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# **Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023**

## **Explanatory Notes**

### **FOR**

### **Amendments to be moved during consideration in detail by the Honourable Leanne Linard MP, Minister for the Environment and the Great Barrier Reef, Minister for Science and Minister for Multicultural Affairs**

#### **Title of the Bill**

Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023

#### **Objectives of the Amendments**

The objective of the amendments to be moved during consideration in detail of the Criminal Code (Serious Vilification and Hate Crimes) and Other Legislation Amendment Bill 2023 (the Bill) is to validate the appointment of the Inspector of Detention Services (Inspector) under the *Ombudsman Act 2001* (Ombudsman Act) during the period from 9 December 2022 to 28 September 2023 (the relevant period).

#### **Achievement of the Objectives**

The proposed amendments achieve the policy objective by amending the Ombudsman Act to declare that anything done by the Inspector under the Ombudsman Act, the *Inspector of Detention Services Act 2022* or another law during the relevant period in the performance of the duties of the office has the same effect, and is taken to have always had the same effect, as it would have had if the Inspector had made the oath required under section 63(1) of the Ombudsman Act before performing the duties.

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## **Alternative Ways of Achieving Policy Objectives**

There is no alternative way to achieve the policy objective other than amending the Ombudsman Act.

## **Estimated Cost for Government Implementation**

There are no costs associated with these amendments.

## **Consistency with Fundamental Legislative Principles**

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect rights and liberties, or impose obligations, retrospectively.

The amendments will operate retrospectively. However, they simply validate the performance by the Inspector of its existing functions and powers and do not impose obligations on, or affect the rights and liberties of, individuals. Accordingly, in the circumstances, the amendments have sufficient regard to the fundamental legislative principle stated in section 4(3)(g) of the *Legislative Standards Act 1992*.

## **Consultation**

The Inspector has been consulted on the need for these amendments.

## **NOTES ON PROVISIONS**

*Amendment 1* amends the Bill by inserting Part 3A (Amendment of Ombudsman Act 2001).

Clause 22A provides that this part amends the *Ombudsman Act 2001*.

Clause 22B amends the heading in Part 12 of the *Ombudsman Act 2001* to insert ‘and validation.’

Clause 22C inserts new Division 8 in Part 12 (Validation provision for inspector of detention services) which includes new section 120 (Performance of duties of inspector of detention services before taking oath).

New subsection 120(1) provides that this section applies in relation to a person who held office as the inspector of detention services during the period from 9 December 2022 to 28 September 2023 (the relevant period).

New subsection 120(2) provides that anything done by the person under the *Ombudsman Act 2001*, the *Inspector of Detention Services Act 2022* or another law during the relevant period in the performance of the duties of the office has the same

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effect, and is taken to have always had the same effect, as it would have had if the person had made the oath required under section 63(1) before performing the duties. An oath includes an affirmation (*Acts Interpretation Act 1954*).

*Amendment 2* amends the long title of the Bill to insert ‘the Ombudsman Act 2001’.

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