

House of Representatives

Supplementary Order Paper

Tuesday, 12 June 2007

Independent Police Complaints Authority Amendment Bill

Proposed amendments

Hon Mark Burton, in Committee, to move the following amendments:

Clause 1

Subclause (1): to omit “Complaints” (line 2 on page 2) and substitute “Conduct”.

Clause 3

To omit this clause (lines 11 to 14 on page 2) and substitute the following clause:

3 Long Title amended

The Long Title is amended by omitting “**an independent Police Complaints**” and substituting “**the Independent Police Conduct**”.

Clause 4

To omit this clause (lines 15 to 20 on page 2) and substitute the following clause:

4 Name of principal Act changed

- (1) As from the commencement of this section, the principal Act is called the **Independent Police Conduct Authority Act 1988**.
- (2) Section 1(1) is consequentially amended by omitting “Police Complaints” and substituting “Independent Police Conduct”.

Clause 5

New definition of **Authority** in *subclause (1)*: to omit “Complaints” (line 7 on page 3) and substitute “Conduct”.

New definition of **chairperson** in *subclause (1)*: to omit “**section 4C(1)**” (line 10 on page 3) and substitute “**section 5A(1)**”.

New definition of **member** in *subclause (3)*: to omit “**section 4A(1)**” (line 16 on page 3) and substitute “**section 5(1)**”.

Clause 6

To omit this clause (line 17 on page 3 to line 10 on page 6) and substitute the following clauses:

- 6 New section 4 and heading substituted**
Section 4 and the heading above section 4 are repealed and the following heading and section substituted:
“Independent Police Conduct Authority
- “4 Independent Police Conduct Authority established**
There is an authority known as the Independent Police Conduct Authority.”
- 6A Crown entity**
- (1) Section 4A(2) is amended by omitting “applies” in the second place where it appears and substituting “provides”.
- (2) Section 4A is amended by repealing subsections (3) and (4) and substituting the following subsection:
- “(3) The members of the Authority are the board for the purposes of the Crown Entities Act 2004.”
- 6B New sections 5 to 5C substituted**
Section 5 is repealed and the following sections are substituted:
- “5 Membership of Authority**
- “(1) The Authority consists of up to 5 members appointed by the Governor-General on the recommendation of the House of Representatives.
- “(2) **Subsection (1)** applies despite section 28(1)(b) of the Crown Entities Act 2004.
- “5A Chairperson of Authority**
- “(1) The Governor-General, on the recommendation of the House of Representatives, must appoint 1 member as the chairperson of the Authority.
- “(2) A person appointed as the chairperson of the Authority must be a Judge or a retired Judge.
- “(3) **Subsection (1)** applies despite clause 1(2) of Schedule 5 of the Crown Entities Act 2004.
- “5B Appointment of Judge as member of Authority**
- “(1) The appointment of a Judge as a member of the Authority does not affect his or her judicial office, rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges that he or she has as a Judge, including matters relating to superannuation.

“(2) The time a Judge serves as a member of the Authority must be taken as service as a Judge.

“5C Resignation of member

“(1) A member may resign from office by written notice to the Governor-General (with a copy to the Authority) signed by the member.

“(2) The resignation is effective on receipt by the Governor-General of the notice or at any later time specified in the notice.

“(3) This section applies despite section 44 of the Crown Entities Act 2004.”

6C New sections 6 and 7 substituted

Sections 6 and 7 are repealed and the following sections substituted:

“6 Power to remove or suspend members

“(1) Section 42 of the Crown Entities Act 2004 applies to any member who is a Judge.

“(2) Section 39(1) of the Crown Entities Act 2004 does not apply to any member.

“(3) Instead, any member who is not a Judge may be removed for just cause by the Governor-General acting upon an address from the House of Representatives.

“(4) **Just cause** has the same meaning as in section 40 of the Crown Entities Act 2004.

“7 Filling of vacancy

“(1) If a vacancy occurs in the membership of the Authority, the Governor-General, on the recommendation of the House of Representatives, may appoint a successor.

“(2) Despite **subsection (1)**, if the vacancy exists at the close of a session, or the vacancy occurs while Parliament is not in session, and the House of Representatives has not recommended an appointment to fill the vacancy, the Governor-General in Council may appoint a successor at any time before the commencement of the next ensuing session of Parliament.

“(3) An appointment made under **subsection (2)** lapses, and the office again becomes vacant, unless the appointment is confirmed by the House of Representatives before the end of the 24th sitting day following the date of the appointment.”

Clause 8

To omit this clause (line 13 on page 6 to line 24 on page 8).

Clause 9

To omit “the Authority, the Deputy Authority,” (line 27 on page 8) and substitute “the Authority and the Deputy Authority”.

Clause 10

To omit this clause (lines 29 to 32 on page 8).

Clause 11

To omit this clause (lines 6 to 14 on page 9).

Clause 12

To omit this clause (lines 15 to 24 on page 9) and substitute the following clause:

12 Functions of Authority

Section 12 is amended by inserting the following subsection after subsection (2):

“(2A) The Authority may receive complaints relating to a matter specified in subsection (1)(a) that occurred before, on, or after 1 April 1989.”

