

MISCONDUCT TRIBUNALS BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The Bill amends the *Criminal Justice Act 1989* to separate the misconduct tribunals from the Criminal Justice Commission and the *Criminal Justice Act 1989* by:

- omitting them from that Act,
- providing for the establishment of independent misconduct tribunals; and
- providing for the procedure and powers of the misconduct tribunals.

Reasons for the objectives and how they will be achieved

Under the *Criminal Justice Act 1989*, misconduct tribunals are established as an organisational unit of the Criminal Justice Commission, (the Commission) and as part of the Official Misconduct Division.

Criticisms of the misconduct tribunals have been made by the Commission, the Parliamentary Criminal Justice Committee (Parliamentary Committee) and the Queensland Police Service in relation to the perceived independence of misconduct tribunals. The concern is that they are constituted as an organisational unit of the Official Misconduct Division of the Commission, under the direction of the Director of that Division.

In December 1991, in Report No. 13, "Review of the operations of the Parliamentary Criminal Justice Committee and the Criminal Justice Commission", the Parliamentary Committee recommended that the tribunals be separated from the Commission and established under their own legislation, with administrative support for the tribunals provided by the Department of Justice.

Because of concern expressed by the Commission about the limitations in the tribunal only having the capacity to review disciplinary decisions by hearing matters afresh, the Parliamentary Committee also recommended that, so that internal disciplinary proceedings were not irrelevant, the tribunal itself should have the power to determine whether a matter should be heard afresh, or on the basis of the record of proceedings below.

In July 1992, in Report No. 17, “The Committee’s recommendations on changes to the method of appointment and conditions of service of members of the misconduct tribunals”, the Parliamentary Committee made a number of recommendations concerning a proposed model for the misconduct tribunals, including the appointment of a full-time Chairperson and lay members.

In Report No.26 of February 1995, “A report of a review of the activities of the Criminal Justice Commission pursuant to s.118(1)(f) of the *Criminal Justice Act 1989*”, the Parliamentary Committee concluded that the misconduct tribunals should not be transferred to the jurisdiction of the District Court.

In Report No.26, the Parliamentary Committee concluded that the administration of the misconduct tribunals should be along the lines recommended in Report No. 13 and Report No.17. The Parliamentary Committee also recommended that the Commission should have the right to appeal from internal disciplinary decisions within the Queensland Police Service.

This Bill implements the recommendations of Report No. 13 in respect of Misconduct Tribunals, and a number of the recommendations contained in Reports 17 and 26.

Administrative cost to Government of implementation

Transfer of administrative responsibility for the misconduct tribunals from the Commission to the Department of Justice is likely to be cost neutral.

Fundamental legislative principles

The Bill complies with the fundamental legislative principals in all respects.

The Bill provides an independent mechanism for disciplinary decisions to be made and reviewed in a manner which is consistent with principles of natural justice. The Bill protects the rights of persons who are the subject of disciplinary charges.

Consultation

As noted above, the Bill implements certain recommendations of the Parliamentary Committee in relation to the misconduct tribunals.

The recommendations of the Parliamentary Committee were formulated following reviews of the operations of the Commission under section 118 (1)(f) of the *Criminal Justice Act 1989*. These reviews involved substantial consultation with the Commission and the Police Service; and included opportunities for public submissions.

The Bill was circulated widely prior to its introduction to the Legislative Assembly. A number of submissions were received in response to the draft Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 is the commencement provision and provides that the Act commences on a day to be fixed by proclamation.

Clause 3 provides that the main objects of the Act are to provide for the establishment and operation of independent misconduct tribunals, in a manner that is fair, impartial, effective and efficient.

Clause 4 provides that a dictionary for defining words used in the Act is contained in Schedule 2.

PART 2—MISCONDUCT TRIBUNALS

Division 1—Misconduct Tribunal Panel and Members

Clause 5 provides for the establishment of a panel of at least six tribunal members by the Governor in Council. One tribunal member is to be appointed as the Senior Member.

Clause 6 provides for the qualifications of tribunal members. It is based on section 42 of the *Criminal Justice Act 1989*.

