

# **INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988 No. 35**

NEW SOUTH WALES



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**INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988**  
**No. 35**

NEW SOUTH WALES



**Act No. 35, 1988**

An Act to constitute the Independent Commission Against Corruption and to define its functions. [Assented to 6 July 1988]

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Independent Commission Against Corruption Act 1988.

**Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Definitions**

3. (1) In this Act—

“Assistant Commissioner” means an Assistant Commissioner for the Independent Commission Against Corruption;

“authorised justice” means—

(a) a Magistrate; or

(b) a justice of the peace employed in the Attorney General’s Department;

“Commission” means the Independent Commission Against Corruption constituted by this Act;

“Commissioner” means the Commissioner for the Independent Commission Against Corruption;

“conduct” includes neglect, failure and inaction;

“corrupt conduct” has the meaning given by Part 3;

“investigate” includes examine;

“investigation” means an investigation under this Act;

“Joint Committee” means the joint committee called the Committee on the Independent Commission Against Corruption, constituted under this Act;

“legal practitioner” means a barrister or solicitor of the Supreme Court;

“local government authority” means a council of a city, municipality or shire, a county council, an urban committee or a person or body exercising all or any of the functions of such a council or committee;

“officer of the Commission” means the Commissioner, an Assistant Commissioner, a member of the staff of the Commission or a person engaged to provide the Commission with services, information or advice under section 104;

“premises” includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not), and any part thereof;

“public authority” includes the following:

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- (a) a Government Department, Administrative Office or Teaching Service;
  - (b) a statutory body representing the Crown;
  - (c) a declared authority under the Public Service Act 1979;
  - (d) a person or body in relation to whom or to whose functions an account is kept of administration or working expenses, where the account—
    - (i) is part of the accounts prepared under the Public Finance and Audit Act 1983; or
    - (ii) is required by or under any Act to be audited by the Auditor-General; or
    - (iii) is an account with respect to which the Auditor-General has powers under any law; or
    - (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts if requested to do so by a Minister of the Crown;
  - (e) a local government authority;
  - (f) the Police Force;
  - (g) a body, or the holder of an office, declared by the regulations to be a body or office within this definition;
- “public official” means an individual having public official functions or acting in a public official capacity, and includes any of the following:
- (a) the Governor (whether or not acting with the advice of the Executive Council);
  - (b) a person appointed to an office by the Governor;
  - (c) a Minister of the Crown, a member of the Executive Council or a Parliamentary Secretary;
  - (d) a member of the Legislative Council or of the Legislative Assembly;
  - (e) a person employed by the President of the Legislative Council or the Speaker of the Legislative Assembly or both;
  - (f) a judge, a magistrate or the holder of any other judicial office (whether exercising judicial, ministerial or other functions);
  - (g) an officer or temporary employee of the Public Service or a Teaching Service;
  - (h) an individual who constitutes or is a member of a public authority;
  - (i) a person in the service of the Crown or of a public authority;
  - (j) an individual entitled to be reimbursed expenses, from a fund of which an account mentioned in paragraph (d) of the definition of “public authority” is kept, of attending meetings or carrying out the business of any body constituted by an Act;

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- (k) a member of the Police Force;
- (l) the holder of an office declared by the regulations to be an office within this definition;
- (m) an employee of or any person otherwise engaged by or acting for or on behalf of, or in the place of, or as deputy or delegate of, a public authority or any person or body described in any of the foregoing paragraphs;

“search warrant” means a search warrant issued under this Act;

“task force” includes a body of persons that is similar to a task force, however the body is described.

(2) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

## **PART 2—CONSTITUTION OF COMMISSION**

### **Commission**

4. (1) There is constituted by this Act a corporation with the corporate name of the Independent Commission Against Corruption.

(2) The Commission has the functions conferred or imposed on it by or under this or any other Act.

(3) The functions of the Commission are exercisable by the Commissioner, and any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, shall be taken to have been done by the Commission.

(4) A reference in this Act to a hearing before the Commission or anything done or omitted by, to or in relation to the Commission includes a reference to a hearing before, or a thing done or omitted by, to or in relation to, the Commissioner or another officer of the Commission having authority in the circumstances.

### **Commissioner**

5. (1) The Governor may appoint a Commissioner for the Independent Commission Against Corruption.

(2) The Commissioner has and may exercise the functions conferred or imposed on the Commissioner by or under this or any other Act.

### **Assistant Commissioners**

6. (1) The Governor may, with the concurrence of the Commissioner, appoint one or more Assistant Commissioners for the Independent Commission Against Corruption.

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(2) An Assistant Commissioner has and may exercise the functions conferred or imposed on an Assistant Commissioner by or under this or any other Act.

(3) An Assistant Commissioner shall assist the Commissioner, as the Commissioner requires.

**PART 3—CORRUPT CONDUCT****Corrupt conduct**

7. (1) For the purposes of this Act, corrupt conduct is any conduct which falls within the description of corrupt conduct in either or both of subsections (1) and (2) of section 8, but which is not excluded by section 9.

(2) Conduct comprising a conspiracy or attempt to commit or engage in conduct that would be corrupt conduct under section 8 (1) or (2) shall itself be regarded as corrupt conduct under section 8 (1) or (2).

