



POLICE INTEGRITY BILL

1. Features of the PIA

The Police Integrity Act ('PIA') will re-establish the OPI under its own Act with some adjustments to OPI's objects and powers.

The PIA adopts 19 of the 22 recommendations made by the Special Investigations Monitor in his November 2007 report under s. 86ZM of the *Police Regulation Act 1958* ('PRA'). The main changes introduced by the PIA are as follows.

- The PIA introduces a regime of **drug and alcohol testing** for OPI personnel in certain circumstances. The testing regime is identical, essentially, to that to be introduced for Victoria Police members under recently passed amendments to the PRA. (s.30 - 37 PIA)
- The PIA introduces a new process whereby **legal representation** for witnesses can be arranged through the Department of Justice to ensure free, independent legal advice and representation. (s.75 - 77 PIA)
- The PIA allows for certain OPI staff to be authorised to possess, carry and use **defensive equipment and firearms**. (s.102 - 103 PIA)
- The PIA does away with the cumbersome certification process under the PRA connected with **abrogation of the privilege against self-incrimination**. Under the PIA, the privilege will be abrogated in all 'examinations'. The PIA will also clarify some issues surrounding legal professional privilege. (s. 69 - 74 PIA)
- The PIA clarifies procedures for resisting **production of sensitive OPI documents in response to subpoenas**. The new provisions create a class of documents called 'protected documents', and outlines procedures by which a court must deal with subpoenas requiring production of such documents. (s.104 - 111 PIA)

- The PIA corrects certain technical deficiencies that were present in OPI's search warrant provisions. (s. 87 - 101 PIA)

2. Commencement of PIA

2.1. Need for two-stage commencement

The PIA will have a two-stage commencement process.

This is necessary because the Commonwealth legislation governing OPI's telecommunications interception powers - the Telecommunication (Interception and Access) Act ('the TIA') - contains numerous references to the OPI as a creature of the PRA.

If the PIA were to commence before these references are amended, there may be questions about the validity of OPI's powers under the TIA. Although s. 10A of the *Acts Interpretation Act* (Cwth) provides that a reference in Commonwealth legislation to a State Act may be read as a reference to a re-enactment of that Act, rather than risk any question about OPI's TI powers, the commencement of the PIA is to be deferred until the necessary amendments are made to the TIA.

However, rather than defer all of the urgent reforms and additions until the Commonwealth amends the TIA, some amendments have been made to Part IVA of the PRA. When the Commonwealth has made the necessary amendments to the TIA, virtually the whole of Part IVA of the PRA will be repealed and the PIA will commence operation.

2.2. Commencement – Stage one

The PIA received Royal Assent on Tuesday 1 July 2008 and the new provisions inserted by the PIA into Part IVA commenced on 2 July 2008 [see s. 2 (1) PIA]. Those amendments provide for:

- the new procedures to deal with "protected documents" that have been subpoenaed. (new ss86KE-KK);
- introduction of specific penalties for **failure of witnesses to attend** and answer questions (s. 86PF);
- **legal assistance** for witnesses (s86VAA-VAC);

- **abrogation of privilege** against self-incrimination and clarification of some issues surrounding legal professional privilege (86VAD – 86VAI); and
- the correction to the technical defects in OPI's **powers of entry and search** (s. 86VB (1); s86VA – 86VO).

2.3. Commencement – Stage two

When the Commonwealth has made the necessary amendments to the TIA, the whole of Part IVA of the Police Regulation Act (with the exception of provisions relating to complaints) will be repealed and the PIA in its totality will come into operation (s. 2 (2) PIA). When this occurs, the provisions relating to **drug and alcohol testing and defensive equipment** will come into operation.

The full commencement of the PIA will also bring into force a number of other clarifying provisions.

3. Police, Major Crime and Whistleblowers Legislation Amendment Bill 2008

This omnibus bill contains a number of clarifying amendments to the *Police Integrity Act 2008*. The only provisions that need be mentioned are those which authorise the Director, Police Integrity to commence criminal proceedings in relation to any matter arising out of an investigation. This provision resolves doubt as to the functions of the Director in regard to the commencement of criminal proceedings.