Clause 7 provides that the Minister may only nominate persons for appointment as tribunal members after a process of advertising, consultation with the Chairperson of the Commission, and obtaining the support of the Parliamentary Committee for the appointment.

Clause 8 provides for the duration of the appointment of tribunal members. A tribunal member may serve for not more than a total of six years.

Clause 9 provides for the remuneration and allowances for tribunal members.

Clause 10 provides for the removal from office of tribunal members by the Governor in Council in defined circumstances.

Division 2—Establishment & Composition of Tribunals

Clause 11 provides that the senior member may establish a misconduct tribunal to hear a particular matter. The misconduct tribunal may consist of the senior member or another member chosen by the senior member. The Registrar is to give notice of the member to the prescribed person, the person bringing the charge and, in any case, the principal officer for the unit of public administration in which the prescribed person was or employed.

PART 3—JURISDICTION***Division 1—Charges of Official Misconduct against Prescribed Persons***

Clause 12 provides that “official misconduct” has the same meaning in

this Act as in the *Criminal Justice Act 1989*.

Clause 13 provides that in its original jurisdiction, a misconduct tribunal can hear and decide charges, of a disciplinary nature, of official misconduct made against a prescribed person.

Clause 14 provides that misconduct tribunals have exclusive jurisdiction with respect to charges, of a disciplinary nature, of official misconduct. This is subject to rights of appeal from the misconduct tribunals.

Division 2—Appeals against decisions on charges of other misconduct against prescribed persons

Clause 15 defines “reviewable decision”. These are decisions made in relation to disciplinary charges of misconduct against a prescribed person, other than decisions by a court or a misconduct tribunal. These will generally be disciplinary decisions made under the *Police Service Administration Act 1990*.

Clause 16 provides that a misconduct tribunal has appellate jurisdiction to hear and decide an appeal against a reviewable decision.

PART 4—PROCEEDINGS

Division 1—Starting Proceedings

Clause 17 provides that proceedings in a tribunal’s original jurisdiction may be commenced by a principal officer, or by the Commission, by filing a charge of misconduct with the Registrar and giving a copy of the charge to the prescribed person.

Clause 18 provides that proceedings in a tribunal’s appellate jurisdiction are commenced by filing a notice of appeal with the Registrar of the tribunal. *Clause 18* also sets out the requirements for the content of the notice of appeal, and service of the notice.

Division 2—Procedures of Misconduct Tribunals

Clause 19 provides that the Registrar must ask the Senior Member to establish a misconduct tribunal as soon as practicable after proceedings are started. It also requires the prescribed person to be given a copy of the evidence to be presented at the hearing.

Clause 20 sets out the powers of a misconduct tribunal in relation to proceedings before it. Tribunal orders may be enforced by filing a copy of the order in a Registry of the Supreme Court. These include powers to require a person to attend at and give evidence to a tribunal hearing. A person must comply with a tribunal order unless the person has a reasonable excuse. A reasonable excuse includes refusal to comply with an order on the grounds of self incrimination and legal professional privilege.

Clause 21 provides that a person has a right to be represented in proceedings before a tribunal.

Clause 22 gives the tribunal power to retain documents that are given to the tribunal for a hearing.

Clause 23 requires a misconduct tribunal to observe natural justice when conducting a hearing in a proceeding, and to act as quickly and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues before it. *Clause 23(2)* provides that the tribunal is not bound by rules of evidence and may decide the procedures to be followed for the proceeding.

Clause 23(4) provides that if the tribunal is exercising appellate jurisdiction it will conduct the appeal by way of a rehearing on the evidence given before the original decision-maker. Limitations are placed on the introduction at the appeal of evidence which was available at the time of the original hearing.

Clause 24 provides that hearings of a misconduct tribunal are generally to be open to the public. However, the tribunal may order that the hearing be closed.

Division 3—Misconduct Tribunal Decisions

Clause 25 sets out the range of penalties that may be imposed by a misconduct tribunal in relation to a prescribed person.

