

POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2003

AMENDMENTS AGREED TO IN COMMITTEE

1 Clause 2—

At page 8, line 8, ‘13² commences’ —
omit, insert—
‘13 and part 11A¹ commence’.

2 Clause 13—

At page 24, lines 12 to 14—
omit, insert—

‘ review for 9 months after the sections commence.

‘(2) The conduct of the review and the preparation of the report is a function of the CMC for the *Crime and Misconduct Act 2001*.

‘(3) In the course of preparing the report, the CMC must consult with the Minister.

‘(4) The CMC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.’.

3 Clause 13—

At page 24, line 16, after ‘371E’—
insert—
‘and this section’.

1 Section 13 (Replacement of s 371A (Power to seize potentially harmful things)) and part 11A (Amendment of Public Service Act 1996)

4 Clause 13—

At page 24, line 17, after ‘provisions’—
insert—
‘and this section’.

5 Clause 22—

At page 29, line 6, ‘complaint and’—
omit.

6 After clause 22—

At page 29, after line 8—
insert—

‘PART 5A—AMENDMENT OF CRIMINAL CODE

‘22A Act amended in pt 5A

‘This part amends the Criminal Code.

‘22B Amendment of s 328A (Dangerous operation of a vehicle)

‘(1) Section 328A(4)(b), from ‘concentration of alcohol’ to ‘100 ml of blood’—

omit, insert—

‘offender was, at that time, over the high alcohol limit’.

‘(2) Section 328A(5)—

insert—

‘**“high alcohol limit”** see the *Transport Operations (Road Use Management) Act 1995*, section 79A.²’.

² *Transport Operations (Road Use Management) Act 1995*, section 79A (When is a person over the limit)

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‘(3) Section 328A(5), definition “operates, or in any way interferes with the operation of, a vehicle dangerously”, paragraph (d), after ‘in the operator’s blood’—

insert—

‘or breath’.’.

7 After clause 28—

At page 31, after line 19—

insert—

**‘PART 8A—AMENDMENT OF POLICE POWERS AND
RESPONSIBILITIES (FORENSIC PROCEDURES)
AMENDMENT ACT 2003**

‘28A Act amended in pt 8A

‘This part amends the *Police Powers and Responsibilities (Forensic Procedures) Amendment Act 2003*.

**‘28B Amendment of s 10 (Replacement of ch 8, pts 2–4 and pt 5, hdg of
Act No. 5 of 2000)**

‘Section 10, new section 318ZF(6), definition “reporting notice”, from ‘section 318B(2)’—

omit, insert—

‘section 318A(2).³’.

8 After clause 47—

At page 53, after line 17—

insert—

3 Section 318A (Prisoner serving term of imprisonment for prescribed indictable offence)

‘PART 11A—AMENDMENT OF PUBLIC SERVICE ACT 1996

‘47A Act amended in pt 11A

‘This part amends the *Public Service Act 1996*.

‘47B Insertion of new pt 9A

‘After section 114—

insert—

‘PART 9A—CRIMINAL HISTORY REPORTS IF ENGAGED TO PERFORM RELEVANT DUTIES

‘114A Definitions for pt 9A

‘In this part—

“criminal history” see the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

“criminal history report” means a report given under section 114D to a chief executive by the commissioner of the police service about the criminal history of a person.

“engage”, a person, includes any of the following—

- (a) appoint, employ, promote, redeploy or second the person within or to a department;
- (b) allow the person to participate in a work performance arrangement or an interchange arrangement, within the meaning of section 82,⁴ in a department;
- (c) start training the person in a department as an apprentice or trainee, within the meaning of the *Training and Employment Act 2000*, chapter 1, part 2.⁵

4 Section 82 (Work performance and interchange arrangements)

5 *Training and Employment Act 2000*, chapter 1 (Preliminary), part 2 (Definitions and basic concepts)

“relevant duties” means the particular duties in a department in relation to which the chief executive of the department decides, under section 114C(1), it may be necessary to have regard to the criminal history of anyone engaged to perform those duties to ensure the person so engaged is suitable to perform them.

‘114B Relationship of part with other laws

‘(1) This part does not limit any other law under which the criminal history of a person may be obtained, including any other part of this Act.

‘(2) Also, this part is subject to the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

‘114C Chief executive may decide to obtain criminal history

‘(1) This section applies if the chief executive of a department decides, under a directive issued for this part, that, because of the nature of particular duties to be performed in the department, it may be necessary to have regard to the criminal history of anyone engaged to perform those duties to ensure the person so engaged is suitable to perform them.

‘(2) When the chief executive proposes to engage a person to perform the relevant duties, the chief executive may, under a directive issued for this part, ask the person for written consent for the chief executive to obtain the person’s criminal history.

‘(3) Subsection (2) applies to a person even if the person is a public service employee at the time the chief executive proposes to engage the person to perform the relevant duties.

‘114D Obtaining criminal history with consent

‘(1) If a person gives written consent under section 114C(2) to obtain the person’s criminal history, the chief executive may ask the commissioner of the police service for a written report about the person’s criminal history.

‘(2) Subject to subsection (3), the commissioner of the police service must give the report to the chief executive.