(3) Conduct comprising such a conspiracy or attempt is not excluded by section 9 if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in that section.

**General nature of corrupt conduct**

8. (1) Corrupt conduct is—

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust; or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

(2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which involves any of the following matters:

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- (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition);
- (b) bribery;
- (c) blackmail;
- (d) obtaining or offering secret commissions;
- (e) fraud;
- (f) theft;
- (g) perverting the course of justice;
- (h) embezzlement;
- (i) election bribery;
- (j) election funding offences;
- (k) election fraud;
- (l) treating;
- (m) tax evasion;
- (n) revenue evasion;
- (o) currency violations;
- (p) illegal drug dealings;
- (q) illegal gambling;
- (r) obtaining financial benefit by vice engaged in by others;
- (s) bankruptcy and company violations;
- (t) harbouring criminals;
- (u) forgery;
- (v) treason or other offences against the Sovereign;
- (w) homicide or violence;
- (x) matters of the same or a similar nature to any listed above;
- (y) any conspiracy or attempt in relation to any of the above.

(3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.

(4) Conduct committed by or in relation to a person who was not or is not a public official may amount to corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.

(5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to—

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- (a) matters arising in the State or matters arising under the law of the State; or
- (b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.

(6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

**Limitation on nature of corrupt conduct**

9. (1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve—

- (a) a criminal offence; or
- (b) a disciplinary offence; or
- (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official.

(2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.

(3) For the purposes of this section—

“criminal offence” means a criminal offence under the law of the State or under any other law relevant to the conduct in question;

“disciplinary offence” includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

**Complaints about possible corrupt conduct**

10. (1) Any person may make a complaint to the Commission about a matter that concerns or may concern corrupt conduct.

(2) The Commission may investigate a complaint or decide that a complaint need not be investigated.

(3) The Commission may discontinue an investigation of a complaint.

**Duty to notify Commission of possible corrupt conduct**

11. (1) This section applies to the following officers:

- (a) the Ombudsman;
- (b) the Commissioner of Police;
- (c) the principal officer of a public authority;
- (d) an officer who constitutes a public authority.

(2) An officer to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct.

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(3) The Commission may issue guidelines as to what matters need or need not be reported.

(4) This section has effect despite any duty of secrecy or other restriction on disclosure.

(5) The regulations may prescribe who is the principal officer of a public authority, but in the absence of regulations applying in relation to a particular public authority, the principal officer is the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.

## **PART 4—FUNCTIONS OF COMMISSION**

### **Division 1—Functions generally**

#### **Public interest to be paramount**

12. In exercising its functions, the Commission shall regard the protection of the public interest and the prevention of breaches of public trust as its paramount concerns.

#### **Principal functions**

13. (1) The principal functions of the Commission are as follows:
- (a) to investigate any circumstances implying, or any allegations, that corrupt conduct may have occurred, may be occurring or may be about to occur;
  - (b) to investigate any conduct which, in the opinion of the Commission, is or was connected with or conducive to corrupt conduct;
  - (c) to communicate to appropriate authorities the results of its investigations;
  - (d) to examine the laws governing, and the practices and procedures of, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corrupt conduct;
  - (e) to instruct, advise and assist any public authority, public official or other person (on the request of the authority, official or person) on ways in which corrupt conduct may be eliminated;
  - (f) to advise public authorities or public officials of changes in practices or procedures compatible with the effective exercise of their functions which the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct;
  - (g) to co-operate with public authorities and public officials in reviewing laws, practices and procedures with a view to reducing the likelihood of the occurrence of corrupt conduct;



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- (h) to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct;
  - (i) to educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration;
  - (j) to enlist and foster public support in combating corrupt conduct.
- (2) The principal functions of the Commission also include the following:
- (a) to investigate any matter referred to the Commission by both Houses of Parliament, with a view to determining—
    - (i) whether any corrupt conduct may have occurred, may be occurring or may be about to occur; or
    - (ii) whether the laws governing, or the practices or procedures of, any public authority or public official need to be changed with a view to reducing the likelihood of the occurrence of corrupt conduct;
  - (b) to develop, arrange, supervise, participate in or conduct such educational or advisory programs as may be described in a reference made to the Commission by both Houses of Parliament.

**Other functions**

14. (1) Other functions of the Commission are as follows:
- (a) to assemble evidence that may be admissible in the prosecution of a person for a criminal offence against a law of the State in connection with corrupt conduct and to furnish any such evidence to the Director of Public Prosecutions;
  - (b) to furnish to the Attorney General other evidence obtained in the course of its investigations (being evidence that may be admissible in the prosecution of a person for a criminal offence against a law of another State, the Commonwealth or a Territory) and to recommend what action the Commission considers should be taken in relation to that evidence.
- (2) If the Commission obtains any information in the course of its investigations relating to the exercise of the functions of a public authority, the Commission may, if it considers it desirable to do so—
- (a) furnish that information or a report on that information to the Minister for the authority; and
  - (b) make to that Minister such recommendations (if any) relating to the exercise of the functions of the authority as the Commission considers appropriate.
- (3) If the Commission furnishes any evidence or information to a person under this section on the understanding that the information is confidential, the person is subject to the secrecy provisions of section 111 in relation to the information.