New clause 14A

To insert the following clause after *clause 14* (after line 5 on page 10):

14A Duty of Commissioner to notify Authority of complaints

(1) Section 15 is amended by omitting “as soon as practicable”.

(2) Section 15 is amended by adding the following subsection as subsection (2):

“(2) Notification must be given as soon as practicable, but no later than 5 working days after receipt of the complaint.”

Clause 15

To insert the following subclause after the heading to this clause (after line 6 on page 10) as subclause (1AA):

(1AA) Section 17(1) is amended by inserting the following paragraph after paragraph (a):

“(ab) refer the complaint to the police for investigation by the police.”

Clause 15A

To insert the following subclause after the heading to this clause (after line 18 on page 10) as subclause (1):

(1) Section 18(1)(b)(i) is amended by omitting “trivial” and substituting “minor”.

Clause 16A

To omit “occurs” (line 19 on page 11) and substitute “appears”.

New clause 16B

To insert the following clause after *clause 16A* (after line 20 on page 11):

16B Implementation of recommendations of Authority

Section 29(2) is amended by omitting “may” and substituting “must”.

Clause 17

Subclause (2): to omit this subclause (lines 25 to 30 on page 11) and substitute the following subclause:

- (2) Section 32(3) is repealed.

Clause 19

To omit this clause (line 18 on page 12 to line 3 on page 18).

Clause 20

To omit this clause (lines 4 to 16 on page 18).

Clause 21

To omit this clause (line 17 on page 18 to line 29 on page 19).

Clause 23

To omit this clause (lines 33 to 35 on page 19).

Clause 24

New sections 40 to 42: to omit these sections (line 5 on page 20 to line 9 on page 21) and substitute the following sections:

“40 Complaints made to Police Complaints Authority

Any complaint made to the Police Complaints Authority before the commencement of the Independent Police Conduct Authority Amendment Act **2002** that had not been finally dealt with before the commencement of that Act must be dealt with by the Authority under this Act (as amended by the Independent Police Conduct Authority Amendment Act **2002**), whether or not any action was taken in relation to the complaint before the commencement of the Independent Police Conduct Authority Amendment Act **2002**.

“41 Police Complaints Authority is chairperson

“(1) The person who, immediately before the commencement of the Independent Police Conduct Authority Amendment Act **2002**, held office as the Police Complaints Authority under section 4(2) of this Act (as it read immediately before the commencement of the Independent Police Conduct Authority Amendment Act **2002**) is taken to have been appointed to the office of chairperson of the Authority under **section 5A(1)** of this Act (as substituted by **section 6B** of the Independent Police Conduct Authority Amendment Act **2002**).

“(2) The person who is taken to have been appointed as the chairperson of the Authority under this section is appointed on the same terms and conditions on which, and for the remainder of the term for which, the person was appointed under section 4(2) of this Act (as it read immediately before the commencement of the Independent Police Conduct Authority Amendment Act **2002**).

“42 Deputy Police Complaints Authority is member of Authority

- “(1) The person who, immediately before the commencement of the Independent Police Conduct Authority Amendment Act 2002, held office as a Deputy Police Complaints Authority under section 8 of this Act (as it read immediately before the commencement of the Independent Police Conduct Authority Amendment Act 2002) is taken to have been appointed as a member of the Authority under **section 5(1)** of this Act (as substituted by **section 6B** of the Independent Police Conduct Authority Amendment Act 2002).
- “(2) The person who is taken to have been appointed as a member of the Authority under this section is appointed on the same terms and conditions on which, and for the remainder of the term for which, the person was appointed under section 8 of this Act (as it read immediately before the commencement of the Independent Police Conduct Authority Amendment Act 2002).”

New section 43(1): to omit “Independent Police Complaints Authority Amendment Act 2002” (lines 13 and 14 on page 21) and substitute “Independent Police Conduct Authority Amendment Act 2002”.

New section 44: to omit “Independent Police Complaints Authority Amendment Act 2002” (lines 32 and 33 on page 21) and substitute “Independent Police Conduct Authority Amendment Act 2002”.

New section 44: to omit “Complaints” in the third place where it appears (line 36 on page 21) and substitute “Conduct”.

New section 45: to omit “Independent Police Complaints Authority Amendment Act 2002” (lines 5 and 6 on page 22) and substitute “Independent Police Conduct Authority Amendment Act 2002”.

New section 46: to omit “Independent Police Complaints Authority Amendment Act 2002” (lines 9 and 10 on page 22) and substitute “Independent Police Conduct Authority Amendment Act 2002”.

New section 47: to omit this section (lines 12 to 20 on page 22) and substitute the following sections:

“47 Authority must arrange annual report and accounts

The Authority must perform the reporting requirements, and comply with the reporting obligations, relating to annual financial statements, annual reports, and audits that the Police Complaints Authority would have performed and complied with under the Police Complaints Authority Act 1988, the Crown Entities Act 2004, the Public Finance Act 1989, and any other enactment.

