

Police Service Administration and Other Legislation Amendment Bill 2008

Explanatory Notes

General Outline

Objective of the Legislation

The *Police Service Administration and Other Legislation Amendment Bill 2008* (the Bill) aims to provide for an Act which:

- (a) allows the Queensland Police Service to participate in national information sharing initiatives; and
- (b) facilitates the exchange of information between the Queensland Police Service and other police services of the Commonwealth and other States and specified agencies, approved by Government, for use when performing a policing function or a law enforcement function.

Means of Achieving Policy Objectives

The Bill achieves the objectives by amending the *Police Service Administration Act 1990* (the Act).

Alternative Means of Achieving Policy Objectives

There are no alternative means of achieving the policy objectives other than by legislative reform.

The Bill removes legislative barriers to the communication and sharing of detailed nationwide police information via a secure electronic exchange. It also allows for the continued provision of specific policing information to selected Commonwealth and State Departments without interfering in current requirements for the Commissioner to provide policing information under various existing Acts.

Additionally, the design of the Queensland Police Service (QPS) data base known as QPRIME is such that the terminology currently utilised in the Act when referencing the present databases, will be redundant, therefore requiring update to ensure the legislation remains workable.

Estimated Cost of Implementation

There are no foreseeable increased financial implications for government expenditure from implementation of this proposal.

Consistency with Fundamental Legislative Principles

The proposed legislation overrides the provisions of the *Criminal Law (Rehabilitation of Offenders) Act 1986* and the *Juvenile Justice Act 1992* to allow for the disclosure of information relating to spent convictions and information relevant to investigations relating to juveniles. This is information that would not normally be disclosed such as cautions and conferences relating to juveniles and information provided to law enforcement agencies other than police departments relating to convictions for adults where the rehabilitation period has expired. As a result it is acknowledged that information normally protected by the *Criminal Law (Rehabilitation of Offenders) Act* and the *Juvenile Justice Act* will be released to an information processing service provider. The information will then be provided by CrimTrac to a police service or force or approved law enforcement agency, however, will be limited to that information listed in the nationally agreed 26 points will be released to law enforcement agencies. The information is then limited for use for a policing purpose or law enforcement purpose.

The sharing of information with non-police law enforcement agencies will be limited to those government agencies approved by Cabinet and prescribed by regulation. Additionally, the information provided to these agencies will be limited to the same 26 data points as is available to police jurisdictions through CrimTrac. Similar regulation making powers are contained in section 289 'Disclosure by police of information about cautions and youth justice conferences and agreements' of the *Juvenile Justice Act* which is concerned with information disclosure, under which regulations have been made, and the *Justice and Other Information Disclosure Act 2008* where there is a power to prescribe by regulation purposes for which information may be shared between criminal justice agencies.

Consultation

Extensive Queensland Departmental consultation was undertaken on the contents of the Bill. Community consultation was not undertaken.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides for the citation of the Bill.

Commencement

Clause 2 provides that the Bill is to commence on 6 October 2008.

Part 2 Amendment of Police Service Administration Act 1990

Act amended in pt 2

Clause 3 indicates Part 2 of the Bill amends the *Police Service Administration Act 1990*.

Amendment of s 1.4 (Definitions)

Clause 4 inserts the definitions in the Definitions provisions of the Act.

Amendment of s 5AA.9 (Commissioner may request information from other authorities)

Clause 5 removes the term “declared law enforcement agency” inserts the term declared agency”. The declared agencies are those found in the *Police Powers and Responsibilities Act 2000*.

Amendment of s 5AA.11 (Assessment of suitability)

Clause 6 removes the term “declared law enforcement agency” inserts the term declared agency”. The declared agencies are those found in the *Police Powers and Responsibilities Act 2000*.

Amendment of s 10.2A (Disclosure of criminal history for employment screening under commercial or other arrangement)

Clause 7 removes the term “CrimTrac Agency” and inserts the term “CrimTrac”. This change standardises the name of the agency in legislation.

Insertion of new pt 10, div 1A

Clause 8 inserts a new Division 1A (Provisions about the exchange of policing information) to ensure the Queensland Police Service is able to participate in national information sharing initiatives and arrangements by providing and sharing policing information with nominated agencies through an information processing service provider. While an information processing service provider undertakes an information brokering role, collecting and collating policing information to be shared among nominated agencies, this brokering may be seen as a disclosure of the information. This Division introduces provisions to accommodate the bulk electronic transfer of information for these initiatives and any incidental information disclosure associated with the information transfer.