**Task forces**

15. The Commission may, in connection with its principal functions—
- (a) arrange for the establishment of task forces within the State; and
  - (b) seek the establishment of joint task forces with authorities of the Commonwealth or other States or Territories; and
  - (c) co-operate with State task forces, Commonwealth task forces, joint task forces or other task forces; and
  - (d) co-ordinate or co-operate in co-ordinating any such task forces.

**Co-operation with other agencies**

16. (1) In exercising its principal functions relating to the investigation of conduct, the Commission—

- (a) shall, as far as practicable, work in co-operation with law enforcement agencies; and
- (b) may work in co-operation with the Auditor-General, the Ombudsman, the National Crime Authority, the Australian Bureau of Criminal Intelligence and such other persons and bodies as the Commission thinks appropriate.

(2) In exercising its other principal functions, the Commission shall, as far as practicable, work in co-operation with the Auditor-General, educational institutions, management consultants and such other persons and bodies as the Commission thinks appropriate.

(3) The Commission may consult with and disseminate intelligence and information to law enforcement agencies, the National Crime Authority, the Australian Bureau of Criminal Intelligence and such other persons and bodies as the Commission thinks appropriate.

(4) If the Commission disseminates information to a person or body under this section on the understanding that the information is confidential, the person or body is subject to the secrecy provisions of section 111 in relation to the information.

(5) In this section—

“law enforcement agency” means—

- (a) the Police Force; or
- (b) a police force of another State or Territory; or
- (c) the Australian Federal Police; or
- (d) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of the State, another State or a Territory.

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**Evidence and procedure**

17. (1) The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.

(2) The Commission shall exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission shall accept written submissions as far as is possible and hearings shall be conducted with as little emphasis on an adversarial approach as is possible.

**Court proceedings**

18. (1) The Commission may do any or all of the following:

- (a) commence, continue, discontinue or complete any investigation;
- (b) furnish reports in connection with any investigation;
- (c) do all such acts and things as are necessary or expedient for those purposes,

despite any proceedings that may be in or before any court, tribunal, warden, coroner, Magistrate, justice of the peace or other person.

(2) If the Commission does any of the things mentioned in subsection (1)—

- (a) the Commission shall, as far as practicable, ensure that any hearing or other matters relating to the investigation are conducted in private during the currency of the proceedings (so far as the hearing or other matters relate to or affect the subject-matter of the proceedings); and
- (b) the Commission shall, as far as practicable, give such directions (having effect during the currency of the proceedings) under section 112 as will avoid prejudice to any person affected by the proceedings; and
- (c) the Commission shall defer making any report to Parliament in relation to the investigation during the currency of the proceedings.

(3) This section has effect whether or not the proceedings commenced before or after the relevant investigation commenced and has effect whether or not the Commission or an officer of the Commission is a party to the proceedings.

**Incidental powers**

19. (1) The Commission has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions, and any specific powers conferred on the Commission by this Act shall not be taken to limit by implication the generality of this section.

(2) The Commission or an officer of the Commission may seek the issue of a warrant under the Listening Devices Act 1984.

**Division 2—Investigations****Investigations generally**

20. (1) The Commission may conduct an investigation on its own initiative, on a complaint made to it, on a report made to it or on a reference made to it.

(2) The Commission may conduct an investigation even though no particular public official or other person has been implicated.

(3) The Commission may, in considering whether or not to conduct, continue or discontinue an investigation (other than in relation to a matter referred by both Houses of Parliament), have regard to such matters as it thinks fit, including whether or not (in the Commission's opinion)—

- (a) the subject-matter of the investigation is trivial; or
- (b) the conduct concerned occurred at too remote a time to justify investigation; or
- (c) if the investigation was initiated as a result of a complaint—the complaint was frivolous, vexatious or not in good faith.

(4) Before deciding whether to discontinue or not to commence an investigation of a complaint, the Commission must consult the Operations Review Committee in relation to the matter.

**Power to obtain information**

21. (1) For the purposes of an investigation, the Commission may, by notice in writing served on a public authority or public official, require the authority or official to produce a statement of information.

(2) A notice under this section must specify or describe the information concerned, must fix a time and date for compliance and must specify the person (being the Commissioner or an Assistant Commissioner) to whom the production is to be made.

(3) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the public authority or public official and may, but need not, specify the person or class of persons who may so act.

**Power to obtain documents etc.**

22. (1) For the purposes of an investigation, the Commission may, by notice in writing served on a person (whether or not a public authority or public official), require the person—

- (a) to attend, at a time and place specified in the notice, before a person (being the Commissioner or an Assistant Commissioner) specified in the notice; and
- (b) to produce at that time and place to the person so specified a document or other thing specified in the notice.

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(2) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the person on whom it was imposed and may, but need not, specify the person or class of persons who may so act.

**Power to enter public premises**

23. (1) For the purposes of an investigation, the Commissioner or an officer of the Commission authorised in writing by the Commissioner may, at any time—

- (a) enter and inspect any premises occupied or used by a public authority or public official in that capacity; and
- (b) inspect any document or other thing in or on the premises; and
- (c) take copies of any document in or on the premises.

(2) Subsection (1) does not authorise the inspection of a document or thing, or the taking of copies of a document, so far as the document or thing concerns the relationship between the State Bank or the Government Insurance Office and a client of that Bank or Office.

