




Speech By
Hon. Jarrod Bleijie

MEMBER FOR KAWANA

Record of Proceedings, 19 March 2014

CRIME AND MISCONDUCT AND OTHER LEGISLATION AMENDMENT BILL

Introduction

 **Hon. JP BLEIJIE** (Kawana—LNP) (Attorney-General and Minister for Justice) (3.33 pm): I present a bill for an act to amend the Crime and Misconduct Act 2001, the Public Service Act 2008 and the Public Service Regulation 2008 for particular purposes, and to make minor and consequential amendments to the legislation mentioned in schedule 2. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Crime and Misconduct and Other Legislation Amendment Bill 2014 [\[4689\]](#).

Tabled paper: Crime and Misconduct and Other Legislation Amendment Bill 2014, explanatory notes [\[4690\]](#).

I am pleased to introduce the Crime and Misconduct and Other Legislation Amendment Bill 2014. In 2013 two significant landmark reports regarding the Crime and Misconduct Commission, the CMC, were released—the report of the review by the Independent Advisory Panel, constituted by the Hon. Ian Callinan AC and Professor Nicholas Aroney, of the Crime and Misconduct Act 2001 and related matters, and the report of the inquiry by the Parliamentary Crime and Misconduct Committee into the CMC's release and destruction of Fitzgerald Commission of Inquiry documents. On 3 July 2013 the government tabled its response to the recommendations in both reports. The government response indicated that an implementation panel—comprising the Director-General, Department of Justice and Attorney-General as panel chair, the Director-General, Department of the Premier and Cabinet, the Commission Chief Executive of the Public Service Commission and the Acting Chairperson of the Crime and Misconduct Commission—had been established to oversee and direct the consideration and implementation of the accepted recommendations in the government response.

This bill is the product of much of the panel's work and seeks to implement government accepted recommendations to the Callinan-Aroney and Parliamentary Crime and Misconduct Committee reports. The bill when enacted will, together with administrative changes at the Crime and Misconduct Commission and across the public service, lead to improvements 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
- the management of personal conduct and work performance of Queensland public service employees.

The bill's policy objectives include:

- reforming the upper governance structure of the CMC;
- changing the definition of 'official misconduct'—which the bill renames as 'corrupt conduct'—which, with other amendments, will raise the threshold for matters within the CMC's jurisdiction;
- renaming the CMC's 'misconduct function' to 'corruption function', with consequential amendments;
- improving the CMC's complaints management system to refocus the CMC's corruption activities on more serious cases of corruption and reduce the number of complaints the CMC deals with and investigates;
- removing the CMC's responsibility for the 'prevention' of corruption in units of public administration;
- ensuring the CMC's research function is more focussed and relevant to its functions;
- strengthening the transparency and accountability of the CMC;
- clarifying the disciplinary action that may be taken by the CMC in relation to conduct of CMC officers;
- making transitional arrangements to continue the current acting chairperson's appointment and certain other appointments, and providing transitional arrangements for the ending of other appointments;
- implementing recent recommendations of public reports about the CMC's investigation of alleged official misconduct at the University of Queensland; and
- improving the management of personal conduct and work performance of Queensland public service employees.

The bill renames the CMC as the Crime and Corruption Commission. This is consistent with its realignment to focus on corruption and corrupt conduct. The structure of the commission has been the subject of much consideration and debate. That consideration and debate has obviously had significant regard to the Parliamentary Crime and Misconduct Committee's recommendation No. 19 that the Crime and Misconduct Act be amended to cause structural separation of the chairperson and chief executive officer and the circumstances leading up to the Parliamentary Crime and Misconduct Committee inquiry and report last year.

We have also examined the various governance structures for similar bodies around Australia, each with their own particular nuances and variations. The government welcomes suggestions and comments about the upper governance structure as reflected in the bill—by the Legal Affairs and Community Safety Committee when it considers the bill, by individuals and organisations who no doubt will make submissions to the parliamentary committee, and by commentators generally. In addition, and because the government is genuinely committed to making sure the upper governance structure works, the bill inserts a new provision which allows the Parliamentary Crime and Misconduct Committee to conduct periodic reviews of the structure of the commission.

Under the bill the commission will consist of Governor in Council appointed commissioners who are: a full-time legally qualified chairman, a legally qualified part-time deputy chairman, two part-time (ordinary) commissioners and a full-time chief executive officer. Although the Parliamentary Crime and Misconduct Committee is to be consulted about commissioner appointments, the bill removes the current requirement for the PCMC's bipartisan support for these appointments. The commissioners, as the commission, will provide strategic direction and leadership 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.

The chairman is responsible for the proper performance of the functions and exercise of the powers delegated to the chairman under the act. The chairman is to report to the commission on the performance of the commission's functions but is not bound by any direction of the commission in the performance of functions or exercise of powers in an investigation, hearing, operation or other proceeding.

The CEO is pivotal to the effective management of the commission. The CEO is responsible to the commission for the administration of the commission; and is to perform the functions and exercise the powers delegated to, or conferred on, the CEO under the act or specifically delegated to the CEO by the chairman. The CEO will be responsible for matters such as the employment, management and discipline of commission staff, the management of the commission's documents, including the Fitzgerald Commission of Inquiry documents, and the preparation and compliance with the

commission's budget. The CEO is subject to the chairman's direction in respect of functions or a power delegated to the CEO by the chairman and is otherwise subject to the commission's direction in respect of performing a function or exercising a power under the act.

