bill 2006*.

Clause 10 of the *Crime and Misconduct and Other Legislation Amendment Bill 2006* amends section 178 of the *Crime and Misconduct Act 2001* to allow the chairperson to decide that an assistant commissioner conduct the public hearing if the chairperson considers it necessary for the efficient operation of the commission.

It is arguable under clause 10 as to whether more than one public hearing can be conducted at the same time (for example the chairperson conducting one public hearing at the same time another public hearing is being conducted by an assistant commissioner). The amendments to clause 10 make it clear that more than one public hearing may be conducted at the same time.

Amendment 5: Amendment 5 amends the *Crime and Misconduct and Other Legislation Amendment Bill 2006* by inserting after clause 35 a new Part 2A (new clause 35A and clause 35B) which in turn amends the *Corrective Services Act 2006*, a new Part 2B (new clauses 35C to 35H) which in turn amends the *Electoral Act 1992* and a new Part 2C (clauses 35I to 35S) which in turn amends the *Local Government Act 1993*.

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New clause 35A provides that Part 2A amends the *Corrective Services Act 2006*.

New clause 35B amends section 497 of the *Corrective Services Act 2006* which inserted new sections 160 to 160H into the *Penalties and Sentences Act 1992*.

New clause 35B(1) amends section 497 *Corrective Services Act 2006* by inserting a definition of “impose” into new section 160 of the *Penalties and Sentences Act 1992* (yet to be commenced). The definition sets out that imposing a term of imprisonment includes the making of an order that either whole or part of an order of suspended imprisonment is activated.

This makes clear that new sections 160B – 160D of the *Penalties and Sentences Act 1992* (yet to be commenced) as inserted by the *Corrective Services Act 2006* are intended to apply to cases when the Court is dealing with the activation of an existing suspended term of imprisonment. This definition also overcomes the case of *R v. Waters* [1998] 2 Qd R 442 which states that activation of an existing suspended term of imprisonment does not constitute the imposition of a term of imprisonment.

New clause 35B(2) amends section 497 *Corrective Services Act 2006* by inserting a note after the definition of “period of imprisonment” in new section 160 of the *Penalties and Sentences Act 1992*. This amendment is to clarify that a period of imprisonment includes the term of imprisonment a court imposes at the time of sentence.

New clause 35B(3) amends section 497 of the *Corrective Services Act 2006* by inserting a note into new section 160A(2) *Penalties and Sentences Act 1992* to clarify that new sections 160E to 160H further provide for the parole orders that may be made under new sections 160B to 160D

New clause 35B(4) amends section 497 of the *Corrective Services Act 2006* by correcting a grammatical error in new section 160B(1) of the *Penalties and Sentences Act 1992* by substituting the word “applies” for “apply”.

New clause 35B(5) amends section 497 of the *Corrective Services Act 2006* by correcting in new section 160H(1)(b) of the *Penalties and Sentences Act 1992* the erroneous term “under this part” to “under this division”. A clarifying reference to new section 160E is also inserted.

New clause 35B(6) amends section 497 of the *Corrective Services Act 2006* by correcting in new section 160H(2) of the *Penalties and Sentences Act 1992* the erroneous term “under this part” to “under this division”.

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New clause 35B(7) amends section 497 of the *Corrective Services Act 2006* by the inserting in new section 160H(2) of the *Penalties and Sentences Act 1992* a further clarifying statement in the example.

The amendments in new clauses 35B(5) and 35B(7) clarify the meaning of new section 160H, that is, that when a court is imposing more than one term of imprisonment in a series of sentencing orders, the court is not required to make an order relating to parole in relation to each term of imprisonment but may make one order relating to parole in relation to the whole period of imprisonment.

New clause 35C provides for new Part 2B which amends the *Electoral Act 1992*.

There have been recent amendments to the *Commonwealth Electoral Act 1918* in relation to prisoners. Under these changes, although all prisoners (except those convicted of treason or treachery) are entitled to be enrolled or remain on the electoral roll, they will not be entitled to vote in federal elections.

Previously, prisoners serving sentences of three years or more or who had been convicted of treason or treachery could not be enrolled on the Commonwealth electoral roll and therefore could not vote.

The Government has decided in the interests of maintaining consistency under the joint roll arrangements with the Commonwealth to also exclude prisoners from voting.

As a consequence, all prisoners (apart from those convicted of treason or treachery) will be entitled to remain or enrol on the Queensland roll but, under new clause 35G, they will not be entitled to vote in State elections.

There are a number of consequential amendments. New clause 35D amends the definition “institution” to exclude prisons. New clause 35E provides that the Commission can ask the Chief Executive of the Department of Corrective Services for information for the purpose of deciding persons who are not entitled to vote because they are serving sentences of imprisonment. New clause 35F omits a redundant definition. New clause 35H removes a provision relating to prisoner postal votes.

New clause 35I provides that new Part 2C amends the *Local Government Act 1993*.

New clauses 35I to 35S are consequential amendments to the *Local Government Act 1993* as a result of amendments to the *Electoral Act 1992* to exclude prisoner voting.

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New clause 35K removes a provision about declaration votes by prisoners. New Clause 35L ensures that persons released from prison after the rolls are drawn but before the election must make a declaration vote. New clauses 35J, 35M -35R are reference changes. New clause 35S removes prisons from the definition “institution”.

Amendment 6: Amendment 6 amends the *Crime and Misconduct and Other Legislation Amendment Bill 2006* by inserting clause 49A after clause 49.

Section 408 of the *Police Powers and Responsibilities Act 2000* provides that the Crime and Misconduct Commission’s register of covert acts is open to the CMC, a monitor or the parliamentary commissioner.

Clause 49A, inserted by this amendment, deletes the reference in section 408(a) of the *Police Powers and Responsibilities Act 2000* to ‘the Crime and Misconduct Commission’ and substitutes ‘the CMC chairperson’. This is being done because it makes more sense to limit access to a covert register to the chairperson, rather than the CMC as a body.

The amendment is also consistent with s.270 (1) of the *Crime and Misconduct Act 2001*, which clearly aims to limit the right of inspection to such a register to the chairperson.

Amendment 7: New clauses 50A-50D provide for new Part 4A which amends the *Referendums Act 1997*. As for amendments to the *Electoral Act 1992* in amendment 5, these clauses relate to excluding prisoners from voting in referendums.