Division 1A Provisions about exchange of policing information

Subdivision 1 Preliminary

10.2G Definitions for div 1A

“Approved agency” for this division means a Commonwealth or State entity prescribed by regulation as an approved agency.

“Approved information” for this division means information prescribed by regulation. Clause 13 inserts the schedule listing the approved information.

“Condition” includes a prohibition or restriction placed in the use of information under Division 1A of the Act.

“End user” means a Police Service or Force of the Commonwealth or State, or an agency prescribed by regulation to be a law enforcement agency or an approved agency.

“Head” means the Commissioner of a Commonwealth or State Police Service or Force, or the chief executive officer of a law enforcement agency, approved agency, IPSP, or other Commonwealth or State entity.

“IPSP” means CrimTrac or information processing service provider prescribed under regulation.

“Law enforcement agency” for this division means a Commonwealth or State agency prescribed under regulation to be a law enforcement agency.

“Law enforcement purpose” means using the information for a purpose authorised under a law of the Commonwealth or the State.

“Member” of an entity includes a person employed or engaged by the entity.

“MINDA” is an acronym for the Mobile Integrated Network Data Access System which is administered by Queensland Transport.

“Policing purpose” means using the approved information for a purpose similar to a purpose for which a member of the Queensland Police Service would be authorised to use the approved information.

“Use” in addition to its ordinary meaning includes to disclose, give or give access to, make available, publish or record the information.

10.2H Meaning of CrimTrac

Clause 9 provides a definition for CrimTrac. The definition is meant to ensure that should another entity replace CrimTrac or it be renamed, the references to CrimTrac in the Act will apply to that entity or the new entity.

Subdivision 2 Giving of policing information

10.2I Giving information to an IPSP to enable use of approved information by police services and law enforcement agencies for particular purposes

This provision gives the Commissioner of Police authority to transfer any information held in a QPS database, to an IPSP, to allow the sharing of approved information between Commonwealth and State police services and nominated law enforcement agencies. Where information in excess of the approved information is required by the policing agency or nominated law enforcement agency, this section does not restrict the Commissioner’s

power to authorise specific information disclosures on a case-by-case or class basis having regard to the circumstances of each case or class under the current provisions of the Act.

The use of the information is limited to a policing purpose or a law enforcement purpose, depending on the agency.

This section does not limit the application of section 10.2J.

10.2J Giving approved information to police services and law enforcement agencies to enable use of approved information for particular purposes

This provision provides that the Commissioner may give approved information to Commonwealth and other State police services to use for a policing purpose or law enforcement agencies to use for a law enforcement purpose. This provision does not require the engagement of an IPSP in giving the approved information.

Where information in excess of the approved information is required by the policing agency or nominated law enforcement agency, this section does not restrict the Commissioner's power to authorise specific information disclosures on a case-by-case and class basis having regard to the circumstances of each case or class under the current provisions of the Act.

10.2K Giving information to Queensland Transport to enable Queensland Transport to administer MINDA

This provision provides that the Commissioner may give information to Queensland Transport for the purpose of making the information available to members of the Queensland Police Service and authorised officers exercising a power under a Transport Act with an officer of the Queensland Police Service.

In administering MINDA, Queensland Transport does not access the information but transmits it back to the Queensland Police Service for use by members of the Queensland Police Service when performing a function of the Service.

10.2L Giving information to approved agencies to enable use of information for particular purposes

This provision indicates the Commissioner is not limited in the information he can give to the chief executive of an approved agency, for the approved agency to use for a law enforcement purpose. This includes direct computer access to a QPS database.

The Commissioner may appoint, in writing, nominated persons within an approved agency to access a QPS database. These persons are authorised members. Only authorised members within the approved agency are authorised to access the QPS database. The information made available for the use of the approved agency through the authorised members, is not limited to the approved information.

10.2M Commissioner may impose conditions

The provision allows the Commissioner to impose conditions that the Commissioner considers appropriate when giving information under Part 1A, Subdivision 2 of this Act.

