

# **CRIME AND MISCONDUCT AND OTHER LEGISLATION AMENDMENT BILL 2014**

## **Explanatory Notes**

### **Short title**

The short title of the Bill is the Crime and Misconduct and Other Legislation Amendment Bill 2014.

### **Policy objectives and the reasons for them**

On 3 July 2013, the Queensland Government tabled its response in the Legislative Assembly to the two recent reviews of the Crime and Misconduct Commission (CMC): the review by the Independent Advisory Panel (constituted by the Honourable Ian Callinan AC and Professor Nicholas Aroney (Callinan/Aroney)) of the *Crime and Misconduct Act 2001* (CM Act) and related matters; and the inquiry by the Parliamentary Crime and Misconduct Committee into the CMC's release and destruction of Fitzgerald Commission of Inquiry documents.

Implementation of the accepted recommendations will lead to an improvement in:

- public confidence in the CMC;
- timeliness of the investigation of complaints;
- operational and corporate governance structures within the CMC;
- the current culture within the CMC;
- CMC internal complaints management systems for misconduct matters;
- internal processes and practices in the CMC; and
- management of personal conduct and work performance of Queensland public service employees.

An Implementation Panel (the Panel) comprising: the Director-General, Department of Justice and Attorney-General (DJAG) (Chair); Director-General, Department of the Premier and Cabinet (DPC); Commission Chief Executive (CCE), Public Service Commission (PSC); and Acting Chairperson, CMC was established to oversee and direct the consideration and implementation of the accepted recommendations in the Government Response.

The Panel has met on a regular basis and provided reports to the Premier and the Attorney-General and Minister for Justice on the progress of implementing the recommendations, including advice on how the recommendations' intentions are best achieved. Legislative amendments are required to give effect to the accepted recommendations.

The policy objectives of the Bill are to:

1. reform the upper governance structure of the CMC (which will be renamed the *Crime and Corruption Commission* and generally referred to from this point in the Explanatory Notes as the commission);
2. change the definition of ‘official misconduct’ in the CM Act to raise the threshold for what matters are captured within that definition and rename the defined conduct as ‘corrupt conduct’;
3. rename the ‘misconduct function’ in the CM Act to ‘corruption function’; which will result in the following new titles: ‘*Crime and Corruption Act 2001*’; ‘Crime and Corruption Commission’; ‘Parliamentary Crime and Corruption Committee’ and ‘Parliamentary Crime and Corruption Commissioner’;
4. improve the complaints management system of the commission to refocus it on more serious cases of corruption and reduce the number of complaints the commission is to deal with and investigate;
5. remove the commission’s responsibilities for the ‘prevention’ of corruption in units of public administration;
6. ensure the commission’s research function is more focussed and relevant to its functions;
7. strengthen the transparency and accountability of the commission by expanding the role of the Parliamentary Crime and Corruption Commissioner (parliamentary commissioner) in his oversight of the commission, and requiring meetings between the commission and the Parliamentary Crime and Corruption Committee (the parliamentary committee) to be held in public as much as possible;
8. clarify the grounds for discipline and what disciplinary action may be taken by the commission in relation to conduct of commission officers;
9. make transitional arrangements to continue the current acting chairperson’s appointment and certain other appointments; and provide transitional arrangements for the ending of other appointments;
10. implement recent recommendations of public reports about the commission’s investigation of alleged official misconduct at the University of Queensland and to make other unrelated minor amendments to the CM Act;
11. improve the management of personal conduct and work performance of Queensland public service employees; and
12. make consequential amendments to the CM Act, the *Public Service Act 2008* (PS Act) and other Queensland legislation and regulations to support the above policy objectives.

## **Achievement of policy objectives**

### Reform of the upper governance structure of the commission

- *Current upper governance of the commission*

The CM Act currently provides that the commission is a statutory body and is to consist of the following commissioners - a full time chairperson and four part time commissioners, who are appointed by the Governor in Council on recommendation by the Minister with the bipartisan approval of the parliamentary committee. The chairperson is also the commission’s chief executive officer (CEO).

A person is eligible for appointment as chairperson if qualified for appointment as a judge. One of the part time commissioners must be a lawyer of five years standing with a demonstrated interest in civil liberties. The other part time commissioners must have the qualifications or experience in one or more of the following areas: public sector management and review; criminology; sociology; or research related to crime or crime prevention.

The CM Act also creates the full-time positions of assistant commissioner, crime and assistant commissioner, misconduct who assist the chairperson in the performance of the commission's crime and misconduct functions respectively. The assistant commissioners are also appointed by the Governor in Council on recommendation by the Minister in consultation with the parliamentary committee.

- *Proposed new upper governance structure for the commission*

The Bill establishes a new upper governance structure for the commission. Under the Bill the commission comprises five commissioners who are:

- a full time legally qualified chairman responsible to the commission for performing the commission's functions and exercising the commission's powers;
- a legally qualified part-time deputy chairman;
- two part-time ordinary commissioners with the qualifications, skill or standing appropriate to assist the commission perform its functions; and
- a full-time CEO who is responsible to the commission for the administration of the commission.

Under the Bill, commissioners are appointed by the Governor in Council for a term of up to five years and may be reappointed for further terms not more than five years. The maximum term of appointment for a commissioner is ten years. The requirement for bipartisan approval by the parliamentary committee of the appointment of a commissioner is removed by the Bill. However, the Minister is required to consult with the parliamentary committee prior to the appointment or reappointment of any of the commissioners.

The Bill allows the chairman to appoint sessional commissioners to help the chairman perform the commission's functions or exercise the commission's powers by conducting hearings, examining witnesses or conducting specific investigations.

The role and powers of assistant commissioners in the CM Act have been transferred to 'senior executive officers', who are senior officers appointed by the commission, and not the Governor in Council.

The commissioners, sitting as the commission, set the commission's strategic direction and provide leadership to the commission. The chairman is responsible for, and is to report to the commission on, all operational matters but is not bound by directions from the commission except in relation to the commission's strategic direction.

Under the Bill, the CEO is pivotal to the effective management of the commission and as such is responsible for:

1. the proper administration of the commission;
2. the employment, management and discipline of commission staff;
3. the management of the commission's documents (including the Fitzgerald Commission of Inquiry documents);
4. the preparation and compliance with the commission's budget under section 259 of the CM Act, including responsibility under the *Financial Accountability Act 2009*; and
5. setting benchmarks for assessing and investigating complaints about corruption and ensuring the benchmarks are met by commission staff.

The CEO is to report to the commission on the above listed matters and is bound by the directions from the commission on those matters. The CEO may also issue directions to commission staff as to how they decide whether a complaint involves a more serious case of corrupt conduct or a case of systemic corrupt conduct within a unit of public administration. However, in issuing the direction, the CEO is subject to the direction and control of the chairman.

The Bill statutorily delegates relevant commission's functions and powers to the chairman and CEO and the chairman and CEO may sub-delegate these functions and powers to appropriately qualified commission officers in accordance with the provisions of the CM Act.

To ensure the reforms to the upper governance structure of the commission are working effectively, the Bill amends section 292 of the CM Act to include an additional function for the parliamentary committee to periodically review the structure of the commission, including the relationship between the types of commissioners and the roles, functions and powers of the commission, chairman and chief executive officer and for each review to table in the Legislative Assembly a report about the review, including any recommendations for changes to the CM Act.

#### Change in the definition of 'official misconduct' in the CM Act to 'corrupt conduct'

The Callinan/Aroney report found that the definition of 'official misconduct' has a wider application when compared with the definitions contained in other interstate anti-corruption legislation; and that the threshold for what constitutes official misconduct should be narrowed.

The Bill amends the definition as currently contained in sections 14 and 15 of the CM Act to: change the conditional 'would' to 'could' as recommended by Callinan/Aroney; using the new term 'corrupt conduct'; and to redraft the definition so it more clearly set out the elements that comprise 'corrupt conduct'. The definition also includes a list of types of offences or behaviours in subsection (2), which are not conclusive of corrupt conduct, but could be corrupt conduct if the preconditions of subsection (1) of the definition are met.

#### Renaming the 'misconduct' function

As a result of the new term 'corrupt conduct', the commission's misconduct function will now be known as the 'corruption function' and accordingly the Bill provides for the following new titles: '*Crime and Corruption Act 2001*'; 'Crime and Corruption

Commission’; ‘Parliamentary Crime and Corruption Committee’ and ‘Parliamentary Crime and Corruption Commissioner’.

Commission’s new complaints management system

Callinan/Aroney were of the view the commission’s focus should be on investigating serious cases of corrupt conduct. In addition to changing the definition of ‘official misconduct, Callinan/Aroney also recommended a number of other strategies designed to reduce the number of complaints the commission has to deal with.

Consistent with the goal to reduce the number of matters referred to, and investigated by the commission, the Bill:

1. raises the threshold of when public officials are to notify the commission of corrupt conduct so that notification is only required when the public official *reasonably suspects* corrupt conduct (this is being done by amendment to section 38, which currently only requires the public official to *suspect* the conduct involves or may involve official misconduct);
2. expands the use of section 40 directions issued to units of public administration to ensure only the more serious corrupt conduct matters will be referred to the commission. Directions under section 40 will now also include what complaints need or need not be notified to the commission as well as when and how complaints are to be notified to the commission;
3. requires the commission must only investigate the more serious cases of corrupt conduct (amendments to sections 5 and 35);
4. expands the grounds upon which the commission may dismiss or take no action in relation to a complaint to also include when the complaint is: not made in good faith; made for a mischievous purpose; made recklessly or maliciously; not within the commission’s jurisdiction; not in the public interest or has been dealt with by another entity (amendment to section 46(2)(g)); and
5. enlarges the grounds upon which the commission may prosecute a person in relation to making a complaint that is: vexatious; not made in good faith; made for a mischievous purpose; or made recklessly or maliciously (new section 216A).

The Bill amends section 36 of the CM Act to require a complaint must be made by way of a statutory declaration, except if the commission determines exceptional circumstances exist (such as: a fear of retaliation for making the complaint; the literacy level of a complainant or his or her competency in English; or that the complainant has a disability that affects the person’s ability to make the complaint by statutory declaration). This amendment will ensure complaints are made for genuine purposes.

To provide for greater transparency in the way the commission manages investigations into corrupt conduct, the Bill requires the commission to publish, on a publicly accessible website, information about the commission’s systems and procedures for dealing with complaints about corruption, including information about the standard benchmarks for completing its investigations and procedures for ensuring its benchmarks are met.