(3) The public authority or public official shall make available to the Commissioner or authorised officer such facilities as are necessary to enable the powers conferred by this section to be exercised.

**Privilege as regards information, documents etc.**

24. (1) This section applies where, under section 21 or 22, the Commission requires any person—

- (a) to produce any statement of information; or
- (b) to produce any document or other thing.

(2) The Commission shall set aside the requirement if it appears to the Commission that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commission that the person consents to compliance with the requirement.

(3) The person must however comply with the requirement despite—

- (a) any rule which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest; or
- (b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

**Privilege as regards entry on public premises**

25. (1) This section applies to the powers of entry, inspection and copying conferred by section 23.

(2) The powers shall not be exercised if it appears to the Commissioner or authorised officer that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist inspection of the premises or production of the document or other thing and it does not appear to the Commissioner or authorised officer that the person consents to the inspection or production.

(3) The powers may however be exercised despite—

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or other thing on grounds of public interest; or
- (b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

**Self-incrimination**

26. (1) This section applies where, under section 21 or 22, the Commission requires any person—

- (a) to produce any statement of information; or
- (b) to produce any document or other thing.

(2) If the statement, document or other thing tends to incriminate the person and the person objects to production at the time, neither the fact of the requirement nor the statement, document or thing itself (if produced) may be used in any proceedings against the person (except proceedings for an offence against this Act).

(3) They may however be used for the purposes of the investigation concerned, despite any such objection.

**Injunctions**

27. The Supreme Court may, on application made by the Commission, grant an injunction restraining any conduct in which a person (whether or not a public authority or public official) is engaging or in which such a person appears likely to engage, if the conduct is the subject of, or affects the subject of, an investigation or proposed investigation by the Commission.

**Provisions relating to injunctions**

28. (1) The Supreme Court shall not grant an injunction under section 27 unless it is of the opinion that—

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- (a) the conduct sought to be restrained is likely to impede the conduct of the investigation or proposed investigation; or
- (b) it is necessary to restrain the conduct in order to prevent irreparable harm being done because of corrupt conduct or suspected corrupt conduct.

(2) The Commission shall not be required, as a condition for the granting of an injunction under section 27, to give any undertaking as to damages.

**Powers exercisable whether or not hearings being held**

29. Powers may be exercised under this Division in relation to an investigation whether or not a hearing before the Commission is being held for the purposes of the investigation.

**Division 3—Hearings**

**Hearings**

30. (1) For the purposes of an investigation, the Commission may hold hearings.

(2) A hearing shall be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner.

(3) At each hearing, the person presiding shall announce the general scope and purpose of the hearing.

(4) A person appearing before the Commission at a hearing is entitled to be informed of the general scope and purpose of the hearing.

**Public and private hearings**

31. (1) A hearing shall be held in public, unless the Commission directs that the hearing be held in private.

(2) If the Commission directs that a hearing be held in private, the Commission may give directions as to the persons who may be present at the hearing.

(3) At a hearing that is held in public, the Commission may direct that the hearing or a part of the hearing be held in private and give directions as to the persons who may be present.

(4) The Commission shall not give a direction under this section that a hearing or part of a hearing be held in private unless it is satisfied that it is desirable to do so in the public interest for reasons connected with the subject-matter of the investigation or the nature of the evidence to be given.

**Right of appearance of affected person**

32. If it is shown to the satisfaction of the Commission that any person is substantially and directly interested in any subject-matter of a hearing, the Commission may authorise the person to appear at the hearing or a specified part of the hearing.

**Legal representation**

33. (1) The Commission may, in relation to a hearing, authorise—

- (a) a person giving evidence at the hearing; or

(b) a person referred to in section 32,  
to be represented by a legal practitioner at the hearing or a specified part  
of the hearing.

(2) The Commission is required to give a reasonable opportunity for a  
person giving evidence at the hearing to be legally represented.

(3) A legal practitioner appointed by the Commission to assist it may  
appear before the Commission.

#### **Examination and cross-examination**

34. (1) A legal practitioner appointed by the Commission to assist it,  
or a person or a person's legal practitioner authorised to appear at a hearing,  
may, with the leave of the Commission, examine or cross-examine any  
witness on any matter that the Commission considers relevant.

(2) Any witness so examined or cross-examined has the same protection  
and is subject to the same liabilities as if examined by the Commissioner  
or an Assistant Commissioner.

#### **Power to summon witnesses and take evidence**

35. (1) The Commissioner may summon a person to appear before the  
Commission at a hearing at a time and place named in the summons—

(a) to give evidence; or

(b) to produce such documents or other things (if any) as are referred  
to in the summons,

or both.

(2) The person presiding at a hearing before the Commission may require  
a person appearing at the hearing to produce a document or other thing.

(3) The Commission may, at a hearing, take evidence on oath or  
affirmation and for that purpose—

(a) the person presiding at the hearing may require a person appearing  
at the hearing to give evidence either to take an oath or to make an  
affirmation in a form approved by the person presiding; and

(b) the person presiding, or a person authorised for the purpose by the  
person presiding, may administer an oath or affirmation to a person  
so appearing at the hearing.

