

CARRUTHERS INQUIRY ENABLING BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objectives of the Bill are:

- To protect the Criminal Justice Commission Inquiry into the matters referred to colloquially as the Memorandum of Understanding Inquiry and the Sporting Shooters Investigation, whether conducted by Kenneth Carruthers QC or not, from intervention by the Connolly Inquiry during the deliberations of the Carruthers Inquiry (whether constituted by Kenneth Carruthers QC or not);
- To protect the Connolly Inquiry from any legal process for which it as a consequence might be liable in respect of its intervention in the Carruthers Inquiry; and
- To declare that Parliament believes that this Bill removes impediments to the Carruthers Inquiry completing its Report, that Parliament wishes the Honourable Kenneth Carruthers QC to return to complete the Report, and to authorise him to resume the conduct of the Inquiry immediately on his withdrawal of his resignation;

Reasons for the objectives and how they will be achieved

The Bill is a response to the resignation of Kenneth Carruthers QC from the inquiry established by the Criminal Justice Commission to investigate the Memorandum of Understanding and the Sporting Shooters matters. Carruthers QC stated that he had lost the appearance of impartiality as a

result of the interventions in his inquiry by the Connolly Inquiry. This was by virtue of the fact that if he subsequently found in favour of those persons he was investigating who were also involved at the Cabinet level in the setting up of the Connolly Inquiry, he might be seen to be influenced in that decision by the Connolly Inquiry's intervention, whereas if he subsequently found against those involved at a Cabinet level in the setting up of the Connolly Inquiry he might be seen to be reacting against those persons. Either way, he stated, his appearance of impartiality was forfeit. A Declaration by the Parliament of its confidence in him solves that problem.

The Bill also prohibits further intervention by the Connolly Inquiry into the Criminal Justice Commission's Inquiry into the Memorandum of Understanding and Sporting Shooters matters. This protection operates only for the duration of that Inquiry. This would provide Carruthers QC with the protection he wished, should he return to complete his Inquiry. However the Criminal Justice Commission Inquiry into the Memorandum of Understanding and Sporting Shooters matters is protected by this legislation whether Carruthers QC returns to complete the Inquiry or not. The passage of this Bill therefore would enable the Criminal Justice Commission to appoint some other person to complete the Carruthers Inquiry, even if Kenneth Carruthers QC chose not to return to complete the job.

At the time of the writing of these explanatory notes the Criminal Justice Commission has appointed two barristers to complete that part of the work of the Carruthers Inquiry which was concerned with providing the Director of Public Prosecutions with a brief on the basis of which he could determine whether any person should be prosecuted for any offence arising out of matters heard before the Carruthers Inquiry. That however is only one part of the work that that Inquiry was set up by the Criminal Justice Commission to undertake. The rest of that work might involve the tabling of a Report setting out findings of fact relating to the matters under investigation, and recommendations for law reform to prevent the recurrence of any events deemed by the Inquiry to be contrary to propriety or the public interest. These and other matters of value to the public may flow from a Report of the Carruthers Inquiry, and if the Bill were passed would do so even if Carruthers QC elected not to return, and the Criminal Justice Commission appointed some other person to complete the Inquiry and its Report.

Administrative cost to Government of implementation

The Carruthers Inquiry is funded by the Criminal Justice Commission out of appropriations already made by the Parliament.

Fundamental legislative principles

The Bill is consistent with fundamental legislative principles with a reservation with respect to the question of retrospectivity. That retrospectivity is necessary to make it clear that it was never the intention of the Parliament that the Connolly Inquiry would have the power to intervene in the deliberations of the Carruthers Inquiry.

Retrospectivity is also necessary to save the Connolly Inquiry from any possible legal consequences flowing from this of its intervention in the Carruthers Inquiry. The rights and liberties of individuals are thus not affected by this retrospectivity.

In this sense the Bill is a curative measure which seeks to declare Parliament's original intention, and therefore does not represent the kind of retrospectivity the fundamental legislative principles are established to discourage.

NOTES ON PROVISIONS

Clause 1 sets out the short title of the Bill.

Clause 2 provides that the Bill is taken to have commenced on the date of assent of the Criminal Justice Legislation Amendment Act 1996.

Clause 3 defines and identifies the two Inquiries referred to in the Bill.

Clause 4 declares the Parliament's wish that Carruthers QC resume the Inquiry, authorises him to do so, and expresses Parliament's belief that the Bill removes all impediments to his doing so.

Clause 5 and 6 amend the *Criminal Justice Act 1989* by inserting a new Section 132C which has the effect of quarantining the Criminal Justice Commission's Inquiry into the Memorandum of Understanding and Sporting Shooters matters from further intervention by the Connolly Inquiry, and saves the Connolly Inquiry from any liability for any intervention it has so far made that might flow from this.