

Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Bill

Government Bill

Explanatory note

General policy statement

An amendment to the Police Complaints Authority Act 1988 (the **Act**) is required to allow the Commission of Inquiry into Police Conduct (the **Commission**) to fulfil its terms of reference to inquire into investigations carried out by the police on behalf of the Police Complaints Authority (the **Authority**).

The terms of reference for the Commission include an inquiry into the adequacy of any investigations which have been carried out by the police on behalf of the Police Complaints Authority and which have concerned complaints alleging sexual assault by members of the police or by associates of the police or by both, and if any of these investigations have not been adequate, the respects in which they were inadequate.

Section 32(1) of the Act requires the Authority, and every person holding any office or appointment under the Authority, to maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions. Section 33(1) provides that no proceedings shall lie against the Authority, or any person holding any office or appointment under the Authority, nor may the Authority or such person be called to give evidence in any court or proceedings of a judicial nature.

These provisions are designed to facilitate the free flow of information essential for the effective conduct of investigations in compliance with the statutory functions of the Authority. Members of the public are able to approach the Authority in confidence with matters

that may be personally sensitive or embarrassing if made public. It also enables the Authority to obtain free and frank information from members of the police regarding complaints. Secrecy is important to encourage witnesses to be frank by providing a climate in which evidence can be given without fear of self-incrimination, retribution by alleged offenders or associates, or defamation proceedings.

The Commissions of Inquiry Act 1908 provides that a Commission of Inquiry may order any person to produce for examination any information (section 4C) and summons any person to appear before the inquiry (section 4D). There is some uncertainty as to whether section 32(1) of the Act applies to documents created by police officers involved in the investigation of a complaint or other matter that was received by or notified to or otherwise came to the attention of the Authority.

It is necessary for the Commission to have access to that material in order to complete its task. Accordingly, it is vital for public confidence in the Commission, the police, and the Authority that this uncertainty be removed.

It may be noted that persons who appear before the Commission of Inquiry have certain protections which are conferred under section 6 of the Commissions of Inquiry Act 1908.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

Clause 3 sets out the purpose of the Bill.

Clause 4 defines certain terms used in the Bill.

Two key definitions are **restricted matter** and **member of the police**. A **restricted matter** includes any document, information, or communication produced by or, as the case requires, made by a person holding office as the Authority or Deputy Authority or as a staff member or employee of the Authority. The definition also includes any communication made by a person to the Authority in which the person made a complaint or raised a concern about the

conduct of the police or any member of the police and in respect of which that person has not agreed that it may be disclosed to the Commission.

A **member of the police** includes former members of the police other than any person currently holding office as an employee or staff member of the Authority.

Clause 5 provides that the Bill expires at the close of the day that is 1 year after the date on which the Commission finally reports to the Governor-General.

Part 2

Disclosure to Commission of Inquiry into Police Conduct

Clause 6 amends the Police Complaints Authority Act 1988 “the principal Act” by providing that section 32(1) does not prevent—

- the Police Complaints Authority, or any person holding office or appointment under the Authority, from disclosing any matter (other than a restricted matter) in order to comply with any direction or order of the Commission under section 4C of the Commissions of Inquiry Act 1908:
- any member of the police who investigated a complaint or other matter received by or notified to or that otherwise came to the attention of the Authority (other than former members of the police who are currently staff members or employees of the Authority) from disclosing any matter (other than a restricted matter) in order to comply with a summons issued by the Commission under section 4D of the Commissions of Inquiry Act 1908, or in evidence before the Commission.

Clause 7 amends section 33 of the principal Act to allow members of the police (and former members of the police who are not currently staff members or employees of the Authority) involved in the investigation of complaints received by or notified to the Police Complaints Authority to give evidence in proceedings before the Commission.

Hon Phil Goff

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Bill **2004**.
- (2) In this Act, the Police Complaints Authority Act 1988¹ is called “the principal Act”.

¹ 1988 No 2

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

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3 Purpose

The purpose of this Act is to amend certain provisions of the Police Complaints Authority Act 1988 to ensure that they do not prevent the Commission of Inquiry into Police Conduct from gaining access to information needed in order to carry out its functions.

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4 Interpretation

For the purposes of this Act, but not the principal Act,—

Commission—

- (a) means the Commission of Inquiry into Police Conduct, the terms of reference for which are set out in the Supplement to the *Gazette* dated 20 February 2004; and 5
- (b) includes any person authorised by the members of the Commission to exercise any power under section 4C of the Commission of Inquiry Act 1908

member of the police includes a former member of the police (other than a person who is currently a staff member or employee of the Authority) 10

restricted matter—

- (a) means any document, information, or communication produced by or, as the case requires, made by a person holding office as the Authority or the Deputy Authority, or as a staff member or employee of the Authority; and 15
- (b) includes any communication by a person to the Authority—
 - (i) in which that person made a complaint or raised a concern about the conduct of the police, or any member of the police; and 20
 - (ii) in respect of which, that person has not agreed that it may be disclosed to the Commission.

5 Expiry 25

This Act expires at the close of the day that is 1 year after the date on which the Commission finally reports to the Governor-General.

Part 2

**Disclosure to Commission of Inquiry into
Police Conduct** 30

6 Authority and staff to maintain secrecy

Section 32 of the principal Act must be read as if, after subsection (2), the following subsection was inserted:

- “(2A) Subsection (1) does not prevent— 35
 - “(a) the Authority, or any person holding any office or appointment under the Authority, from disclosing any

matter (other than a restricted matter) in order to comply with any direction or order of the Commission under section 4C of the Commissions of Inquiry Act 1908:

“(b) any member of the police involved in the investigation of a complaint or other matter that was received by or notified to or otherwise came to the attention of, the Authority, from disclosing any matter (other than a restricted matter)— 5

“(i) in order to comply with a summons issued by the Commission under section 4D of the Commissions of Inquiry Act 1908: 10

“(ii) in evidence before the Commission.”

7 Proceedings privileged

Section 33 of the principal Act must be read as if, after subsection (2), the following subsection was inserted: 15

“(2A) Nothing in subsection (1)(b) applies to any member of the police who is called to give evidence in proceedings before the Commission.”