‘(3) The duty imposed on the commissioner of the police service to comply with the request applies only to information in the commissioner’s possession or to which the commissioner has access.

‘114E Assessment of suitability using criminal history report and subsequent destruction of the report

‘(1) In making an assessment about the person’s suitability for engagement to perform the relevant duties after obtaining a criminal history report about the person, the chief executive must, under a directive issued for this part, consider the person’s criminal history.

‘(2) If, after making the assessment mentioned in subsection (1), the person’s criminal history report is no longer required to be kept under a directive issued for this part, the chief executive must destroy the report and any other document required by the directive to be destroyed.

‘114F If person does not consent to obtaining criminal history

‘If a person does not consent to the chief executive obtaining the person’s criminal history, the chief executive is not required to consider, or further consider, the person for engagement to perform the relevant duties.

‘114G Confidentiality

‘(1) This section applies to a person who—

- (a) is, or has been, a public service employee in a department or a selection panel member; and
- (b) in that capacity acquired information, or gained access to a document, under this part about someone else’s criminal history, including, for example, a criminal history report.

‘(2) The person must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units.

‘(3) Subsection (2) does not apply to the disclosure of information, or giving of access to a document, about a person—

- (a) to a public service employee in the department or a selection panel member, for the purpose of assessing the person’s suitability to be engaged to perform the relevant duties in relation to which the criminal history report about the person was obtained; or
- (b) with the person’s consent; or

- (c) if the disclosure or giving of access is otherwise required under an Act.

‘(4) In this section—

“**selection panel member**” means a member of a panel formed to make a recommendation to the chief executive of a department about engaging a person to perform relevant duties in the department.

‘114H Commissioner may issue a directive or guideline for this part

‘(1) For this part, the commissioner may issue directives and guidelines under section 34.⁶

‘(2) Without limiting subsection (1) or section 34, a directive issued for this part must make provision for—

- (a) the circumstances in which a chief executive may decide that it is necessary to obtain the criminal history of a person under section 114D; and
- (b) a reasonable opportunity to be given to a person to make written representations about a criminal history report obtained about the person before an adverse decision relating to the person is made.

‘(3) In this section—

“**adverse decision**”, relating to a person, means a decision about the person’s suitability for engagement to perform the relevant duties in relation to which a criminal history report was obtained, other than a decision that the person is suitable for engagement to perform the relevant duties.’

‘47C Insertion of new pt 11, div 3

‘After section 145—

insert—

‘Division 3—Transitional provision for the Police Powers and Responsibilities and Other Legislation Amendment Act 2003

6 Section 34 (Rulings of industrial relations Minister and commissioner)

‘146 Chief executive may ask for consent to obtain criminal history only if engagement is after the commencement

‘The chief executive may not, under section 114C,⁷ ask a person for the person’s written consent to obtain a report of the person’s criminal history unless the chief executive proposes to engage the person to perform relevant duties after the commencement of this section.’.

‘47D Amendment of sch 3 (Dictionary)

‘Schedule 3—

insert—

‘**“criminal history”**, for part 9A and section 146, see section 114A.

“criminal history report”, for part 9A, see section 114A.

“engage”, for part 9A and section 146, see section 114A.

“relevant duties”, for part 9A and section 146, see section 114A.’.’.

9 Clause 50—

At page 55, lines 11 to 13—

omit, insert—

‘**(6)** As soon as practicable after 18 months after the commencement of this section, the Crime and Misconduct Commission must review the use of this section.

‘**(7)** The conduct of the review and the preparation of the report is a function of the Crime and Misconduct Commission for the *Crime and Misconduct Act 2001*.

‘**(8)** In the course of preparing the report, the Crime and Misconduct Commission must consult with the Minister.

‘**(9)** The Crime and Misconduct Commission must give a copy of the report to the Speaker for tabling in the Legislative Assembly.’.

⁷ Section 114C (Chief executive may decide to obtain criminal history)

10 Clause 62—

At page 62, lines 13 and 14—
omit.

11 Clause 64—

At page 63, lines 13 to 16—
omit.

12 Clause 64—

At page 63, line 18—
omit, insert—
‘omit, insert—’.

13 After clause 69—

At page 65, after line 17—
insert—

**‘69A Amendment of s 52 (Physical possession and use of weapon
sometimes allowed for the purpose of training a minor)**

‘(1) Section 52(1) and (2), after ‘category A or B weapon’—
insert—

‘or a category M crossbow’.

‘(2) Section 52(2), after ‘category A or B weapons’—
insert—

‘or category M crossbows’.’.

14 Clause 77—

At page 66, line 21, **‘s 185’—**
omit, insert—
‘ss 185–186’.

15 Clause 77—

At page 67, after line 9—

insert—

‘186 Transitional regulation-making power

‘(1) A regulation (a **“transitional regulation”**) may make provision of a saving or transitional nature for category M crossbows for which—

- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act before the commencement of this section to the operation of this Act after the commencement; and
- (b) this Act does not make provision or sufficient provision.

‘(2) A transitional regulation may have retrospective operation to a day not earlier than the commencement.

‘(3) A transitional regulation must declare it is a transitional regulation.

‘(4) This section and any transitional regulation expire 1 year after the commencement.’.