The Bill also allows the CEO to issue binding directions to commission staff on how to determine if a complaint involves a more serious case of corrupt conduct or a case of systemic corrupt conduct in a unit of public administration. In issuing these directions the CEO is subject to the direction and control of the chairman.

#### Commission's prevention and research functions

Callinan/Aroney recommended the commission's prevention function for misconduct should cease and that this would allow the commission to focus on investigating serious cases of corrupt conduct.

The Bill amends section 23 and makes consequential amendments to other provisions in the CM Act to remove the commission's function for the prevention of corruption in units of public administration.

Callinan/Aroney were of the view that *'non-specific research by the CMC is a distraction, and not such as to justify the expense and resources needed for it.'* (recommendation 12).

The Bill does not remove the commission's research function. However, to ensure research stays focussed and is relevant, amendments in the Bill will require research to be undertaken in accordance with a three yearly research plan that is approved by the Minister and which:

1. supports the commission's functions;
2. is required to be undertaken by the commission under an Act; or
3. is referred to the commission by the Minister.

#### Transparency and accountability of the commission

The Bill includes amendments to promote accountability and transparency of the commission's decision-making, operations and activities by:

- requiring parliamentary committee meetings with the commission be held in public, except where the committee considers the confidential and sensitive nature of the information being discussed needs protection or may jeopardise ongoing investigations; and
- enlarging the powers of the parliamentary commissioner by: allowing the parliamentary commissioner to investigate complaints on his or her own initiative; removing the requirement for the bipartisan approval by the parliamentary committee for the parliamentary commissioner to hold hearings; and allowing reports of the parliamentary commissioner to be used by the commission's chief executive officer in deciding whether to take disciplinary action, and what disciplinary action should be taken, against commission officers.

The parliamentary committee currently holds public meetings with the commission except for discussing confidential or sensitive information. The proposed amendment to require public meetings formalises the current practice.

The Bill also amends section 292(f) of the CM Act to extend the interval at which the parliamentary committee conducts its statutory review of the activities of the commission from every three years (which coincides with the parliamentary terms) to every five years.

The parliamentary committee has in its last two (2) reports of its review of the commission under section 292(f) (in 2009 and 2012), noted that this time frame does not allow sufficient time for recommendations to be implemented and monitored before the next review is to occur and recommended a five (5) year interval between reviews is more appropriate.

Currently, any work conducted by the parliamentary commissioner is afforded the protection of parliamentary privilege because the work is undertaken at the direction of the parliamentary committee. However, the investigation and report conducted under the parliamentary commissioner's new own motion investigation powers will not be protected by parliamentary privilege. The Bill provides for additional protections to the parliamentary commissioner that are consistent with those provided for commission staff.

The Bill also amends section 329 of the CM Act to require the chairman, deputy chairman or CEO to notify the parliamentary commissioner, as well as the parliamentary committee, of any conduct by a commission officer that involves or may involve improper conduct. Also the definition of 'improper conduct' in this section is amended by including additional types of conduct that will fall within the definition.

#### Disciplinary proceedings for commission staff

The Bill inserts new provisions in the CM Act to clarify the disciplinary action the chief executive officer may take in relation to conduct of commission staff, including senior officers, persons employed under section 254, persons seconded under section 255 and persons engaged under section 256. The grounds for disciplinary action and the disciplinary action that may be taken are broadly modelled on certain provisions applying to public sector employees and other government employees such as ambulance officers.

Commission officers are either employed under a written contract of employment or subject to the *Crime and Misconduct Commission Employees Award – State 2012*. The new disciplinary provisions will apply to both existing and future contract and award employees but will not apply to the employee if the conduct occurred prior to commencement of the new provisions.

Although the Bill does not include specific appeal procedures in respect of disciplinary action, commission officers have access to the industrial dispute resolution mechanisms provided under their award and also pursuant to Chapter 7 of the *Industrial Relations Act 1999*.

Officers may also have access to unfair dismissal proceedings (an application for reinstatement) under Chapter 3 of that Act. Commission officers who are on a contract are also able to seek a remedy based on breach of contract.

### Amendments to the CM Act to implement recommendations of public reports

Section 38 of the CM Act obliges public officials (defined to mean the Ombudsman, a chief executive officer of a unit of public administration (including the Commissioner of Police), or a person who constitutes a corporate entity that is a unit of public administration) to notify the commission when corrupt conduct is reasonably suspected (as amended by the Bill). When the public official is the subject of suspected corrupt conduct, the application of section 38 is problematic. This issue was highlighted by the CMC in their September 2013 report, *An examination of suspected official misconduct at the University of Queensland*.

To address this issue, the Bill includes an amendment that requires agencies to develop a policy that sets out how the agency will manage a complaint that involves the public official of that agency. The policy is to be developed in consultation with the commission.

The parliamentary committee noted in their September 2013 Report No. 92, *Complaint about the CMC investigation into the University of Queensland*, that section 58 of the CM Act currently limits the commission's ability to fully review the appropriateness of how an agency manages misconduct of its officers when a judicial officer is a member of the decision-making body of that agency. The parliamentary committee recommended an amendment to section 58 of the CM Act, which is included in the Bill, to allow the commission to investigate a decision making body of an agency when a judicial officer is a member of that decision-making body.

### Other amendments to the CM Act

The Bill includes an amendment to section 308(1) to provide discretion to the Speaker as to when the Speaker is to appoint an acting parliamentary commissioner. Currently, the Speaker must appoint an acting parliamentary commissioner whenever the parliamentary commissioner is absent from Queensland (even when for example in Tweed Heads for a short period appearing in a criminal trial). In such circumstances the parliamentary commissioner is still able to perform his or her duties and it is not necessary for the Speaker to appoint an acting parliamentary commissioner.

The CM Act establishes a Crime Reference Committee (CRC) that is responsible for making the general and specific crime references to the commission. The general or specific crime references authorise the commission to conduct crime investigations. The CRC's membership includes two community representatives. The Bill removes the requirement for the Minister to consult with the Leader of the Opposition prior to the appointment of a community representative to the CRC. There is no perceived benefit in obtaining approval from the Leader of the Opposition for the appointment of community representative members to what is an internal approving authority for the crime and intelligence activities of the commission.

The Bill amends section 4 of the CM Act to clarify the primary and secondary purposes of the CM Act. The redrafting of this section makes it clear the commission's primary purpose is to combat and reduce the incidence of major crime. The commission's corruption function is stated as the secondary purpose.

Improving the management of personal conduct and work performance of Queensland public service employees

Callinan/Aroney and the Commission of Audit recommended refocusing responsibility of conduct in public sector agencies to line managers and ultimately CEOs to be dealt with promptly, with the PSC having a role in monitoring and auditing of agency responses.

The PSC's *Conduct and Performance Excellence* (CaPE) service, supported by the amendments to the PS Act contained in the Bill, will promote and support excellence in the management of conduct and performance in the Queensland public sector. It will: provide specialist advice and support to agencies, upon request, on the management of conduct and performance; set, and strategically monitor, benchmarks (timeliness) and standards (quality) for agencies' handling of these matters; and review individual cases as required, with the aim of building capability. CaPE will contribute to the development of capability within agencies to ensure they have a high standard of human resource and managerial skill. It will also work closely with the commission to ensure matters are addressed effectively within the appropriate jurisdiction.

The Bill achieves its objective of enabling improvement in the management of work performance in the Queensland public service by:

1. authorising the PSC to have functions of review in relation to departments' current or completed cases of conduct and performance matters;
2. enabling the CCE of the PSC to request certain information in relation to agency performance, workforce and disciplinary matters;
3. enabling the giving, receiving and recording of information between the PSC, commission and other agencies, and to ensure that the way any information is given, received or recorded occurs appropriately;
4. including provisions regarding confidentiality of information and protection from liability for giving information. These amendments will enable the CCE to enter into an agreement about giving and receiving information with certain external agencies; and
5. requiring agencies to maintain a complaints management system, to demonstrate Government's commitment to effective complaints management systems which are flexible and are managed at agency level.

Consequential amendments

The two schedules in the Bill include amendments to the CM Act and various other pieces of legislation to implement the changes to the nomenclature used in the CM Act as amended by the Bill.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objectives other than legislation.

## Estimated cost for government implementation

The PSC will be working with agencies, including Queensland Treasury and Trade for the most appropriate funding strategy for the CaPE service. It is anticipated that the reforms included in this Bill are able to be met from within existing resources.

## Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

### **Part A: Amendments to the *Crime and Misconduct Act 2001***

A. Does not have sufficient regard to the rights and liberties of individuals, section 4(2)(a) *Legislative Standards Act 1992*

Clause 29 inserts a new section 216A to create a new offence in section 216A.

Section 216A creates a new offence of making a complaint to the commission that is: vexatious; not made in good faith; made primarily for a mischievous purpose; or made recklessly or maliciously. The Callinan/Aroney report stated the commission was required to deal with a number of complaints that were minor or trivial and sometimes made for ulterior motives, and recommended a number of strategies to reduce the number of complaints being made.

One of the strategies included the creation of a new offence if the complaint was a 'baseless complaint'. A baseless complaint was broadly defined as being a complaint that is: malicious, vexatious, reckless or exclusively vindictive; based on information from another person; or made in circumstances where the person has not considered the definition of corrupt conduct.

The ambit of the new offence in section 216A is not as wide as recommended in the Callinan/Aroney report as it does not include circumstances when the complainant relies upon information received from another party or has not complied with a procedural step. The offence is limited to those complaints made for an ulterior purpose and not for genuine reasons. The offence will impose a maximum penalty of 85 penalty units or one year imprisonment, which is the same penalty for the existing offence in section 216 of the CM Act.

Clause 62 inserts a new division (Chapter 6, part 1, div 9) to deal with disciplinary proceedings for commission staff.

The new disciplinary provisions for commission officers are broadly modelled on certain provisions in the *Public Service Act 2008* and *Ambulance Service Act 1991*. However, under the CM Act amendments, the appeal rights are limited to those currently provided to commission officers.

As noted above, commission officers have access to the industrial dispute resolution mechanisms provided under their award (the *Crime and Misconduct Commission Industrial Award State 2012*) and also pursuant to Chapter 7 of the *Industrial Relations Act 1999*. Commission officers may also have access to unfair dismissal proceedings (an application for re-instatement) under Chapter 3 of that Act. Commission officers who are on a contract are also able to seek a remedy based on breach of contract.