(4) A witness who has been summoned to attend before the Commission  
shall appear and report himself or herself from day to day unless the witness  
is excused from attendance or until the witness is released from further  
attendance by the person presiding at the hearing.

(5) A person who, without being so excused or released, fails to appear  
and report shall be taken to have failed to appear before the Commission  
in obedience to the summons.



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**Arrest of witness**

**36. (1)** If a person served with a summons to attend the Commission as a witness fails to attend in answer to the summons, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness.

**(2)** If the Commissioner is satisfied by evidence on oath or affirmation that it is probable that a person whose evidence is desired and is necessary and relevant to an investigation under this Act—

- (a) will not attend before the Commission to give evidence without being compelled to do so; or
- (b) is about to or is making preparations to leave the State and the person's evidence will not be obtained by the Commission if the person departs,

the Commissioner may issue a warrant for the arrest of the person.

**(3)** The Commissioner is authorised to administer an oath or affirmation for the purposes of subsection (2).

**(4)** A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.

**(5)** A warrant may be issued under subsection (2) after the issue of a summons to the person whose evidence is desired, even though the time named in the summons for the person to attend has not yet passed.

**(6)** A warrant under this section authorises the arrest of the witness and his or her being promptly brought before the Commission and detained in custody for that purpose until released by order of the Commissioner.

**(7)** A warrant issued under this section may be executed by any member of the Police Force, or by any person to whom it is addressed, and the person executing it may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.

**(8)** The issue of a warrant or the arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with a summons.

**Privilege as regards answers, documents etc.**

**37. (1)** A witness summoned to attend or appearing before the Commission at a hearing is not entitled to refuse—

- (a) to be sworn or to make an affirmation; or
- (b) to answer any question relevant to an investigation put to the witness by the Commissioner or other person presiding at a hearing; or
- (c) to produce any document or other thing in the witness's custody or control which the witness is required by the summons or by the person presiding to produce.

(2) A witness summoned to attend or appearing before the Commission at a hearing is not excused from answering any question or producing any document or other thing on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground.

(3) An answer made, or document or other thing produced, by a witness at a hearing before the Commission is not (except as otherwise provided in this section) admissible in evidence against the person in any civil or criminal proceedings or in any disciplinary proceedings.

(4) Nothing in this section makes inadmissible—

- (a) any answer, document or other thing in proceedings for an offence against this Act or in proceedings for contempt under this Act; or
- (b) any answer, document or other thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (2); or
- (c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.

#### **Declaration as to objections by witness**

38. The Commissioner or person presiding at the hearing may declare that all or any classes of answers given by a witness or that all or any classes of documents or other things produced by a witness will be regarded as having been given or produced on objection by the witness, and there is accordingly no need for the witness to make an objection in respect of each such answer, document or other thing.

#### **Attendance of prisoner before Commission**

39. (1) If the Commissioner requires the attendance at a hearing before the Commission of a prisoner, the Commissioner may, by order in writing served on the governor of the prison in whose custody the prisoner is, direct the governor to produce the prisoner, or have the prisoner produced, at the time and place stated in the order.

(2) Such an order is sufficient authority to the governor of the prison for producing or having produced the prisoner, who shall be produced accordingly.

(3) A prisoner shall, when produced under this section in the actual custody of the governor of the prison, a prison officer or a member of the Police Force, be taken to be in lawful custody.

(4) The governor, prison officer or member of the Police Force shall in due course return the prisoner to the prison.

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(5) In this section, “governor of a prison”, “prison” and “prisoner” have the same meanings as in the Prisons Act 1952.

**Division 4—Search warrants****Issue of search warrant**

40. (1) An authorised justice to whom an application is made under subsection (4) may issue a search warrant if satisfied that there are reasonable grounds for doing so.

(2) The Commissioner, on application made to the Commissioner under subsection (4), may issue a search warrant if the Commissioner thinks fit in the circumstances and if satisfied that there are reasonable grounds for doing so.

(3) Search warrants should, as far as practicable, be issued by authorised justices, but nothing in this subsection affects the discretion of the Commissioner to issue them.

(4) An officer of the Commission may apply to an authorised justice or the Commissioner for a search warrant if the officer has reasonable grounds for believing that there is in or on any premises a document or other thing connected with any matter that is being investigated under this Act or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises.

**Authority conferred by warrant**

41. (1) A search warrant authorises any member of the Police Force, or any other person, named in the warrant—

- (a) to enter the premises; and
- (b) to search the premises for documents or other things connected with any matter that is being investigated under this Act; and
- (c) to seize any such documents or other things found in or on the premises and deliver them to the Commission.

(2) A member of the Police Force executing a search warrant may search a person found in or on the premises whom the member of the Police Force reasonably suspects of having a document or other thing mentioned in the warrant.

**Duty to show warrant**

42. A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

**Use of force**

43. (1) A person authorised to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

(2) A person authorised to enter premises under a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of the search.

**Use of assistants to execute warrant**

44. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

**Execution of warrant by day or night**

45. (1) A search warrant may be executed by day, but shall not be executed by night unless the person issuing the warrant, by the warrant, authorises its execution by night.

(2) In this section—

“by day” means during the period between 6 a.m. and 9 p.m. on any day;

“by night” means during the period between 9 p.m. on any day and 6 a.m. on the following day.