“48 Obligations and rights concerning Commission of Inquiry into Police Conduct unchanged

On the commencement of the Independent Police Conduct Authority Amendment Act 2002, the obligations, duties,

rights, and powers of the Police Complaints Authority under the Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Act 2004 must be performed by, may be exercised by, or apply to, the Authority.”

Clause 25

To omit this clause (lines 21 to 23 on page 22).

Heading to Part 3

To omit “and repeals” (line 25 on page 22).

Clause 26

To omit this clause (lines 26 to 33 on page 22) and substitute the following clauses:

26 Amendments to other Acts

The Acts specified in **Schedule 2** are amended in the manner set out in that schedule.

26A Amendments to Corrections Regulations 2005

- (1) This section amends the Corrections Regulations 2005.
- (2) Regulation 168 is amended by omitting “Police Complaints” and substituting “Independent Police Conduct”.

Clause 27

To omit this clause (lines 1 to 5 on page 23).

Schedule 1

To omit this Schedule (line 1 on page 24 to line 28 on page 25).

Schedule 2

To omit this Schedule (line 1 on page 26 to line 11 on page 27) and substitute the following schedule:

Schedule 2

s 26

Consequential amendments to other Acts

Children’s Commissioner Act 2003 (2003 No 121)

Section 19(4)(f): omit “Police Complaints” and substitute “Independent Police Conduct”.

Section 23(3)(f): omit “Police Complaints” and substitute “Independent Police Conduct”.

Coroners Act 1988 (1988 No 111)

Section 29(3)(b)(i): omit “Police Complaints” in each place where it appears and substitute in each case “Independent Police Conduct”.

Coroners Act 2006 (2006 No 38)

Paragraph (l) of the definition of **other investigating authority** in section 9: omit “Police Complaints” in each place where it appears and substitute in each case “Independent Police Conduct”.

Section 72(a): omit “Police Complaints” in each place where it appears and substitute in each case “Independent Police Conduct”.

Corrections Act 2004 (2004 No 50)

Section 3(1): insert in its appropriate alphabetical order:

“**Independent Police Conduct Authority** includes any employee of the Authority”.

Paragraph (i) of the definition of **official agency** in section 3(1): omit “Police Complaints” and substitute “Independent Police Conduct”.

Definition of **Police Complaints Authority** in section 3(1): repeal.

Section 114(2)(c)(vi): omit “Police Complaints” and substitute “Independent Police Conduct”.

Crimes of Torture Act 1989 (1989 No 106)

Paragraph (b) of the definition of **National Preventive Mechanism** in section 16: omit “Police Complaints” and substitute “Independent Police Conduct”.

Crown Entities Act 2004 (2004 No 115)

Section 131(1): omit “Police Complaints” and substitute “Independent Police Conduct”.

Section 131(2): omit “Police Complaints” and substitute “Independent Police Conduct”.

First column of Part 3 of Schedule 1: insert the following item in its appropriate alphabetical order:

Independent Police Conduct
Authority

First column of Part 3 of Schedule 1: omit the item relating to the Police Complaints Authority.

Ombudsmen Act 1975 (1975 No 9)

Item relating to Crown entities within the meaning of section 7 of the Crown Entities Act 2004 (other than the Police Complaints Authority) in Part 2 of Schedule 1: omit “Police Complaints” and substitute “Independent Police Conduct”.

Police Act 1958 (1958 No 109)

Section 6(5)(d): omit “Police Complaints” and substitute “Independent Police Conduct”.

Police Complaints Authority (Commission of Inquiry into Police Conduct) Amendment Act 2004 (2004 No 37)

Section 3: omit “Police Complaints” and substitute “Independent Police Conduct”.

Definition of **instruction communication** in section 4: omit “sections 17(1)(b) or (c)” and substitute “section 17(1)(ab), (b), (c), or (ca)”.

Paragraph (a) of the definition of **restricted matter** in section 4: omit “person holding office as the Authority or the Deputy Authority, or as” and substitute “member of the Authority, or”.

New subsection (2A) set out in section 6: insert “a member of the Authority,” after “the Authority,” in the first place where it appears.

Protected Disclosures Act 2000 (2000 No 7)

Paragraph (a)(vii) of the definition of **appropriate authority** in section 3: omit “Police Complaints” and substitute “Independent Police Conduct”.

Remuneration Authority Act 1977 (1977 No 110)

Schedule 4: omit the item relating to the Police Complaints Authority and the Deputy Police Complaints Authority and substitute the following item:

The members of the Independent Police Conduct Authority

Victims’ Rights Act 2002 (2002 No 39)

Section 49(2)(c): omit “Police Complaints” in each place where it appears and substitute in each case “Independent Police Conduct”.

Explanatory note

This Supplementary Order Paper amends the Independent Police Complaints Authority Amendment Bill, primarily in order to align the provisions of the Bill with the legislative changes made by the Crown Entities Act 2004 and to give effect to the recommendations in the Report of the Commission of Inquiry into Police Conduct issued in March 2007.

The name of the Police Complaints Authority is to be changed to the Independent Police Conduct Authority. Therefore, the name of the principal Act and the Bill are amended accordingly.

Schedule 2 of the Bill is omitted and replaced in order to update the consequential amendments that must be made when the Bill comes into force.

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