Subdivision 3 Relationship with other provisions

10.2N Use of information permitted despite other provisions

This provision gives the Commissioner of Police specific authorisation to give information to specified entities under Part 1A, Subdivision 2 of this Act despite any other law prohibiting or restricting the disclosure of information. The Commissioner is permitted to undertake bulk transfers of information to an IPSP, provide approved information to a police service or law enforcement agency, provide specific members of an approved agency with direct access to a QPS database and transfer information to Queensland Transport to administer MINDA. Therefore this clause overrides the provisions of any Act prohibiting the transfer or disclosure of information to an IPSP, law enforcement agency or authorised agency.

A police service or force may use the information for a policing purpose and a law enforcement agency or approved agency may use information for a law enforcement purpose, despite an Act that imposes a condition or restriction on the use of the information.

Additionally, this provision affects section 10.2A ‘Disclosure of criminal history for employment screening under commercial arrangement’ of the Act. As the criminal history information relevant to section 10.2A is forwarded to CrimTrac via the bulk electronic transfer to facilitate the information sharing under this Division, this section allows that information to be used to facilitate the criminal history disclosures under section 10.2A of the Act. A criminal history provided under section 10.2A will continue to be in accordance with section 3 of the *Criminal Law (Rehabilitation of Offenders) Act*.

10.2O Condition imposed under another Act may apply

This provision limits the use of the information a member has gained under this Division of the Act. Where the information is the subject of a prohibition or restriction when in the possession of the Queensland Police Service under another Act, the member or entity who receives that information through this division is subject to the same prohibition or restriction. For example, if the information is subject to publishing restrictions in Queensland, the entity is also subject to those restrictions on publishing the information.

Subdivision 4 General

10.2P Misuse of information given under this division

This provision creates an offence for a person to use information obtained under this division contrary to the purpose for which it was given, that is, a policing purpose or a law enforcement purpose, or any purpose permitted under an Act, or using the information in contravention of any conditions imposed by the Commissioner. The maximum penalty for an offence committed under this provision is 100 penalty units.

Furthermore a person must not use the information contrary to a condition imposed by another Act, as outlined in section 10.2O. The maximum penalty for an offence committed under this provision is 100 penalty units.

10.2Q Extra-territorial application of offence provision

This provision gives clear indication that a person commits an offence against section 10.2S for misusing information under this division whether or not the offence was committed in Queensland.

10.2R Protection from liability

This provision indicates that a person who is acting in honestly and without negligence will not be liable civilly or criminally for the transfer or giving of the information under this division. However, this provision does not limit the application of disciplinary action under this Act in respect to a member acting honestly in the giving of the information but outside the scope of this Division.

Replacement of pt 11, hdg (Transitional provisions)

Clause 9 amends the existing heading for Part 11 of the Act.

Insertion of new pt 11 div 3

Clause 10 inserts a new division in the part.

Division 3 Declaratory provision for Police Service Administration and Other Legislation Amendment Act 2008

11.6 Amendment of regulation by the Police Service Administration and Other Legislation Amendment Act 2008 does not affect powers of Governor in Council

The inclusion of the regulations in the Bill and introduced to Parliament does not affect the power of the Governor in Council to further amend or repeal the regulations.

Amendment of schedule (relevant information)

Clause 11 omits out-dated terminology and inserts current terminology required to support the recruiting and employment provisions in the Act.

Part 3 Amendment of Police Service Administration Regulation 1990

Regulation amended in pt 3

Clause 12 indicates Part 3 of the Bill amends the *Police Service Administration Regulation 1990*.

Insertion of new pt 7D

Clause 13 inserts a new Part 7D after part 7C.

Part 7D Provisions about exchange of policing information

7C.2 Law enforcement agencies—Act, s 10.2G

This provision lists the agencies to be included in the definition of law enforcement agency.

7C.2 Approved information—Act, s 10.2G

This provision indicates that the definition of approved information is the information contained in the schedule.

Insertion of new schedule

Clause 14 inserts a new schedule listing the approved information to which Division 1A applies. The schedule lists 26 points of information that defines approved information to which section 7C.3 of the Regulation applies.

The approved information includes the broadened definition of ‘criminal history’. The term criminal history for this Division adopts a meaning to include any offence alleged to have been committed by the person, including expired convictions subject to the *Criminal Law (Rehabilitation of Offenders) Act* and caution and conference information under the *Juvenile Justice Act*.

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