Clause 26 provides that in exercising appellate jurisdiction a misconduct tribunal can either confirm the decision appealed against, set aside the decision and substitute another decision, or remit the matter to the original

decision-maker. *Clause 26(3)* provides that the decision of the tribunal in its appellate jurisdiction is final and conclusive.

Clause 27 provides that a misconduct tribunal may refer a matter for investigation or further investigation with a view to the taking of criminal proceedings or for another purpose.

Clause 28 provides that a misconduct tribunal may suspend the imposition of punishment on a prescribed person for a defined period. *Clause 28(4)* provides that if a prescribed person is found to have committed a further act of misconduct or official misconduct during the period of suspension the suspension is revoked, and the punishment imposed has immediate effect.

Division 4—Protection of Persons Associated with Misconduct Tribunals

Clause 29 sets out the protection and immunity of tribunal members and lawyers or other persons appearing before misconduct tribunals.

Clause 30 indemnifies persons who provide information to, or produce documents to a tribunal, from civil and criminal liability.

Division 5—Contempt of Misconduct Tribunal

Clause 31 sets out the various grounds upon which a person may be in contempt of a misconduct tribunal.

Clause 32 provides for the punishment of contempt by the certification of a contempt by the tribunal or the senior member to the Supreme Court.

Clause 33 provides that if conduct constitutes a criminal offence and contempt of a misconduct tribunal the offender may only be punished for the contempt or the offence.

Division 6—Miscellaneous

Clause 34 provides for the payment of allowances to witnesses before misconduct tribunals.

Clause 35 provides that parties to misconduct tribunal hearings are to bear their own costs however, a misconduct tribunal may make orders

about the payment of costs if it is satisfied that it is appropriate to do so.

Clause 36 provides for the keeping of records by misconduct tribunals.

PART 5—APPEALS

Clause 37 sets out who is entitled to appeal to the Supreme Court against decisions of a misconduct tribunal exercising original jurisdiction.

Clause 37(2) sets out the grounds of appeal from a decision of a misconduct tribunal to the Supreme Court.

Clause 37(4) provides that an appeal is generally by way of rehearing however, the Court has discretion to order the matter to be heard afresh, in whole or in part.

Clause 37(5) provides that the Supreme Court may transfer an appeal to a District Court.

PART 6—GENERAL

Clause 38 provides that a review of misconduct tribunals may be conducted by the Parliamentary Committee in conjunction with a review under section 118(1)(f) of the *Criminal Justice Act 1989*. The Parliamentary Committee is not able to inquire into particular proceedings before the tribunals.

Clause 39 requires the senior member to produce an annual report to be given to the Parliamentary Committee and to the Minister.

Clause 40 provides for the appointment of a Registrar of misconduct tribunals and other ancillary staff.

Clause 41 provides for the authentication of documents by the member constituting the tribunal or the senior member.

Clause 42 provides that judicial notice must be taken of the signature of a tribunal member.

Clause 43 declares that, for the purposes of chapter 16 of the Criminal Code:

- misconduct tribunal proceedings are judicial proceedings
- a person constituting a misconduct tribunal is the holder of a judicial office; and
- a misconduct tribunal is a tribunal.

Chapter 16 of the Criminal Code deals with offences relating to the administration of justice, such as perjury.

Clause 44 is a confidentiality provision in relation to information obtained by tribunal members, the Registrar or other tribunal staff.

Clause 45 provides for the making of rules about the practice and procedure of the misconduct tribunals by the senior member.

Clause 46 provides for the making of regulations by the Governor in Council.

PART 7—TRANSITIONAL PROVISIONS AND AMENDMENTS

Clause 47 provides that proceedings commenced and partly heard under the *Criminal Justice Act 1989* may be dealt with under that Act. Proceedings commenced but not partly heard may be dealt with under the *Misconduct Tribunals Act 1997*.

Clause 48 provides that the schedule amends the Acts referred to in it.

SCHEDULE 1

AMENDMENTS

The schedule contains complementary amendments to the *Criminal Justice Act 1989* and other Acts which refer to the misconduct tribunals.

SCHEDULE 2

DICTIONARY

Schedule 2 contains a dictionary defining words used in the Act.