

# **POLICE SERVICE ADMINISTRATION AND MISCONDUCT TRIBUNALS AMENDMENT BILL 2001**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objective of the Legislation**

The objective of the Bill is to preserve the existing review and appeal provisions of the *Police Service Administration Act 1990* (PSAA) and the *Misconduct Tribunals Act 1997* respectively, which could be interpreted to involve industrial matters, from the operation of the *Industrial Relations Act 1999* (IR Act).

#### **Reason for the Bill**

Part 9 “Review of decisions” of the PSAA deals specifically with applications by police officers to have decisions reviewed which involve the selection/appointment of an officer to a police officer position via transfer and promotion, actions against an officer for any breach of discipline, the suspension or standing down of an officer and other matters that are prescribed by regulation as being open to review under this Part. Section 9.3 “Application for review” of the PSAA authorises police officers to apply to have such decisions reviewed by a Commissioner for Police Service Reviews (Review Commissioner).

A decision outlined in s.9.3 of the PSAA could be classed as an “industrial matter” within the scope of s.7 and Schedule 1 of the IR Act. Consequently these matters could be heard and decided by the Queensland Industrial Relations Commission (the Industrial Commission) or be further appealed to the Industrial Court of Queensland (the Industrial Court) subject to these bodies appropriating the necessary jurisdiction to adjudicate these matters.

Section 265 of the IR Act sets out the jurisdictional matters that the Industrial Commission may hear and decide. These include all questions

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arising out of an industrial matter and appeals properly made to it under this or another Act. Section 341 of the IR Act authorises a person who is dissatisfied with a decision of the Industrial Commission, subject to exceptions, to appeal against the decision to the Industrial Court on the grounds of an error of law or excess, or want, of jurisdiction. Section 342 of the IR Act authorises a person who is dissatisfied with a decision of the Industrial Commission, subject to exceptions, to appeal against the decision to the Full Bench, with the Full Bench's leave, on a ground other than an error of law or excess, or want, of jurisdiction.

Section 686(1)(c) of the IR Act currently preserves any matter about which another Act does not allow for the jurisdiction of the Industrial Court or Industrial Commission in relation to the matter, because the other Act prescribes a process or procedure by which to pursue the matter.

On this basis, the PSAA review process for police officers under Part 9 is currently exempt from the IR Act. However, s.686(5) of the IR Act states that the exemption will expire on 1 July 2001. Therefore, the PSAA will require amendment before that date to ensure that the Commissioner for Police Service Reviews' process is preserved.

The appeal provisions relating to the original jurisdiction and the appellate jurisdiction of the *Misconduct Tribunals Act 1997* could be similarly affected by the operation of the IR Act should no exemptions be put in place before 1 July 2001 to preserve them. This is on the basis that the reviewable decisions and grounds subject to the appeal provisions of the *Misconduct Tribunals Act 1997* could also be classed as industrial matters as defined by the *Industrial Relations Act 1999*.

These issues were not identified before the introduction of the IR Act because all submissions relating to that Act were subject to a Category A security classification.

### **Means of Achieving Objective**

The objective will be achieved by amending the *Misconduct Tribunals Act 1997* and the PSAA by way of exclusions to preserve their appeal and review provisions respectively from the operation of the IR Act before that date. The exclusions will be in accordance with s.686(1)(b)(i) of the IR Act which provides that the IR Act binds the State, other than in relation to a matter about which another Act excludes the jurisdiction of the Industrial Commission or Industrial Court about the matter.

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The Bill is considered to be a reasonable and appropriate way of achieving the objective.

### **Alternative Means of Achieving Objective**

The objective cannot be achieved in any way other than by amending the relevant legislation.

### **Estimated Cost of Implementation for Government**

The implementation of this legislation will not entail any new costs to Government.

### **Consistency with Fundamental Legislative Principles**

The Bill does not breach fundamental legislative principles. It is to preserve the current situation with respect to Part 9 “Review of decisions” of the PSAA whereby police officers may apply to have certain decisions reviewed by a Commissioner for Police Service Reviews. The Police Commissioner’s discretionary decision making power to either affirm or reject a recommendation by a Review Commissioner is balanced by the right of police officers to apply to the Supreme Court to have any such decision reviewed, subject to specific grounds, under the *Judicial Review Act 1991*. The Bill will also preserve the current situation with respect to the appeal systems relating to the original jurisdiction and the appellate jurisdiction of the Misconduct Tribunal under the *Misconduct Tribunals Act 1997*.

### **Consultation Conducted in Development of the Bill**

The following stakeholders were consulted with respect to this matter:

- Department of Industrial Relations;
- Criminal Justice Commission;
- The Queensland Police Commissioned Officers’ Union of Employees; and
- Queensland Police Union of Employees.

## **NOTES ON PROVISIONS**

### **PART 1—PRELIMINARY**

#### **Short title**

*Clause 1* specifies the short title of the proposed Act.

### **PART 2—AMENDMENT OF POLICE SERVICE ADMINISTRATION ACT 1990**

#### **Act amended in pt 2**

*Clause 2* identifies the *Police Service Administration Act 1990* as the Act being amended by this part.

#### **Insertion of new s 9.1A**

*Clause 3* inserts a new section 9.1A (Relationship with Industrial Relations Act 1999) in the *Police Service Administration Act 1990* to preserve the current situation by providing that the industrial court and the industrial relations commission do not have jurisdiction in relation to a matter that has been, is being, or may be reviewed under this part even though it may be, or be about, or arise out of, an industrial matter within the meaning of the *Industrial Relations Act 1999*.

### **PART 3—AMENDMENT OF MISCONDUCT TRIBUNALS ACT 1997**

#### **Act amended in pt 3**

*Clause 4* identifies the *Misconduct Tribunals Act 1997* as the Act being amended by this part.

### **Insertion of new s 4A**

*Clause 5 inserts a new section 4A (Relationship with Industrial Relations Act 1999) to the *Misconduct Tribunals Act 1997* to preserve the current situation by providing that the industrial court and the industrial relations commission do not have jurisdiction in relation to a matter that a tribunal, the Supreme Court or the District Court may decide under this Act even though it may be, or be about, or arise out of, an industrial matter within the meaning of the *Industrial Relations Act 1999*.*