The new discipline provisions will apply to all current commission officers on contract or employed under the State Award. The new provisions generally reflect current accepted practices for discipline common to all government sector employees and provide the chairman with flexibility when dealing with the less serious discipline issues. These amendments make it clear that the chairman has other options to discipline a commission officer other than dismissal. These amendments will allow the chairman to take disciplinary action against the commission officer other than dismissal.

The new provisions, although applying to all existing employees, will apply only to conduct of an employee that occurred after commencement of the amendments.

Clause 74 inserts new sections 314A and 314B to allow the parliamentary commissioner to table a referral or recommendation and the parliamentary committee or Minister to table a report about commission officers that involves or may involve corrupt conduct.

After the parliamentary commissioner completes an investigation under the new section 314(4) into suspected corrupt conduct, he or she may table in the Legislative Assembly a referral or recommendation (or extract thereof) about conduct of a commission officer that involves or may involve corrupt conduct. The parliamentary committee or Minister may table a copy of the report prepared by the parliamentary commissioner.

However, the tabling of this information is only to occur in the following limited circumstances: the information relates to serious corrupt conduct; there has been inadequate action by the appropriate entity to deal with the conduct investigated by the parliamentary commissioner; the tabling of the information is in the public interest; and the person the subject of the information which is to be tabled has been afforded procedural fairness prior to the tabling (such as, an opportunity to respond to any adverse statements).

These safeguards provide sufficient protection of the person's rights when balanced with the public interest in tabling the information.

Clauses 80 and 81 insert new sections 397, 398 and 402 to provide transitional arrangements for the ending of existing commissioner and acting commissioner appointments; and continuation of certain appointments

Under these sections, the appointment of the existing acting chairperson, part-time commissioners and acting part-time commissioners will continue until, and only until, commencement of the new Part 11, divisions 3 to 7 (the commencement day). These provisions may affect the income of the persons concerned.

The current acting chairperson's appointment ends 22 May 2014 and that person is no longer eligible for reappointment by virtue of section 24B(5) of the *Acts Interpretation Act 1954*. New section 397 states that the person who is acting chairperson is to be reappointed as acting chairperson up until the commencement day.

New section 402 also provides that upon commencement, the person who was acting chairperson will be acting chairman of the Crime and Corruption Commission from the commencement of the section until 31 October 2014, or until the appointment of a permanent chairman is made, whichever is earlier. This will allow the person who has been overseeing the organisational change of the commission to continue to act in the chairman position until a new person has been appointed, thereby facilitating a smooth transition into the new governance arrangements and implementation of the new complaints management system.

New section 398 also extends the term of appointment for any part-time commissioners whose appointments will end prior to the commencement day until commencement day. On commencement day the Government will have the option to either have in place new permanent or acting appointments.

Clause 81 inserts a new section 416 to provide for how existing complaints are to be dealt with.

The Bill provides that existing complaints made to the commission are to be dealt with in accordance with the amendments, including whether the conduct comes within the new definition of 'corrupt conduct'. Where a complaint that previously was considered 'official misconduct' does not meet the new definition of 'corrupt conduct', the commission must take no further action in relation to that complaint.

However, the public official of the agency that is the subject of the complaint is required to continue to deal with that complaint in accordance with the relevant law, policy or practice.

B. Does not have sufficient regard to the institution of Parliament, section 4(2)(b), *Legislative Standards Act 1992*

Clause 76 inserts a new section 323A to allow the use of a report prepared by the parliamentary commissioner in disciplinary proceedings by the CEO .

Section 323A allows reports of the parliamentary commissioner to be used in deciding whether to take disciplinary action, and what disciplinary action should be taken, against commission officers despite any parliamentary privilege applying to the report or that information may have been obtained under coercive powers exercised by the parliamentary commissioner.

The use of the report by the CEO for disciplinary purposes will avoid the CEO undertaking another investigation that would be a duplication of the previous investigation. The amendment is consistent with the recommendation made by the parliamentary committee in their report of their 2013 review of the commission's release and destruction of the Fitzgerald Commission of Inquiry documents.

C. Provides for an immunity from prosecution, section 4(3)(h) of the *Legislative Standards Act 1992*

Clause 79 amends section 366 to include additional protections for the parliamentary commissioner, particularly when undertaking an own motion investigation.

Currently, any work conducted by the parliamentary commissioner is referred by the parliamentary committee and is afforded the protection of parliamentary privilege by virtue of section 323 of the CM Act and sections 8 and 9 of the *Parliament of Queensland Act 2001*. However, the investigation conducted, and the report prepared, under the new own motion investigation powers of section 314(4) will not be protected by parliamentary privilege.

The protections afforded to the parliamentary commissioner in this amendment are consistent with those provided for commission staff in section 365 of the CM Act.

**Part B: Amendments to the *Public Service Act 2008***

A. Does not have sufficient regard to the rights and liberties of individuals, section 4(2)(a) *Legislative Standards Act 1992*

Clause 87 inserts a new section 88M to allow the disclosure of confidential information obtained by a person in certain circumstances.

Section 88M allows the disclosure of confidential information obtained by a person for the purposes of the PSC's new functions relating to disciplinary matters in stated circumstances. Generally speaking, the circumstances involve performance of legislative or judicial functions or authorisation by the individual concerned or a law.

Whilst the provision may impact on the rights and liberties of individuals, there is adequate justification for this provision. The information can only be disclosed in very limited circumstances, namely: for the purposes of administering the PS Act; to the extent necessary to perform the person's functions under an Act; for a proceeding in a court or tribunal; with the consent of the person to whom the confidential information relates; or if the disclosure is otherwise required or permitted under another Act or law.

Additionally, the persons given protection by this provision are limited to only a person who is, or has been: the PSC CCE; a staff member of the PSC; or any other person to whom the function of conducting a review under section 88I has been delegated to by the CCE.

This is considered justified because the State, as an employer, should ensure that an employee is not exposed to liability and the accompanying financial risk, for carrying out his or her duties. This risk has the potential to stifle innovation and inhibit changes in practices leading to improvements in service delivery in the public sector.

B. Does not give sufficient regards to the rights and liberties of individuals, section 4(2)(a) of the *Legislative Standards Act 1992* and does not provide for an appropriate delegation of legislative power, section 4(4)(a), *Legislative Standards Act 1992*

Clause 87 inserts a new section 88K to allow the CCE to give information to, and obtain information from external agencies for the scheme. A regulation is to prescribe the external agencies to which the authorisation applies and will therefore define the ambit of the provision.

Section 88K allows the CCE to give information to, and obtain information from, external agencies for the scheme. A regulation is to prescribe the external agencies to which the authorisation applies and will therefore define the ambit of the provision.

However, there will be sufficient regard to the rights and liberties of individuals, and the delegation of legislative power will occur only in appropriate cases and to appropriate persons.

As part of the management of a work performance matter, an agency may refer a matter to an external agency (e.g. the Queensland Police Service or the commission).

The PSC will be working in partnership with the relevant agency in order to conduct a review as described in clause 88I. If the work performance matter has been referred to an external agency, then, from time to time, the PSC may need to approach that external agency. This may be, for example, to consult with the Queensland Police Service about a disciplinary process while a criminal process is on foot. In such cases, the CCE needs to be able to obtain information from these external agencies, and also in some cases (with the permission of the agency) to be able to make representations on behalf of the agency.

Subsection 1 of this clause provides that the CCE and the chief executive officer or equivalent of an external agency may enter into an agreement by which information is given or received. Subsection 2 provides that for the purposes of a review under section 88I, the CCE may obtain relevant information from the external agency, and/or, with the consent of the chief executive of the department to which the review relates, give relevant information to the external agency.

Subsection 3 of the clause is not limited to a review under section 88I, but provides that in order to help the CCE perform his or her functions under this part, the CCE may give information to an external agency under an information exchange agreement.

The external agencies will be prescribed in the *Public Service Regulation 2008* and, without limiting the list, will include the Queensland Police Service and the commission.

The agreement will clearly set out the way information is given or received. The information that will be given by the PSC to external agencies will be only what is necessary for the purpose of obtaining information from the external agency (e.g. giving personal details in order to obtain information about the action the external agency is taking in relation to the person). There is no intent to disclose information solely for the external agency's benefit (i.e. to enable the external agency to take action against the person concerned).

C. Provides for an immunity from prosecution, section 4(3)(h) of the *Legislative Standards Act 1992*,

Clause 87 inserts a new section 88L to provide an immunity from prosecution for persons who provide information to the PSC's CCE for the purposes of the PSC's new functions relating to disciplinary matters.

This provision gives public officials who disclose information to the CCE for the scheme, immunity from proceeding or prosecution for the disclosure. The immunity extends to administrative processes, defamation proceedings and breaches of professional and ethical codes.

Whilst the Bill confers immunity from a proceeding, there is adequate justification for this immunity (s4(3)(h) of the *Legislative Standards Act 1992*). The Bill provides that if a person, acting honestly on reasonable grounds, gives the information to the CCE, the person is not liable, civilly, criminally or under an administrative process, for giving the information.

This is considered justified because the State, as an employer, should ensure that an employee is not exposed to liability and the accompanying financial risk, for carrying out his or her duties. This risk has the potential to stifle innovation and inhibit changes in practices leading to improvements in service delivery in the public sector. A clear statement that State and Queensland Public Service employees will be supported will lay a strong foundation for better engagement with risk in the public sector, leading to better service delivery outcomes for the people of Queensland.

The immunity only relates to an employee – it does not extend to the State itself and it does not alter the position that the State may be vicariously liable for the actions of its employees. The amendments will apply equally and consistently across the public service.

D. Does not provide for an appropriate delegation of legislative power, section 4(4)(a) of the *Legislative Standards Act 1992*

Clause 88 inserts a new section 219A to require departments to implement a new system for dealing with customer complaints.

Section 219A introduces a requirement for departments to implement a system for dealing with customer complaints. The system must comply with any Australian Standard about the handling of customer complaints that is in effect from time to time. The requirement potentially breaches section 4(4)(a) of the *Legislative Standards Act 1992* as not having sufficient regard for the institution of Parliament on the grounds that the requirements for the system are delegated to a non-legislative body.

However, there is sufficient regard to the appropriate delegation of legislative power. The clause has been drafted to give departments flexibility to design a process appropriate for their size, customer base, frequency and nature of interactions with customers and other relevant administrative and staffing arrangements. This approach

confirms the Government's continuing commitment to the maintenance of effective complaints management systems which are flexible and are managed at agency level.