**Expiry of warrant**

46. A search warrant ceases to have effect—

- (a) one month after its issue; or
- (b) if it is withdrawn by the person who issued the warrant; or
- (c) when it is executed,

whichever first occurs.

**Seizure pursuant to warrant—special provisions**

47. (1) If, in the course of searching, in accordance with the terms of a search warrant, for documents or other things—

- (a) the person executing the warrant finds a document or other thing that the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an indictable offence against the law of the Commonwealth, a State or a Territory; and
- (b) the first-mentioned person believes on reasonable grounds that it is necessary to seize the document or other thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence,

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that person may seize the document or other thing and, if it is so seized, it shall be taken, for the purposes of this Act, to have been seized pursuant to the warrant.

- (2) If a document or other thing is seized pursuant to a search warrant—
  - (a) the Commission may retain the document or other thing if, and for so long as, its retention by the Commission is reasonably necessary for the purposes of an investigation to which it is relevant; and
  - (b) if the retention of the document or other thing by the Commission is not, or ceases to be, reasonably necessary for such purposes, the Commission shall cause it to be delivered to—
    - (i) the person who appears to the Commission to be entitled to possession of the document or other thing; or
    - (ii) the Attorney General or the Director of Public Prosecutions, with a recommendation as to what action should be taken in relation to the document or other thing.

**Application of provisions of the Search Warrants Act 1985**

**48. (1)** Part 3 of the Search Warrants Act 1985 (other than sections 16–20) applies to a search warrant issued under this Act.

(2) Part 3 of the Search Warrants Act 1985 so applies as if references in that Part to an authorised justice to whom an application for a search warrant is made or by whom a search warrant is issued included (where relevant) references to the Commissioner, where such an application is made to the Commissioner or a search warrant is issued by the Commissioner.

**Division 5—Miscellaneous****Indemnities and undertakings**

**49. (1)** The Commission may recommend to the Attorney General that a person be granted (under section 13 of the Criminal Procedure Act 1986) an indemnity from prosecution.

(2) The Commission may recommend to the Attorney General that a person be given (under section 14 of the Criminal Procedure Act 1986) an undertaking that—

- (a) an answer, statement or disclosure in proceedings before the Commission; or
- (b) the fact of a disclosure or production of a document in proceedings before the Commission,

will not be used in evidence against the person.

(3) Section 14 of the Criminal Procedure Act 1986 applies in relation to proceedings before the Commission in the same way as it applies in relation to proceedings for an offence.

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(4) A reference in this section to proceedings before the Commission includes a reference to a hearing before the Commission or any other investigative activity involving the Commission or an officer of the Commission.

**Protection of witnesses**

50. If it appears to the Commissioner that, because a person—

- (a) has appeared, is appearing or is to appear at a hearing before the Commission to give evidence or to produce a document or other thing; or
- (b) has produced or proposes to produce a document or other thing to the Commission under this Act otherwise than at a hearing before the Commission; or
- (c) has assisted, is assisting or is to assist the Commission in some other manner,

the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary to avoid prejudice to the safety of any such person or to protect any such person from intimidation or harassment.

**Reimbursement of expenses of witnesses**

51. A witness appearing before the Commission shall be paid, out of money provided by Parliament, in respect of the expenses of the witness's attendance an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the Commission determines.

**Legal and financial assistance**

52. (1) A witness who is appearing or is about to appear before the Commission may make an application to the Attorney General for the provision of assistance under this section in respect of the witness's appearance.

(2) If an application is made by a person under this section, the Attorney General may, if satisfied that—

- (a) it would involve substantial hardship to the person to refuse the application; or
- (b) the circumstances of the case are of such a special nature that the application should be granted,

authorise, out of money provided by Parliament, the provision to that person, either unconditionally or subject to such conditions as the Attorney General determines, of such legal or financial assistance in respect of the appearance of that person before the Commission as the Attorney General determines.

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**PART 5—REFERRAL OF MATTERS BY COMMISSION****Referral of matter**

53. (1) The Commission may, before or after investigating a matter (whether or not the investigation is completed, and whether or not the Commission has made any findings), refer the matter for investigation or other action to any person or body considered by the Commission to be appropriate in the circumstances.

(2) The person or body to whom a matter is referred is called in this Part a “relevant authority”.

(3) The Commission may, when referring a matter, recommend what action should be taken by the relevant authority and the time within which it should be taken.

(4) The Commission may communicate to the relevant authority any information which the Commission has obtained during the investigation of conduct connected with the matter.

(5) The Commission shall not refer a matter to a person or body except after appropriate consultation with the person or body and after taking into consideration the views of the person or body.

(6) If the Commission communicates information to a person or body under this section on the understanding that the information is confidential, the person or body is subject to the secrecy provisions of section 111 in relation to the information.

**Report to Commission**

54. (1) The Commission may, when referring a matter under this Part, require the relevant authority to submit to the Commission a report or reports in relation to the matter and the action taken by the relevant authority.

(2) A report shall be of such a nature as the Commission directs.

(3) A report shall be submitted to the Commission within such time as the Commission directs.

**Further action by Commission**

55. (1) If the Commission is not satisfied that a relevant authority has duly and properly taken action in connection with a matter referred under this Part, the Commission shall inform the relevant authority of the grounds of the Commission’s dissatisfaction and shall give the relevant authority an opportunity to comment within a specified time.