As I indicated earlier, the government genuinely welcomes suggestions and comments on the commission's upper governance structure, as reflected during the consideration of the bill by the committee. We have looked at other jurisdictions, and all jurisdictions in Australia, when we are dealing with corruption watchdogs, deal with these governance structures differently. The Callinan and Aroney report found that the definition of 'official misconduct' has a wider application when compared with the definitions contained in other interstate anticorruption legislation; and that the threshold for what constitutes official misconduct, should be narrowed. To address this, the bill changes the definition of 'official misconduct' to a new concept of 'corrupt conduct' that is intended, with other amendments, to raise the threshold for conduct that is subject to the CMC's jurisdiction.

The new definition also includes a list of types of offences or behaviours which are not conclusive of corrupt conduct, but could be corrupt conduct if the preconditions in the definition are met. To understand the full extent of the changes effected by the new definition of 'corrupt conduct', new sections 14 and 15 being inserted by the bill must be considered with other amendments to reduce the number of matters referred to, and investigated by, the CMC. These include amendments: raising the threshold of when public officials are to notify the Crime and Corruption Commission of suspected corrupt conduct from 'suspicion' to 'reasonable suspicion'; expanding the use of the section 40 directions issued by the CCC to agencies to ensure only the more serious corrupt conduct matters are referred to the CCC—as is currently the case, these directions will be developed in consultation with agencies and the Public Service Commission—requiring complaints to be in the form of a statutory declaration unless the commission decides that exceptional circumstances exist which warrant a waiver of this requirement; requiring the CCC to investigate only the more serious cases of corrupt conduct; making it easier for the CCC to dismiss or take no action on a complaint; and removing barriers that hinder prosecuting complainants of non-genuine complaints.

The government's goal is for Queensland's Public Service to be the most responsive and respected public service in the nation. To achieve better outcomes for Queenslanders, it is important that Public Service managers are empowered and that staff under their management or supervision have a clear understanding of the Public Service work performance and personal conduct principles. These longstanding principles recognise that Public Service employment involves public trust. They state that Public Service employment must be directed towards matters such as achieving excellence in service delivery; ensuring the effective, efficient and appropriate use of public resources; and carrying out duties impartially and with integrity. Both the Callinan and Aroney report and the Commission of Audit recommended reforms to refocus responsibility for conduct in public sector agencies to line managers and, ultimately, CEOs to be dealt with promptly.

The bill amends section 26 of the Public Service Act 2008 to make it clear that Public Service managers must take all reasonable steps to ensure each Public Service employee under their management is aware of these important work performance and personal conduct principles. In line with the accepted recommendations, the Public Service Commission has also developed a new conduct management model for the Queensland Public Service, the Conduct and Performance Excellence—CaPE—Service. CaPE's purpose is to promote and support excellence in the management of personal conduct and work 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 and standards for agencies' handling of these matters; and review individual cases as required, with the aim of building capability.

The CaPE Service closely aligns to the Public Service Commission's main statutory functions which include: enhancing the Public Service's human resource management and capability; enhancing and promoting an ethical culture and ethical decision making across the Public Service; and enhancing the Public Service's leadership and management capabilities in relation to disciplinary matters. 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 Crime and Corruption Commission to ensure matters are addressed effectively within the appropriate jurisdiction.

The bill also includes amendments to promote accountability and transparency of the commission's decision making and activities by: requiring parliamentary committee meetings with the CCC to be generally held in public, with appropriate exceptions where the parliamentary committee considers the nature of the information being discussed needs protection or may jeopardise ongoing investigations; and enlarging the powers of the Parliamentary Commissioner by allowing him or her 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 CCC in disciplinary matters.

The bill also addresses unrelated amendments arising from the CMC's investigation into allegations of official misconduct at the University of Queensland. Section 38 of the Crime and Misconduct Act currently obliges a public official, that is the head of a unit of public administration, to notify the CMC about official misconduct. The bill includes an amendment that requires agencies to develop a policy that sets out how the agency will manage a complaint that involves a public official of that agency and that such policy is to be developed in consultation with the CCC. This is in response to issues raised by the CMC in their September 2013 report, *An examination of suspected official misconduct at the University of Queensland*.

The bill also includes an amendment to section 58 of the Crime and Misconduct Act to allow the CCC to investigate a decision-making body of an agency when a judicial officer is a member of that decision-making body. This amendment is in response to issues raised by the parliamentary committee in their September 2013 Report No. 92: *Complaint about the CMC investigation into the University of Queensland* about the abovementioned CMC investigation into the University of Queensland.

The bill refocuses responsibility of conduct in public sector agencies to line managers and, ultimately, CEOs; and, most importantly, paves the way for the Crime and Corruption Commission to focus on major crime and serious corruption; and to become a highly efficient and effective major crime-fighting and serious corrupt conduct investigating organisation for the 21st century. I commend the bill to the House.

First Reading

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (3.46 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Mr DEPUTY SPEAKER (Mr Krause): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.

Portfolio Committee, Reporting Date

Hon. JP BLEIJIE (Kawana—LNP) (Attorney-General and Minister for Justice) (3.47 pm), by leave, without notice: I move—

That under the provisions of standing order 136 the Legal Affairs and Community Safety Committee report to the House on the Crime and Misconduct and Other Legislation Amendment Bill by 30 April 2014.