The system must comply with any Australian Standard developed by Standards Australia about the handling of customer complaints that is in effect from time to time. Standards Australia is the nation's peak non-government Standards organisation. It is charged by the Commonwealth Government to meet Australia's need for contemporary, internationally aligned Standards and related services. Standards Australia leads and promotes a respected and unbiased Standards development process ensuring all competing interests are heard, their points of view considered and consensus reached.

The relevant Australian Standard provides guidance for the design and implementation of an effective and efficient complaints handling process for both commercial and non-commercial activities, and is intended to benefit an organisation and its customers, complainants and other interested parties. The PSC seeks to avoid the inclusion of further legislative provisions that would be inflexible, procedural or in any other way, prescriptive in approach, regarding the management of customer complaints.

## **Consultation**

Public submissions were sought as part of the Callinan/Aroney review.

The Acting Chairperson of the commission is a member of the Implementation Panel established to oversee and direct the consideration and implementation of the accepted recommendations in the Government Response.

The Chief Justice, Chief Judge, Chief Magistrate, President of the Court of Appeal and President of the Queensland Civil and Administrative Tribunal were consulted about the amendment to section 58 of the CM Act.

The Parliamentary Commissioner was consulted about the amendments in the CM Act to enlarge his oversight powers of the commission.

The Queensland Ombudsman was consulted about the definition of corrupt conduct, the new complaints management system of the commission and the new management system for the conduct and performance of Queensland public service employees.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland and is not uniform with or complementary to legislation of the Commonwealth or another State.

## Notes on provisions

### Part 1 - Preliminary

*Clause 1* states that, when enacted, the Bill will be cited as the *Crime and Misconduct and Other Legislation Amendment Act 2014*.

*Clause 2* states that clause 80 of the Bill, which provides for the transitional arrangements about the continued appointment of certain commissioner appointments, is taken to have commenced on the day the Bill for this Act is introduced into the Legislative Assembly.

The clause also provides that the other provisions in the Bill are to commence on a day to be fixed by proclamation.

### Part 2 – Amendment of *Crime and Misconduct Act 2001*

*Clause 3* provides that this part amends the *Crime and Misconduct Act 2001* (the CM Act).

*Clause 4* amends the long title of the CM Act to substitute the word ‘misconduct’ with ‘corruption’ wherever it appears in the long title. This amendment recognises the changes that will be made to the name of the CM Act in clause 5 below and to the parliamentary committee established in the CM Act.

*Clause 5* amends the short title of the CM Act so that upon commencement of this section, the CM Act will be cited as the *Crime and Corruption Act 2001*.

*Clause 6* amends section 4 to refocus the objectives of the commission by providing for a primary and secondary purpose of the CM Act. The primary purpose is to combat and reduce the incidence of major crime. The secondary purpose is to reduce the incidence of corruption in the public sector. The commission’s role in relation to confiscation related investigations remains the same.

*Clause 7* amends section 5 to provide for how the commission is to achieve its amended purpose as set out in clause 6 above. The commission is to investigate cases of corrupt conduct, particularly the more serious cases of corrupt conduct. The clause also makes a consequential amendment to subsection (2) to include a reference to criminal organisations and their participants following the amendments made to the CM Act in 2013 to deal with criminal organisations and their participants.

*Clause 8* omits section 13 because section 14(4) of the *Acts Interpretation Act 1954* provides for this matter.

*Clause 9* omits the heading of chapter 1, part 4, division 2 and also sections 14 and 15, which provide for the definition of ‘official misconduct’. This clause inserts a new heading for division 2 ‘Corrupt conduct’ and inserts new sections 13, 14 and 15 to provide for the new definition of ‘corrupt conduct’ for the CM Act.

Section 13 explains this division provides for the meaning of ‘corrupt conduct’ and the note to this section refers to section 35(3) of the CM Act, as amended by the Bill, which in turn provides that the commission in performing its corruption function must focus on more serious cases of corrupt conduct and cases of systemic corruption.

Section 14 defines certain terms (‘appointment’ and ‘conduct’) that are relevant to the definition of ‘corrupt conduct’. ‘Appointment’ means appointment in a unit of public administration. ‘Conduct’ includes:

- (a) neglect, failure and inaction; and
- (b) conspiracy to engage in conduct; and
- (c) attempt to engage in conduct.

Section 15 provides for the new definition of ‘corrupt conduct’. Paragraphs (a), (b), (c) and (d) of subsection (1) must all apply to the conduct in question for it to be corrupt conduct.

Subsection (1) states corrupt conduct comprises conduct of a person, whether or not the person holds an appointment in a unit of public administration, that (paragraph (a)) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers by a unit of public administration or a person holding an appointment in a unit of public administration. In addition, the conduct in question must (paragraph (b)) also result, or could also result, directly or indirectly, in the performance of functions or exercise of powers by a unit of public administration or a person holding an appointment that: is not honest or is not impartial; involves a breach of trust placed in a person holding an appointment, either knowingly or recklessly; or involves a misuse of information acquired as a result of the person’s appointment. Also, the purpose of the conduct in question, if it is to be considered corrupt conduct, must (paragraph (c)) be to provide: a benefit to the person or another person; or a detriment to another person. Finally, the conduct in question, if it is corrupt conduct, (paragraph (d)) would if proved, be a criminal offence, or a disciplinary breach providing reasonable grounds for termination of employment if the person were a holder of an appointment.

Subsection (2) of the definition lists types of offences or behaviours, which are not conclusive of corrupt conduct, but could be corrupt conduct if the above preconditions of subsection (1) of the definition are met.

*Clause 10* amends section 23 to remove the commission’s responsibility for the prevention of ‘misconduct’ (amended by this Bill to be called ‘corruption’).

*Clause 11* amends section 24 to remove any references to, or activities about, the commission’s responsibility for the prevention of ‘misconduct’ (amended by this Bill to be called ‘corruption’) as a consequence of the commission no longer being responsible for the prevention of ‘misconduct’. The commission still has a prevention function in respect of major crime.

*Clause 12* amends section 33 to redefine the commission’s misconduct functions (amended by this Bill to be called the ‘corruption function’) by removing references to the commission’s responsibilities for the prevention of corruption and the integrity of units of public administration. The commission’s corruption function is to ensure

complaints about corruption are dealt with in an appropriate way having regard to the principles in section 34 as amended by the Bill.

*Clause 13* amends section 34 to omit from the ‘principles’ any references that relate directly to the commission’s current responsibilities for the prevention of misconduct (amended by this Bill to be called ‘corruption’) and the integrity of units of public administration.

*Clause 14* amends section 35 to reflect the new nomenclature to be used in the CM Act and inserts two new activities the commission may undertake when performing its misconduct functions (amended by this Bill to be called the ‘corruption function’). The additional activities will allow the commission: to assess the appropriateness of systems and procedures in a unit of public administration for dealing with complaints; and to provide advice and recommendations to a unit of public administration about dealing with complaints about corruption in an appropriate way.

The clause inserts a new subsection (3) which provides that in respect of the corruption function, the commission must focus on the more serious cases of corrupt conduct and cases of systemic corrupt conduct in a unit of public administration.

*Clause 15* inserts new sections 35A and 35B.

Section 35A provides the commission CEO may issue a direction about how commission officers are to decide whether a complaint involves, or may involve, a more serious case of corrupt conduct or a case of systemic corrupt conduct within a unit of public administration. In issuing the direction, the CEO is subject to the direction and control of the chairman. A commission officer must comply with the direction.

Section 35B provides that the commission is to publish on a publicly accessible website information about the commission’s systems and procedures for its dealing with complaints about corruption and includes details of the types of information to be included in the website information.

*Clause 16* amends section 36 to require a complaint about misconduct (amended by this Bill to be called ‘corruption’) to be made to the commission by way of a statutory declaration, unless the commission decides there is an exceptional circumstance and in this case the complaint need not be by statutory declaration.

*Clause 17* amends section 38 to require a public official to notify the commission about a complaint when the public official has a reasonable suspicion that the complaint involves or may involve official misconduct (amended by this Bill to be called ‘corrupt conduct’) rather than a mere suspicion as is currently the case.

*Clause 18* amends section 40 to provide the commission may issue directions about not only how and when a public official must notify the commission of complaints under sections 37 and 38, but also the kinds of complaints a public official must notify or need not notify the commission about under those sections. Section 40 is also amended so that the commission is also required to consult with, and consider the views of the Public Service Commission before issuing a direction under this section

that relates to the chief executive officer of a department or a public service office within the meaning of the *Public Service Act 2008* (PS Act).

*Clause 19* amends section 46 to reflect the new nomenclature to be used in the CM Act.

This clause also amends subsection 46(2)(g) to expand the grounds upon which the commission may dismiss or take no action in relation to a complaint.

Section 46 is also amended to allow the commission to request information from a public official about a complaint.

*Clause 20* inserts a new section 48A that requires a public official of a unit of public administration to prepare a policy that deals with how a unit of public administration for which the public official is responsible will deal with a complaint that involves or may involve corruption (that is, corrupt conduct or police misconduct) of the public official. The policy may include a nomination of another person who is responsible to notify the commission of a complaint under sections 37 and 38 of the CM Act.

*Clause 21* amends section 52 to redefine and refocus the commission's role in relation to research to that which: supports the proper performance of the commission's functions; is required to be undertaken by the commission under another Act; or is referred to the commission by the Minister. The amendments also require the commission to prepare a three year research plan to be approved by the Minister on an annual basis, which includes details of the research the commission proposes to undertake during that period.

*Clause 22* amends section 58 to allow the commission to investigate a decision-making body of an agency when a judicial officer is a member of that decision-making body. The amendments also provide for the procedure the commission must follow in determining how investigations are to be conducted. In particular, the chairman may delegate to a senior officer of the commission the investigation concerning a complaint involving a judicial officer who is a member of a decision-making body. All other investigations or hearings concerning judicial officers are to be conducted by the chairman.

*Clause 23* amends section 130 to include a definition for 'commission officer' for use in this section, and which states it is to include a 'former commissioner officer'.

*Clause 24* amends section 146K to reflect the new nomenclature to be used in the CM Act.

*Clause 25* amends section 146ZU to reflect the new nomenclature to be used in the Act and to provide the chairman may delegate the chairman's powers under this part to the chief executive officer or a senior executive officer.