(2) If, after considering any comments received from the relevant authority within the specified time, the Commission is still not satisfied, the Commission may submit a report to the Minister for the relevant authority setting out the recommendation concerned and the grounds of dissatisfaction, together with any comments from the relevant authority and the Commission.

(3) If, after considering any comments received from the Minister for the authority within 21 days after the report was submitted to that Minister under subsection (2), the Commission is still of the opinion that the recommendation should be adopted, the Commission may make a report as referred to in section 77.

#### **Responsibility of relevant authority**

56. It is the duty of a relevant authority to comply with any requirement or direction of the Commission under this Part.

#### **Revocation of referral, recommendation etc.**

57. (1) The Commission may revoke a referral under this Part.

(2) The Commission may revoke or vary a recommendation, requirement or direction of the Commission under this Part.

(3) The Commission may vary any time within which a requirement under this Part is to be complied with.

### **PART 6—OPERATIONS REVIEW COMMITTEE**

#### **Constitution of Operations Review Committee**

58. There is constituted by this Act an Operations Review Committee.

#### **Functions**

59. (1) The functions of the Operations Review Committee are as follows:

- (a) to advise the Commissioner whether the Commission should investigate a complaint made under this Act or discontinue an investigation of such a complaint;
- (b) to advise the Commissioner on such other matters as the Commissioner may from time to time refer to the Committee.

(2) The Commissioner shall consult with the Committee on a regular basis, and at least once every 3 months.

#### **Membership**

60. (1) The Operations Review Committee shall consist of 8 members, being the following:



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- (a) the Commissioner, who shall be Chairperson of the Committee;
  - (b) an Assistant Commissioner, nominated by the Commissioner;
  - (c) the Commissioner of Police;
  - (d) a person appointed by the Governor on the recommendation of the Attorney General and with the concurrence of the Commissioner;
  - (e) 4 persons appointed by the Governor on the recommendation of the Minister and with the concurrence of the Commissioner, to represent community views.
- (2) Schedule 2 applies to the appointed members.

**Procedure**

61. (1) The procedure for the calling of meetings of the Operations Review Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.

(2) The Chairperson shall call the first meeting of the Operations Review Committee in such manner as the Chairperson thinks fit.

(3) At a meeting of the Operations Review Committee, 5 members constitute a quorum, of whom one must be the Commissioner or Assistant Commissioner.

(4) The Chairperson or, in the absence of the Chairperson, the member who is an Assistant Commissioner shall preside at a meeting of the Operations Review Committee.

(5) The person presiding at a meeting of the Operations Review Committee shall, in relation to the meeting, have all the functions of the Chairperson.

(6) The Chairperson or person presiding at a meeting of the Operations Review Committee shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(7) A question arising at a meeting of the Operations Review Committee shall be determined by a majority of the members present and voting.

**Disclosure of interests**

62. (1) A member of the Operations Review Committee who has a direct or indirect interest—

- (a) in a matter being considered or about to be considered at a meeting of the Committee; or
- (b) in a thing being done or about to be done by the Committee,

shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.

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(2) A disclosure by a member at a meeting of the Operations Review Committee that the member—

- (a) is a member, or is in the employment, of a specified company or other body; or
- (b) is a partner, or is in the employment, of a specified person; or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) After a member has disclosed the nature of an interest in any matter or thing, the member shall not, unless the Operations Review Committee or (with the concurrence of the Commissioner) the Minister otherwise determines—

- (a) be present during any deliberation of the Committee, or take part in any decision of the Committee, with respect to that matter; or
- (b) exercise any function under this Act with respect to that thing.

(4) A contravention of this section does not invalidate any decision of the Operations Review Committee or the exercise of any function under this Act.

## **PART 7—PARLIAMENTARY JOINT COMMITTEE**

### **Constitution of Joint Committee**

63. As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Independent Commission Against Corruption, shall be appointed.

### **Functions**

64. (1) The functions of the Joint Committee are as follows:

- (a) to monitor and to review the exercise by the Commission of its functions;
- (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
- (c) to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;

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- (d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission;
  - (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this Part authorises the Joint Committee—
- (a) to investigate a matter relating to particular conduct; or
  - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
  - (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.

**Membership**

65. (1) The Joint Committee shall consist of 9 members, of whom—

- (a) 3 shall be members of, and appointed by, the Legislative Council; and
- (b) 6 shall be members of, and appointed by, the Legislative Assembly.

(2) The appointment of members of the Joint Committee shall, as far as practicable, be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.

(3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

**Vacancies**

66. (1) A member of the Joint Committee ceases to hold office—

- (a) when the Legislative Assembly is dissolved or expires by the effluxion of time; or
- (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary; or
- (c) if the member ceases to be a member of the Legislative Council or Legislative Assembly; or
- (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council; or
- (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly; or

- (f) if the member is discharged from office by the House of Parliament to which the member belongs.

(2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Joint Committee appointed by that House.

#### **Chairman and Vice-Chairman**

67. (1) There shall be a Chairman and a Vice-Chairman of the Joint Committee, who shall be elected by and from the members of the Joint Committee.

