

EXPLANATORY MEMORANDUM

POLICE AMENDMENT BILL 2006

Part 1 – Preliminary matters

Clauses 1 and 2 provide, respectively, for the short title and commencement of the Act.

Part 2 – *Police Act 1892* amended

This Part creates new, and amends existing, provisions of the *Police Act 1892* in relation to Aboriginal police liaison officers.

Clause 3. The Act amended: - This identifies the Act amended by this Part.

Clause 4. Section 9 amended: - This enables the Commissioner of Police to make rules, orders and regulations for the general governance and discipline of Aboriginal police liaison officers in the same way the Commissioner currently can for members of the Police Force and police cadets.

Clause 5. Section 13 amended: - This brings Aboriginal police liaison officers under the existing provision that requires a member of the Police Force or special constable who is dismissed or ceases to hold office, to return police issue uniforms and equipment.

Clause 6. Section 15 repealed: - This section creates multiple offences that can only be committed by a member of the Police Force. These offences cover taking bribes, aiding a prisoner to escape, assaulting a superior officer and desertion. The maximum penalty for any of these offences is \$4000 and/or 12 months imprisonment.

This is an archaic provision that has been superseded by later laws. For example, section 82 of *The Criminal Code* provides a maximum penalty of 7 years imprisonment for bribery, section 318 of *The Criminal Code* provides a maximum penalty of 10 years imprisonment for assaulting a public officer and sections 147, 148 and 149 of *The Criminal Code* provide maximum penalties of three years imprisonment for offences relating to aiding an escapee.

This section was flagged for repeal without replacement in the proposed Police Administration Bill and it was decided that, rather than risk giving the provision some validity by amending it to incorporate Aboriginal police liaison officers, it should be repealed by this Bill.

Clause 7. Section 23 amended: - Section 23 details how police disciplinary offences are to be dealt with. It provides the powers to summons and examine witnesses under oath and sets the penalties that may be given. This clause amends section 23 to include Aboriginal police liaison officers as persons whose disciplinary offences can be investigated and dealt with under its provisions.

Further, in drafting these amendments, it was noted that subsection (7)(b), which provides an alternative means of recovering fines imposed on police officers or cadets where it is not possible to do so by deducting the money from the persons salary, was redundant. Subsection 7 provides that a fine imposed under section 23 may be recovered in like manner to a fine imposed by a Justice under this Act. This refers to a fine imposed for a criminal offence under the Police Act. However, the recovery of fines for criminal offences are now subject to the provisions of the *Fines, Penalties and Infringement Notice Enforcement Act 1994* and a disciplinary fine imposed by the Commissioner of Police does not fall within the scope of that Act. Accordingly, as an alternative the revised (7)(b) provides for a fine to be recovered in a court of competent jurisdiction as a debt to the State.

Clause 8. Section 33E amended: - Section 33E provides a right of appeal to the Police Appeal Board in relation to a disciplinary offence. This clause amends section 33E to provide this right of appeal to Aboriginal police liaison officers.

Clause 9. Section 33K amended: - This clause replaces the title Aboriginal aid with “Aboriginal police liaison officer” in the definition of a member of the Police Force for the purposes of *Police Act 1892*, Part IIB – Removal of members.

Clause 10. Part IIIA replaced – This clause repeals the current appointment provisions for Aboriginal police liaison officers and replaces them with contemporary provisions.

A number of legal opinions from the State Solicitor’s Office have advised that because the general definition of a ‘police officer’ in the *Interpretation Act 1984* does not include an Aboriginal police liaison officer, when a statute confers powers on a ‘police officer’ rather than a ‘member of the Police Force” it is likely that the powers, duties, obligations etc do not extend to an Aboriginal police liaison officer.

This clause clarifies that they have all of the powers, duties, obligations, authorisations exceptions and exemptions that a police officer or member of the Police Force has under any other written law unless this is limited by the Commissioner of Police in their instrument of appointment.

Part 3 – Other Acts amended

This Part consequentially amends various other Acts that refer to Aboriginal

aides to replace that redundant title with Aboriginal police liaison officer.

As advised previously in relation to clause 10, a number of legal opinions from the State Solicitor's Office have advised that it is likely that the powers, duties, obligations etc provided in written law to a police officer do not extend to an Aboriginal police liaison officer and this has been addressed in this Bill.

A similar problem has been identified in relation to special constables and this is addressed in the *Criminal Investigation (Consequential Provisions) Act 2006* that was recently passed by the Parliament, but has yet to come into effect.

In clarifying the powers duties etc that can be conferred on Aboriginal police liaison officers and special constables and to ensure legal interpretation issues do not re-occur, the means of allocating their powers, duties etc has been revamped. The Interpretation Act will specify that a police officer is a member of the Police Force appointed under Part 1 and the *Police Act 1892* will specify that both special constables and Aboriginal police liaison officers are deemed to have all the powers, duties etc given to a member of the Police Force or a police officer under any written law, but these powers, duties etc can be limited by the Commissioner of Police in the persons instrument of appointment. This power to limit the powers, duties etc of special constables and Aboriginal police liaison officers will override other Acts that define a police officer to include special constable and/or an Aboriginal police liaison officer.

Accordingly, the definitions of a police officer in these Acts will no longer serve any purpose once both this Bill and the *Criminal Investigation (Consequential Provisions) Act 2006* have been enacted.

Because the *Criminal Investigation (Consequential Provisions) Act 2006* is not scheduled to be proclaimed until well after the *Police Amendment Bill 2006* comes into operation, it will be necessary to do the consequential amendments in two stages. Firstly, as soon as the *Police Amendment Bill 2006* is enacted clauses 11 to 22 will consequentially amend other Acts to replace any references to an Aboriginal aide to with Aboriginal police liaison officer. This will include those reference contained in the definitions of police officer in those Acts that will become redundant once the *Criminal Investigation (Consequential Provisions) Act 2006* comes into effect. Secondly, clause 23 will be proclaimed after the *Criminal Investigation (Consequential Provisions) Act 2006* comes into effect and will repeal the redundant definitions from those other Acts.

Clause 11. *Corruption and Crime Commission Act 2003* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 12. *Court Security and Custodial Services Act 1999* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 13. *Industrial Relations Act 1979* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 14. *Juries Act 1957* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 15. *Occupational Safety and Health Act 1984* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 16. *Prisons Act 1981* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 17. *Protective Custody Act 2000* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 18. *Public Interest Disclosure Act 2003* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 19. *Spent Convictions Act 1988* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 20. *Superannuation and Family Benefits Act 1938* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 21. *Tobacco Products Control Act 2006* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 22. *Witness Protection (Western Australia) Act 1996* amended: - This clause replaces references in this Act to the redundant title Aboriginal aide with Aboriginal police liaison officer.

Clause 23. *Various Acts amended in relation to the definition of “police officer”*: - This clause deletes the definition of police officer from various Acts as these will become redundant when both this Bill and the *Criminal Investigation (Consequential Provisions) Act 2006* have come into effect.