*Clause 26* amends section 178 to reflect the new nomenclature to be used in the CM Act and to provide for the persons who may conduct a public or closed hearing of the commission.

*Clause 27* amends section 213 to include a definition for ‘commission officer’ for use in this section, and which states it is to include a person who was an assistant commissioner or part time commissioner under this Act as in force before the commencement of the definition.

*Clause 28* amends section 216 to remove the making of a ‘vexatious complaint’ from this offence provision. The making of a vexatious complaint is to be included in the new offence provision (section 216A) that is inserted into the CM Act by clause 29 of the Bill. Section 216 is further amended by redrafting certain subsections to reflect the new nomenclature to be used in the CM Act.

*Clause 29* inserts a new section 216A into the Act that provides for a new offence for the making of a complaint that is made: vexatiously; not in good faith; primarily for a mischievous purpose; or recklessly or maliciously. It is also an offence if the person counsels or procures another person to make a complaint on the grounds referred to previously. The maximum penalty imposed is 85 penalty units or 1 year’s imprisonment. The clause also clarifies the meaning of ‘make a complaint to the commission’ in the new section. The notice requirement in section 216 (Frivolous complaint) is not included in the new offence provision because the new offence is dealing with complaints that are made vexatiously; not in good faith; primarily for a mischievous purpose; or recklessly or maliciously; as opposed to frivolous complaints.

*Clause 30* amends the heading in chapter 6, part 1 to reflect the new nomenclature to be used in the Act.

*Clause 31* amends the heading in chapter 6, part 1, division 1 to reflect the new nomenclature to be used in the Act.

*Clause 32* amends section 220 to reflect the new nomenclature to be used in the Act.

*Clause 33* amends section 221 to reflect the new nomenclature to be used in the Act.

*Clause 34* replaces section 223 to provide for the new membership of the commission and whether each of the members is appointed on a full-time or part-time basis.

*Clause 35* amends section 224 to provide for the qualifications for the appointment of the chairman and the deputy chairman to the commission.

*Clause 36* replaces section 225 to provide for the qualifications for the appointment of the chief executive officer and the ordinary commissioners to the commission.

*Clause 37* amends section 227 to provide for the advertising requirements for the appointment of the commissioners to the commission.

*Clause 38* omits sections 228 to 230 and inserts two new sections, sections 228 and 229.

New section 228 requires the Minister to consult with the Parliamentary Crime and Corruption Committee (as renamed by this Bill) about the appointment of a person as

a commissioner to the commission prior to nominating the person for appointment. Also, the Minister must consult with chairman (as renamed by this Bill) about the appointment of any of the other commissioners to the commission prior to nominating the person for appointment.

New section 229 provides that commissioners are to be appointed by the Governor in Council and are appointed under the CM Act and not the PS Act.

*Clause 39* amends section 231 to omit subsections (2) and (3) and to insert new subsections (2) to (4) to provide for the duration of the terms of appointment for commissioners and reappointment of commissioners. A term of appointment may not be longer than five (5) years, but a commissioner may be reappointed for a further term or terms provided the total period a person is appointed is not longer than 10 years. New section 228 (as inserted by this Bill), which sets out the requirements for the Minister for consultation prior to the appointment of commissioners, applies to any reappointment under section 231 as amended by the Bill.

*Clause 40* amends section 233 to reflect the new nomenclature to be used in the CM Act and to also provide that this section is to apply to the chief executive officer.

*Clause 41* amends section 234 to provide for the leave of absence arrangements that apply to the commissioners. The amendments include a reference to the commissioner who is the chief executive officer.

*Clause 42* amends section 236 to reflect the new nomenclature to be used in the CM Act and to also provide that this section is to apply to the chief executive officer.

*Clause 43* omits sections 237 and 237A and replaces these sections with a new section 237 that provides for the appointment process for acting commissioners. The new section is modelled on the existing provisions but includes references to the new members of the commission that are established by this Bill.

*Clause 44* inserts a new chapter 6, part 1, division 2A to provide for new sections 239 to 243 relating to sessional commissioners.

New section 239 provides for the appointment of sessional commissioners by the chairman. The chairman may appoint as many sessional commissioners as are required to help the chairman to perform the commission's functions or exercise the commission's powers by conducting a commission hearing, examining witnesses or conducting a specific investigation.

New section 240 provides for the qualification requirement for appointment as a sessional commissioner. A person must have served as, or is qualified for appointment as a judge of: the Supreme Court of Queensland; Supreme Court of another State; the High Court of Australia' or the Federal Court of Australia.

New section 241 provides that a person who is regarded as 'ineligible' (which is defined in the Schedule 2 Dictionary of the CM Act) can not be appointed or continue to be a sessional commissioner.

New section 242 states a sessional commissioner is appointed on a sessional basis and holds office for the period, and on the terms and conditions, stated in the commissioner's instrument of appointment.

New section 243 states a sessional commissioner may resign by signed notice given to the chairman.

*Clause 45* amends the heading in chapter 6, part 1, division 3 by removing the words 'Assistant Commissioners and'.

*Clause 46* omits sections 239 to 244. These sections related to the appointment of the Assistant Commissioner, Crime and Assistant Commissioner, Misconduct. The Bill intends to remove these positions as Governor in Council appointments and the current role and powers of Assistant Commissioners in the Act will be performed by the senior executive officer (crime) and senior executive officer (corruption) respectively.

*Clause 47* amends section 245, which deals with the employment of senior officers to the commission. The amendment defines senior officers to mean a person who, in the chief executive officer's opinion, is performing duties that would, if the person were a public service officer, be duties of a senior executive. The amendments to section 245 also require the commission to employ a senior officer as senior executive officer (crime) and a senior officer as senior executive officer (corruption) who are responsible to the chairman for the proper performance of the crime and corruption functions respectively.

*Clause 48* amends section 247 to remove the references to assistant commissioners wherever it appears in the section. This clause inserts a new subsection (3C) to provide that if a person held office in the commission as an assistant commissioner under the Act before the commencement of the amendments to this section made by the Bill, and the person continues as a senior officer in the commission, the time the person has been appointed as an assistant commissioner is to be taken into account when determining the total period of appointment of the person as senior officer under subsections (3) and (3B).

*Clause 49* amends section 247A to replace the word 'chairperson' with 'chief executive officer' so that the chief executive officer will be obliged to notify the parliamentary committee under the section.

*Clause 50* amends section 248 to remove the references to assistant commissioners wherever it appears in this section and to reflect the new nomenclature to be used in the Act.

*Clause 51* omits section 250, which provides for the appointment process for acting assistant commissioners.

*Clause 52* replaces chapter 6, part 1, division 4 which provides for the roles of the chairperson and assistant commissioners with a new division 4 and new sections 251 to 253 to deal with the roles of the commission, chairman and chief executive officer.

New section 251 states the role of the commission is to provide strategic leadership and direction for the performance of the commission's functions and the exercise of the commission's powers by the chairman, chief executive officer and commission staff. Subsection (2) also provides for other specific matters the commission is responsible for, including the preparation of strategic and business plans, establishment of internal management committees and their charters and preparation of the internal audit charter. The commission, if asked, may also help the chairman in the performance of the commission's functions or exercise of the commission's powers.

New section 252 states the chairman is the chair of the commission and is to perform the functions and exercise the powers of the commission that have been delegated to the chairman under section 269. While the chairman is required to report to the commission on the performance of the commission's functions and exercise of the commission's powers, the chairman is not subject to the direction of the commission on these matters in relation to an investigation, hearing, operation or other proceeding under the CM Act or another Act. The section further provides that anything done in the commission's name by the chairman or the chairman's delegate is taken to have been done by the commission.

New section 253 states the chief executive officer (CEO) is responsible to the chairman for the administration of the commission. The CEO is to perform the functions and exercise the powers that have been delegated to the chief executive officer under section 269 of the CM Act, that have been delegated by the chairman or that are otherwise conferred on the CEO under the CM Act. The CEO is required to report to the commission on the administration of the commission and the functions and powers delegated to the CEO under section 269 of the CM Act or otherwise conferred on the CEO under the CM Act. The CEO is subject to the direction of the commission for those functions and powers. The CEO is subject to the direction of the chairman for those functions and powers delegated to the CEO by the chairman.

*Clause 53* amends section 254 to remove the requirement for the Minister to be consulted about the officer level at which an officer must be employed under a written contract of employment with the commission. The clause also amends this section to replace the word 'chairperson' with 'chief executive officer' in subsection (6) consistent with the chief executive officer's role.

*Clause 54* amends section 255 to replace the word 'chairperson' with 'chief executive officer' in subsections (1), (3) and (4); and to reflect the new nomenclature to be used in the CM Act.

*Clause 55* amends section 259 to provide that the chief executive officer is responsible for developing the budget for the approval by the commission.

*Clause 56* replaces section 262 to provide that a 'senior executive officer' may attend commission meetings, but is not entitled to vote at a meeting.

*Clause 57* amends section 265 to reflect the new nomenclature to be used in the CM Act. The section is also amended to provide for the order of commissioners that will preside at a commission hearing if the chairman is absent from the meeting.

*Clause 58* replaces section 269 with a new section that provides for the delegation of the commission's functions and powers to specific commission officers. All the commission's functions and powers under the CM Act or another Act, apart from those under sections 234, 251(1) and (2) (as amended by the Bill) and 259 are delegated to either the chairman or chief executive officer (CEO). The chairman is delegated all the powers and functions of the commission apart from those which are delegated to the CEO. The powers and functions delegated to the CEO include: sections 40, 245, 254, 256, 258, 260, and 346B of the CM Act; and the commission's financial accountability functions and public record powers. The commission's financial accountability functions are those functions under the *Financial Accountability Act 2009* and the commission's public record powers are those powers under the *Public Records Act 2002*. New section 269 also provides limitations on which commission officer the chairman or CEO may sub-delegate the specific function or power to for certain sections of the Act.

*Clause 59* amends section 270 to reflect the new nomenclature to be used in the CM Act. The clause also removes the requirement that certain delegations by the chairman must be approved by the commission.

*Clause 60* replaces section 271 to provide that the chief executive officer and senior executive officers may delegate their respective powers under the CM Act to an appropriately qualified commission officer.

*Clause 61* amends section 273 to replace the word 'chairperson' with 'chief executive officer'.

*Clause 62* inserts new divisions 9 and 10 into chapter 6, part 1 to provide for disciplinary action the chief executive officer may take against senior officers, commission staff and agents engaged by the commission. New sections 273A to 273F are included in division 9, while new section 273G is included in division 10.

New section 273A inserts new definitions for division 9 to provide clarity on the meaning of: 'disciplinary action'; 'disciplinary finding'; 'disciplinary ground'; 'employment'; 'former relevant commission officer'; and 'relevant commission officer'.

New section 273B provides authority for the chief executive officer to discipline a relevant commission officer (defined in section 273A inserted by the Bill) if the chief executive officer is reasonably satisfied any one of the grounds stated in section 273B(1) has been met. The new section also allows the chief executive officer to discipline a former relevant commission officer on the same disciplinary grounds under section 273D (as inserted by the Bill).

New section 273C allows the chief executive officer to take disciplinary action, or order the action to be taken against the relevant commission officer the chief executive officer considers reasonable in the circumstances; and provides examples of disciplinary action that may be taken. The section provides direction on how a monetary penalty is to be imposed if this is the disciplinary action the chief executive

officer considers reasonable. A disciplinary order made by the chief executive officer is binding on the person affected by it.

New section 273D sets out how disciplinary action is to be taken against a former relevant commission officer. The section applies if a disciplinary ground arises in relation to a relevant commission officer and after the ground arises, the officer's employment with the commission ends for any reason. The section provides for the process by which the disciplinary action is taken and states the action taken is the making of a disciplinary declaration against the officer. The section further provides that the disciplinary declaration may only be made if the disciplinary action the chief executive officer would have taken if the officer's employment did not end was dismissal or reduction of classification level. The disciplinary declaration includes the disciplinary finding against the former officer and the disciplinary action that would have been taken if the officer's employment had not ended.

New section 273E authorises the chief executive officer to suspend a relevant commission officer from duty if the chief executive officer reasonably believes the officer is liable to disciplinary action under this Act. The chief executive officer must consider if alternative duties are available for the officer prior to the suspension. A suspended officer is entitled to normal remuneration during the period while suspended but the commission may deduct the officer's payments when the officer has alternative employment during the suspension period.

New section 273F requires the chief executive officer to comply with the Act and with the principles of natural justice when exercising the chief executive officer's powers to discipline officers under the CM Act. In particular, where the disciplinary action involves a termination of employment or suspension, the chief executive officer is required to give the officer a notice to this effect including the information prescribed in this section.

New section 273G allows the chief executive officer to require a person who may be employed with the commission to disclose to the chief executive officer particulars of any serious disciplinary action taken against the person. The section sets out how the chief executive officer may take notice of the particulars and the actions the chief executive officer may take if the person fails to comply with the requirement or provides false or misleading information. The section also defines the serious disciplinary action that is to be disclosed under the requirement to the chief executive officer.

*Clause 63* amends section 278 to remove the reference to 'assistant commissioner' and replaces the term with 'senior executive officer', which is the new position established by the Bill. The section is also amended to reflect the new nomenclature to be used in the CM Act.

*Clause 64* amends section 279 to provide that the chairman may appoint as the chairman's deputy for a crime reference committee meeting another commissioner or a senior executive officer.

*Clause 65* amends the heading in chapter 6, part 3 to reflect the new nomenclature to be used in the CM Act.

*Clause 66* amends section 291 to reflect the new nomenclature to be used in the CM Act.

*Clause 67* amends section 292(f) to extend the intervals at which the parliamentary committee is required to review the commission under this section to five (5) years. The amendment provides the next review is to be completed by the end June 2016 with five yearly reviews after that date. The Bill also includes an additional function for the parliamentary committee to periodically review the structure of the commission, including the relationship between the types of commissioners and the roles, functions and powers of the commission, chairman and chief executive officer and to table in the Legislative Assembly a report about the review, including any recommendations for changes to the Act.

*Clause 68* amends section 295 by replacing section 295(1)(b). The new subsection 295(1) (b) is amended to refer to the chairman, deputy chairman and chief executive officer, who all may notify the parliamentary committee of a concern involving suspected improper conduct by a commission officer.

*Clause 69* inserts a new section 302A that states meetings of the parliamentary committee must be held in public. The parliamentary committee may close a meeting or part of a meeting if it considers the matters set out in subsection 302A(2) apply to the meeting or a part of the meeting.

*Clause 70* amends the heading in chapter 6, part 4 to reflect the new nomenclature to be used in the CM Act.

*Clause 71* amends the heading and subsection (1) of section 303 to reflect the new nomenclature to be used in the CM Act

*Clause 72* amends section 308 to provide the Speaker of the Legislative Assembly with discretion as to when he or she is to appoint an acting parliamentary commissioner. This is achieved by replacing the word 'must' with 'may'.

*Clause 73* amends section 314 to allow the parliamentary commissioner to initiate an investigation on his or her own motion. Subsection (4) as included by the Bill, sets out the matters to which an own motion investigation is limited to and the circumstances when the parliamentary commissioner may undertake an own motion investigation. The parliamentary commissioner may also undertake a preliminary investigation in order to form the view that reasonable grounds exist to commence an own motion investigation and may use the powers under section 317 of the CM Act for this purpose. The parliamentary commissioner is required to notify the parliamentary committee if he or she commences a preliminary assessment or an investigation under this section.

*Clause 74* inserts new sections 314A and 314B to provide for the actions the parliamentary commissioner may take following an investigation initiated under the new powers provided to the parliamentary commissioner in section 314(4) as inserted by this Bill.

New section 314A applies when the parliamentary commissioner undertakes an investigation on his or own initiative under section 314(4) as inserted by this Bill. Section 314A sets out the circumstances when the parliamentary commissioner may make a referral for prosecution proceedings or recommendation for disciplinary action in relation to information obtained from conducting the investigation. Subsection (4) limits the information the parliamentary commissioner may include in the referral or recommendation. Subsection (5) allows the parliamentary commissioner to table a referral or recommendation, or an extract of a referral or recommendation, in the Legislative Assembly if, and only if, the parliamentary commissioner is satisfied of the matters noted in the subsection.

New section 314B also applies when the parliamentary commissioner undertakes an investigation on his or own initiative under section 314(4) as inserted by this Bill. The parliamentary commissioner must report to the parliamentary committee on the results of the investigation. The parliamentary commissioner must also give a copy of the report to the chairman, or if the report relates to the conduct of the chairman, the report must be given to the Minister. Subsection (3) requires the report to include information about any referral or recommendation that has been made by the parliamentary commissioner under section 314A of the CM Act (as inserted by the Bill). Subsection (4) states that the parliamentary committee may take action in relation to the subject matter of the report. Subsection (6) allows the Minister and parliamentary committee to table a copy of the report or an extract of the report in the Legislative Assembly if, and only if, certain preconditions exist.

*Clause 75* amends section 318 to remove the requirement for the bipartisan approval of the parliamentary committee before the parliamentary commissioner can conduct a hearing. The parliamentary commissioner may now conduct a hearing to obtain information about a matter if the parliamentary commissioner has used all reasonable means to obtain the information without success and it is appropriate to hold a hearing to obtain the information. The parliamentary commissioner must notify the parliamentary committee if a decision to conduct a hearing is made.

*Clause 76* inserts a new section 323A to allow the Minister or chief executive officer to use a report provided by the parliamentary commissioner or parliamentary committee for: deciding whether (and what) disciplinary action is to be taken against a commission officer; and any disciplinary proceeding relating to a commission officer. The report may be so used by the Minister or chief executive officer despite parliamentary privilege applying to the report. This section therefore abrogates parliamentary privilege to the extent that the report is used in subsequent disciplinary action or proceedings against the commission officer the subject of the report.

*Clause 77* replaces section 329 with a new section to provide for when the chairman, deputy chairman or chief executive officer must notify the parliamentary committee and parliamentary commissioner of conduct by a commission officer that is suspected to involve, or may involve improper conduct. Subsection (4) lists the types of matters that comprise improper conduct.

*Clause 78* amends section 335 to clarify the meaning of 'official' for the purposes of that section to ensure the meaning includes: any person who was previously, or is

now, a commission officer; or a person acting under the direction of a commission officer.

*Clause 79* amends section 336 to include additional protections for the parliamentary commissioner and parliamentary commissioner officers modelled on the protections given to commission officers in sections 335(3) and (4) of the CM Act.

*Clause 80* inserts a new part 11, divisions 1 and 2 into Chapter 8 of the CM Act to provide for the transitional arrangements for this Bill, such as, certain definitions for use in part 11 and for the continuing appointments of the acting chairperson, acting commissioners and other commissioners of the commission. Pursuant to clause 2 of the Bill, clause 83 when enacted as section 83, is taken to have commenced on the day the Bill is introduced into the Legislative Assembly.

New Part 11 Division 1 inserts section 396 that defines the terms ‘amendment Act’ and ‘commencement day’ for the purposes of the new part 11 inserted by the Bill.

New Part 11 Division 2 inserts new sections 397 to 399.

New section 397 applies to the person who holds an appointment to act as acting chairperson of the commission on the day that this section commences. The appointment of the acting chairperson continues on the same terms and conditions (apart from the duration of the appointment) until the commencement day despite section 24B(5) of the *Acts Interpretation Act 1954*.

New section 398 applies to a person who holds a part-time commissioner appointment (whether an acting or permanent appointment) on the day this section commences. The appointment of the part-time commissioner continues on the same terms and conditions (apart from the duration of the appointment) until the commencement day.

New section 399 states that this section applies if the Bill, after passage, is assented to after the day that a person’s appointment: to act as the chairperson; as a part-time commissioner; or to act as a part-time commissioner, would have ended but for sections 397 and 398 as inserted by the Bill. This section declares that the person’s appointment has always been validly extended for the relevant period and anything done or omitted to be done by the person during the relevant period is likewise to be declared valid and lawful.

*Clause 81* inserts new divisions 3 to 7 into part 11, chapter 8 (to insert new sections 400 to 422) that provide for the transitional arrangements for certain provisions amended, replaced or inserted by the Bill.

New Division 3 includes sections 400 to 401 to provide for general matters.

New section 400 provides that in an instrument, if the context permits: a reference to the *Crime and Misconduct Act 2001* may be taken to be a reference to the *Crime and Corruption Act 2001*; and references to ‘misconduct’ or ‘official misconduct’ within the meaning given by the *Crime and Misconduct Act 2001* may be taken to be references to ‘corruption’ or ‘corrupt conduct’ respectively within the meaning of the *Crime and Corruption Act 2001*.

New section 401 provides that certain references in the CM Act that appear in column one of the table, if the context permits, be taken to be the corresponding reference in column two of the table. The section also cross refers to the references included in section 351(2) of the CM Act to link the references used in column two of the table in section 351(2) with the column one references in section 401(1).

New Division 4 includes section 402 to 407 to provide for the transitioning arrangements for certain commissioner appointments that may be existing or new.

New section 402 applies to a person, who immediately before the commencement day (as defined in new section 396 inserted by the Bill), holds an appointment to act as the chairperson of the commission. The section states that the person is appointed to act as the chairman of the commission from the start of the commencement day until the 31 October 2014 or the day a person is appointed as chairman, whichever is earlier. The terms and conditions of the person's continued appointment are the same as before the commencement day other than the duration of the appointment. This section also provides that if the person is subsequently appointed as a commissioner, any period of employment of the person as acting chairperson and chairman is to be taken into account for the purposes of calculating the total period of employment of the person as a commissioner under section 231(3) as inserted by the Bill.

Section 403 states that at the start of the commencement day of this section, the appointment and employment of each person who is appointed as a part-time commissioner ends. The section also provides for how the total period of appointment as a commissioner for the purposes of section 231(3) as inserted by the Bill is to be calculated, if a person's appointment ends under this section and the person is subsequently appointed as a commissioner under the provisions inserted by the Bill.

New section 404 applies to a person who immediately before the commencement day held an appointment to act as a part-time commissioner and is appointed as a commissioner from the commencement day or is appointed to act as a commissioner from the commencement day and is appointed as a commissioner when the acting period ends. The section provides for how the total period of employment as a commissioner for the purposes of section 231(3) as inserted by the Bill is to be calculated.

New section 405 validates any action taken for the purposes of an appointment of a commissioner under the provisions inserted by the Bill if that action was taken prior to the enactment of those provisions. This will allow for advertising and a selection process for the appointment of a commissioner to commence or be conducted immediately after the Bill has been introduced but before the relevant appointment provisions in the Bill having received assent.

New section 406 provides for how a commission investigation, operation or hearing being conducted by a commissioner before the commencement day will be continued after the commencement day.

New section 407 provides for how anything done by, or in relation to, a commissioner before the commencement day and which has not ended may be continued after the commencement day.

New Division 5 inserts sections 408 to 412 to deal with the transitional arrangements for the amending provisions relating to assistant commissioners.

New section 408 applies to a person who is appointed as an assistant commissioner prior to the commencement day. At the start of the commencement day, the appointment and employment of the person as an assistant commissioner ends. From the commencement day, the person is appointed as: for the assistant commissioner (crime), the senior executive officer (crime); and for the assistant commissioner (misconduct), the senior executive officer (corruption). The person is taken to be employed under the same contract the person was appointed as an assistant commissioner. The section further provides for how other rights and conditions of employment of the person are retained.

New section 409 applies to a person who is appointed to act as an assistant commissioner prior to the commencement day. At the start of the commencement day, the appointment and employment of the person to act as an assistant commissioner ends. The section states that if the person is appointed as a senior officer the period the person was appointed to act as an assistant commissioner is to be taken into account for the purposes of determining the total period of employment of the person as a senior officer under section 247 of the CM Act.

New section 410 provides for how a commission investigation, operation or hearing being conducted by an assistant commissioner before the commencement day will be continued after the commencement day.

New section 411 provides for how anything done by or in relation for an assistant commissioner (crime) before the commencement day and which has not ended may be continued after the commencement day.

New section 412 provides for how anything done by or in relation for an assistant commissioner (misconduct) before the commencement day and which has not ended may be continued after the commencement day.

New Division 6 includes section 413 to 415 to deal with the transitional arrangements for the amending provisions relating to the parliamentary commissioner.

New section 413 states section 314(4) as inserted by the Bill applies only in relation to conduct, of a commission officer, engaged in on or after the commencement day.

New section 414 states the amendment to section 318 of the CM Act to allow for the parliamentary commissioner to conduct a hearing without the bipartisan approval of the parliamentary committee applies only to matters that come to the knowledge of the parliamentary commissioner on or after the commencement day.

New section 415 states that section 323A as inserted by the Bill applies only in relation to a report started on or after the commencement of this section.

New Division 7 includes section 416 to 422 to provide for the transitional arrangements relating to other amendments made in the Bill.

New section 416 explains how any complaints about misconduct that were received by the commission prior to the commencement day and that have not been finally dealt with (called 'existing complaints') are to be dealt with after the commencement day.

New section 417 states when the commission is to prepare its first research plan and the period to which the plan is to cover in accordance with section 52 of the CM Act as amended by the Bill.

New section 418 states the amendment to section 58 of the CM Act as included in the Bill applies only in relation to the conduct of a judicial officer engaged in or after the commencement day.

New section 419 explains how certain conduct of a commission officer that comes to the knowledge of the chairperson prior to the commencement day and which has not been notified to the parliamentary committee as provided for in section 329 is to be dealt with after the commencement day.

New section 420 provides that new division 9 to chapter 6, part 1 (as inserted by the Bill) applies to a relevant commission officer: regardless of whether the officer's employment with the commission started before, on or after the commencement day and despite the terms and conditions of the officer's employment. However, disciplinary action against a commission officer in accordance with provisions of the new division 9 to chapter 6 (as inserted by the Bill) applies only in relation to conduct of the relevant commission officer that forms a ground for disciplinary action that arose on or after the commencement day.

New section 421 provides for the transitional application of section 385 of the CM Act to ensure that the section continues to apply to commission hearings about corrupt conduct after the commencement of this section.

New section 422 provides for the continuing application of the *Public Interest Disclosure Act 2010* (PID Act) to a public interest disclosure (PID) that has been made by a person under section 17 of that Act. New section 422 states that in relation to a PID made prior to the commencement day that involves conduct that is 'official misconduct' as defined in the CM Act, but which may no longer amount to 'corrupt conduct' as defined in the Bill, the PID Act continues to apply to the PID.

*Clause 82* amends the Schedule 2 Dictionary in the CM Act by omitting or amending certain definitions that are no longer required or relevant and by inserting new definitions.

Definitions that are omitted are: assistant commissioner; assistant commissioner, crime; assistant commissioner, misconduct; chairperson; commissioner; Crime and Misconduct Commission; misconduct; misconduct functions; misconduct

investigation; misconduct offence; official misconduct; part-time commissioner; senior officer; and specific intelligence operation (misconduct).

The new definitions inserted are: appointment; benefit; chairman; chief executive officer; commissioner; corrupt conduct; corruption; corruption function; corruption investigation; corruption offence; Crime and Corruption Commission; deputy chairman; detriment; disciplinary finding; disciplinary ground; employment; former commission officer; former relevant commission officer; ordinary commissioner; relevant commission officer; senior executive officer; senior executive officer (corruption); senior executive officer (crime); senior officer; sessional commissioner; and specific intelligence operation (corruption).

The definition of ‘commission officer’ is amended.

### **Part 3 – Amendment of *Public Service Act 2008***

*Clause 83* provides that this part amends the *Public Service Act 2008*.

*Clause 84* inserts new subsections 26(2) – (4) and renumbers the existing section 26 to section 26(1). Section 26(2) articulates the requirement of public service managers to proactively manage their employees’ work performance. This signals the return of management of work performance matters to agencies to deal with promptly, and the PSC’s role in monitoring and reviewing agency responses. The amendment made by the clause clearly attributes responsibility for managing work performance to line managers and ultimately CEOs.

*Clause 85* inserts a new subsection (ea), in existing section 46 (1), to expand the PSC’s main functions to include, and creates a specific authority for, the PSC to conduct, or commission, reviews of agencies’ management of work performance matters.

*Clause 86* inserts a new subsection (1A) in existing section 62, to provide that the Commission Chief Executive may also delegate his or her functions under section 88I to any other appropriately qualified entity. The clause also renumbers section 62(1A) and (2) as section 62(2) and (3).

*Clause 87* inserts chapter 3, part 6. This clause amends the PS Act to include specific information about the PSC’s functions in relation to work performance matters, found in new sections 88H – 88N.

Section 88H includes the definitions for part 6 to provide clarity on ‘information’, ‘public service employee’, ‘work performance information directive’ and ‘work performance matter’.

Section 88I authorises the PSC to conduct or commission a review of a department’s handling of work performance matters where issues exist in relation to its management of either current or completed matters. The aim of the review is to build capability in the agency, by helping agencies achieve timely processes and outcomes that are proportionate to the incident.

The PSC will work collaboratively with agencies to address conduct and performance, and partner with agencies to help ensure agencies develop and maintain a high standard of human resource and managerial skills. If the data gathered by the PSC indicates that issues exist in relation to an agency's management of either single or multiple disciplinary or conduct matters, the Commission Chief Executive (CCE) may: review the matter himself/herself; or delegate the power to an appropriate officer within the PSC; or engage a suitable entity to conduct the review on his or her behalf.

Section 88J requires each chief executive of a department, or head of a public service office as defined under section 21 of the PSA, which is the subject of a review to give the CCE, delegate, or entity, the help it reasonably requires to conduct the review.

As these reviews will be different to the reviews the PSC is already able to undertake under section 37 and sections 80 – 85 of the PS Act, clause 88J provides clarity around the requirements of those subject to a work performance review. By way of background, under section 37 the Minister may, by signed notice, refer to the PSC any matter relating to the effectiveness or efficiency of a public service office for the PSC to review and report to the Minister about ('a commission review').

Section 88K enables the CCE to enter into an arrangement about giving and receiving information with certain external agencies (an 'information exchange agreement'). As part of the management of a work performance matter, an agency may refer a matter to an external agency (e.g. the Queensland Police Service or the commission).

Subsection (2) relates to when this exchange of information occurs for the purposes of a review under section 88I. The PSC will be working in partnership with the relevant agency in order to conduct a review as described in clause 88I above. If the work performance matter has been referred to an external agency, then, from time to time, the PSC may need to approach that external agency. This may be, for example, to consult with the Queensland Police Service about a disciplinary process while a criminal process is on foot. In such cases, the CCE needs to be able to obtain information from these external agencies, and also in some cases (with the permission of the agency) to be able to make representations on behalf of the agency.

This section provides that the CCE and the chief executive officer or equivalent of an external agency may enter into an agreement by which relevant information is given or received. 'Relevant information' is defined in the section to mean information about or relevant to either a review of a work performance matter being conducted under section 88I; and/or an investigation, inquiry or other activity being conducted by an external agency relating to the conduct, of a public service employee, that is the subject of a work performance matter being reviewed under section 88I.

Subsection (3) is not limited to a review under section 88I, but provides that in order to help the CCE perform his or her functions under this part, the CCE may give information to an external agency under an information exchange agreement.

The section provides that external agencies will be prescribed in the *Public Service Regulation 2008*. Without limiting the list, it is proposed that prescribed external agencies will include the Queensland Police Service and the commission.

Section 88L creates protection from liability for giving information. A person, on behalf of the agency, may give the information outlined in this part despite any other law that would otherwise prohibit or restrict the giving of the information.

The purpose of this provision is to ensure those employees working with the PSC and sharing information about individual work performance matters are not exposed to legal liability for performing their role.

If a person, acting honestly on reasonable grounds, gives the information to the CCE, the person is not liable, civilly, criminally or under an administrative process, for giving the information.

Without limiting the paragraph above, in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—

- does not contravene the Act, oath or rule of law or practice by giving the information; and
- is not liable to disciplinary action for giving the information.

Also, merely because the person gives the information, the person cannot be held to have breached any code of professional etiquette or ethics, or departed from accepted standards of professional conduct.

Section 88M is inserted in order to ensure that the way any information which is given, received or recorded occurs appropriately. This provision was introduced to clarify that if a person gains confidential information under this part, the person must not disclose the information to anyone else, other than as outlined in section 88M(3).

A person acquires confidential information through this part if the person gains the information because of being, or an opportunity given by being, the CCE; or an employee in the PSC or a person contracted by the chief executive who undertakes a review under section 88I.

‘Confidential information’ means information about a person’s affairs, but does not include information in the public domain (unless further disclosure of the information is prohibited by law); or statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

Section 88N inserts a new provision to the PSA to clearly provide that the PSC will publish information to which it has access to either by way of the work performance information directive or otherwise. The PSC will, in a publically accessible way, and by 30 September after each financial year, publish the following information each year regarding departments’ work performance matters: number, type, how they were handled, the period within which they were finalised and the outcomes.

*Clause 88* inserts a new section 219A and provides an obligation for departments to have in place a system for dealing with customer complaints. This clause confirms the existing expectation that agencies have a complaint system that allows for customers to raise concerns and provide feedback. Its inclusion recognises that a complaints

system provides a valuable source of information, enabling the public service to be responsive and ultimately provide better service delivery outcomes for the people of Queensland.

The clause calls up the Australian Standard on customer complaints management (as in place from time to time) to ensure that the complaints framework meets accepted community standards while still enabling agencies to put in place a system that is appropriate for that agency's circumstances, such as its size and the nature and frequency of customer interactions.

The clause also provides examples of the range of matters that could be considered a 'customer complaint' and incorporates both the decisions made (or failures to make decisions) and the conduct of public servants in providing a service.

The clause requires the chief executive of a department to publish on their website a range of information by 30 September after each financial year, namely the number of customer complaints received by the department in the year; the number of those complaints resulting in further action, and the number of those complaints resulting in no further action.

*Clause 89* inserts new definitions to Schedule 4 (Dictionary), to provide clarity for the terms referred to or introduced by the amendments to the PSA, those being: 'information'; 'work performance information directive'; and 'work performance matter'. The clause also amends the definition of 'public sector disciplinary law' to renumber paragraphs (d) and (e) as paragraphs (e) and (f), and to insert new paragraph (d) which adds the *Crime and Corruption Act 2001* as a public sector disciplinary law. The clause also references section 88H in chapter 3, part 6.

## **Part 4 – Amendment of *Public Service Regulation 2008***

*Clause 90* provides that this part amends the *Public Service Regulation 2008*.

*Clause 91* inserts a new part 4A 'Miscellaneous provision' into the regulation, and a new section 15 which prescribes the commission and the Queensland Police Service as an external agency for section 88K of the Act.

*Clause 92* amends schedule 1 (Public service offices, their heads and applied provisions and rulings) so that new part 6 of chapter 3 (functions of commission relating to work performance matters) applies to the public service officers, their heads and employees listed in this schedule. The clause also amends schedule 1 so that new section 219A (Departments to have complaints management system for customer complaints) applies to the public service office and their heads listed in this schedule.

*Clause 93* amends schedule 2 (applied provisions and ruling for health service employees), part 1 (provisions of the Act applied to Hospital and Health Services and Department of Health) so that new part 6 of chapter 3 and new section 219A apply to Hospital and Health Services and Department of Health. The clause then renumbers the items in part 1. The clause also amends schedule 2, part 2 (provisions of the Act

applied to health service employees) so that new part 6 of chapter 3 applies to health service employees. The clause then renumbers the items in part 2.

## **Part 5 – Minor and Consequential Amendments**

*Clause 94* lists each of the schedules (Schedule 1 and Schedule 2) that are included in this part and describes the purpose for the amendments included in each of the attached schedules.

### **Schedule 1 – Minor and consequential amendments of the *Crime and Misconduct Act 2001***

Clause 1 lists each of the provisions in the CM Act to be amended by omitting the words ‘official misconduct’ or ‘Official misconduct’ and inserting ‘corrupt conduct’ or ‘Corrupt conduct’.

Clause 2 lists each of the provisions in the CM Act to be amended by omitting the words ‘Misconduct’, ‘misconduct’ or ‘(misconduct)’ and inserting ‘Corruption’, ‘corruption’ or ‘(corruption)’.

Clause 3 lists each of the provisions in the CM Act to be amended by omitting ‘chairperson’ or ‘chairperson’s’ and inserting ‘chairman’ or ‘chairman’s’.

Clause 4 lists each of the provisions in the CM Act to be amended by omitting ‘assistant commissioner, crime’ and inserting ‘senior executive officer (crime)’.

Clause 5 lists each of the provisions in the CM Act to be amended by omitting the words ‘assistant commissioner, misconduct’ or ‘assistant commissioner, misconduct’s’ and inserting ‘senior executive officer (corruption)’ or ‘senior executive officer (corruption)’s’.

Clauses 6 to 21 provide for minor or consequential amendments to other provisions in the CM Act to recognise the new terminology or to make minor drafting changes.

### **Schedule 2 – Minor and consequential amendments of other legislation**

This schedule makes consequential amendments to the following legislation to replace the old terminology with the new terms being used in the CM Act:

- *Acts Interpretation Act 1954;*
- *Ambulance Service Act 1991;*
- *Auditor-General Act 2009;*
- *Births, Deaths and Marriages Registration Act 2003;*
- *Births, Deaths and Marriages Registration Regulation 2003;*
- *Casino Control Regulation 1999;*
- *Charitable and Non-Profit Gaming Regulation 1999;*
- *Child Protection (Offender Prohibition Order) Act 2008;*
- *Child Protection (Offender Reporting) Act 2004;*
- *City of Brisbane Act 2010;*

- *City of Brisbane Regulation 2012;*
- *Cooperatives Act 1997;*
- *Coroners Act 2003;*
- *Corrective Services Act 2006;*
- *Corrective Services Regulation 2006;*
- *Crime and Misconduct Regulation 2005;*
- *Criminal Code;*
- *Criminal Law (Sexual Offences) Act 1978;*
- *Criminal Organisation Act 2009;*
- *Criminal Proceeds Confiscation Act 2002;*
- *Disability Services Act 2006;*
- *Education (Queensland College of Teachers Act 2005;*
- *Electoral Act 1992;*
- *Evidence Act 1977;*
- *Explosives Act 1999;*
- *Financial and Performance Management Standard 2009;*
- *Financial Transactions Reports Act 1992;*
- *Fire and Rescue Services Act 1990;*
- *Food Production (Safety) Act 2000;*
- *Gaming Machine Regulation 2002;*
- *Government Owned Corporations Act 1993;*
- *Health Ombudsman Act 2013;*
- *Health Quality and Complaints Commission Act 2006;*
- *Hospital and Health Boards Act 2011;*
- *Information Privacy Act 2009;*
- *Integrity Act 2009;*
- *Interactive Gambling (Player Protection) Regulation 1998;*
- *Judicial Review Act 1991;*
- *Justices Act 1886;*
- *Keno Regulation 2007;*
- *Legal Aid Queensland Act 1997;*
- *Legal Profession Act 2007;*
- *Legal Profession Regulation 2007;*
- *Local Government Act 2009;*
- *Local Governments Regulation 2012;*
- *Lotteries Regulation 2007;*
- *Magistrates Act 1991;*
- *Ministerial and Other Office Holder Staff Act 2010;*
- *Ombudsman Act 2001;*
- *Parliament of Queensland Act 2001;*
- *Penalties and Sentences Act 1992;*
- *Police Powers and Responsibilities Act 2000;*
- *Police Powers and Responsibilities Regulation 2012;*
- *Police Service Administration Act 1990;*
- *Police Service Administration Regulation 1990;*
- *Police Service Administration (Review of Decisions) Regulation 1990;*
- *Police Service (Discipline) Regulations 1990;*

- *Prostitution Act 1999;*
- *Prostitution Regulation 2000;*
- *Public Health Act 2005;*
- *Public Interest Disclosure Act 2010;*
- *Public Safety Preservation Act 1986;*
- *Public Service Act 2008;*
- *Public Service Regulation 2008;*
- *Queensland Civil and Administrative Tribunal Regulation 2009;*
- *Queensland Competition Authority Act 1997;*
- *Queensland Independent Remuneration Tribunal Act 2013;*
- *Queensland Mental Health Commission Act 2013;*
- *Queensland Rail Transit Authority Act 2013;*
- *Queensland Reconstruction Authority Act 2011;*
- *Racing Act 2002;*
- *Residential Tenancies and Rooming Accommodation Act 2008;*
- *Right to Information Act 2009;*
- *Rural and Regional Adjustment Act 1994;*
- *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009;*
- *South East Queensland Water (Restructuring) Act 2007;*
- *Statutory Bodies Financial Arrangements Regulation 2007;*
- *Superannuation (State Public Sector) Act 1990;*
- *Superannuation (State Public Sector) Notice 2010;*
- *Telecommunications Interception Act 2009;*
- *Terrorism (Preventative Detention) Act 2005;*
- *Transport Operations (Marine Safety) Act 1994;*
- *Transport Operations (Passenger Transport) Act 1994;*
- *Wagering Regulation 1999;*
- *Water Act 2000;*
- *Witness Protection Act 2000; and*
- *Workers' Compensation and Rehabilitation Act 2003.*