(2) A member of the Joint Committee ceases to hold office as Chairman or Vice-Chairman of the Joint Committee if—

- (a) the member ceases to be a member of the Committee; or
- (b) the member resigns the office by instrument in writing presented to a meeting of the Committee; or
- (c) the member is discharged from office by the Committee.

(3) At any time when the Chairman is absent from New South Wales or is, for any reason, unable to perform the duties of Chairman or there is a vacancy in that office, the Vice-Chairman may exercise the functions of the Chairman under this Act or under the Parliamentary Evidence Act 1901.

#### **Procedure**

68. (1) The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.

(2) The Clerk of the Legislative Assembly shall call the first meeting of the Joint Committee in each Parliament in such manner as the Clerk thinks fit.

(3) At a meeting of the Joint Committee, 5 members constitute a quorum, but the Committee shall meet as a joint committee at all times.

(4) The Chairman or, in the absence of the Chairman, the Vice-Chairman or, in the absence of both the Chairman and the Vice-Chairman, a member of the Joint Committee elected to chair the meeting by the members present shall preside at a meeting of the Joint Committee.

(5) The Vice-Chairman or other member presiding at a meeting of the Joint Committee shall, in relation to the meeting, have all the functions of the Chairman.

(6) The Chairman, Vice-Chairman or other member presiding at a meeting of the Joint Committee shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

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(7) A question arising at a meeting of the Joint Committee shall be determined by a majority of the votes of the members present and voting.

(8) The Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.

(9) The Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

**Evidence**

69. (1) The Joint Committee shall have power to send for persons, papers and records.

(2) Subject to section 70, the Joint Committee shall take all evidence in public.

(3) Where the Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence.

(4) The production of documents to the Joint Committee shall be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.

**Confidentiality**

70. (1) Where any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or producing the document shall—

- (a) take the evidence in private; or
- (b) direct that the document, or the part of the document, be treated as confidential.

(2) Where a direction under subsection (1) applies to a document or part of a document produced in evidence to the Joint Committee, the contents of the document or part shall, for the purposes of this section, be taken to be evidence given by the person producing the document and taken by the Committee in private.

(3) Where, at the request of a witness, evidence is taken by the Joint Committee in private—

- (a) the Committee shall not, without the consent in writing of the witness; and

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- (b) a person (including a member of the Committee) shall not, without the consent in writing of the witness and the authority of the Committee under subsection (5),

disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (4) Where evidence is taken by the Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) shall not, without the authority of the Committee under subsection (5), disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (5) The Joint Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chairman, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (3).

- (6) Nothing in this section prohibits—

- (a) the disclosure or publication of evidence that has already been lawfully published; or
- (b) the disclosure or publication by a person of a matter of which the person has become aware other than by reason, directly or indirectly, of the giving of evidence before the Joint Committee.

- (7) This section has effect despite section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975.

- (8) Where evidence taken by the Joint Committee in private is disclosed or published in accordance with this section—

- (a) sections 5 and 6 of the Parliamentary Papers (Supplementary Provisions) Act 1975 apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act; and
- (b) Division 5 of Part 3 of, and Schedule 2 to, the Defamation Act 1974 apply to and in relation to that evidence as if it were taken by the Committee in public.

**Application of certain Acts etc.**

71. For the purposes of the Parliamentary Evidence Act 1901 and the Parliamentary Papers (Supplementary Provisions) Act 1975 and for any other purposes—

- (a) the Joint Committee shall be taken to be a joint committee of the Legislative Council and Legislative Assembly; and

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- (b) the proposal for the appointment of the Joint Committee shall be taken to have originated in the Legislative Assembly.

**Validity of certain acts or proceedings**

72. Any act or proceeding of the Joint Committee is, even though at the time when the act or proceeding was done, taken or commenced there was—

- (a) a vacancy in the office of a member of the Committee; or
- (b) any defect in the appointment, or any disqualification, of a member of the Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

**PART 8—REFERENCES BY AND REPORTS TO PARLIAMENT****References by Parliament**

73. (1) Both Houses of Parliament may, by resolution of each House, refer to the Commission any matter of the kind mentioned in section 13 (2).

(2) It is the duty of the Commission to fully investigate a matter referred to in section 13 (2) (a).

(3) It is the duty of the Commission to comply as fully as possible with any directions contained in a reference of a matter referred to in section 13 (2) (b).

(4) Both Houses of Parliament may, by resolution of each House, amend or revoke a reference made under this section.

**Reports on referred matters etc.**

74. (1) The Commission may prepare reports in relation to any matter that has been or is the subject of an investigation.

(2) The Commission shall prepare reports in relation to a matter referred to the Commission by both Houses of Parliament, as directed by those Houses.

(3) The Commission shall prepare reports in relation to matters as to which the Commission has conducted a public hearing, unless the Houses of Parliament have given different directions under subsection (2).

(4) The Commission shall furnish reports prepared under this section to the Presiding Officer of each House of Parliament.

(5) A report may include a statement of the Commission's findings as to whether there is or was any evidence or sufficient evidence warranting consideration of—

- (a) the prosecution of a specified person for a specified offence; or
- (b) the taking of action against a specified person for a specified disciplinary offence; or
- (c) the taking of action against a specified public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

(6) A report shall include such a statement in relation to the persons substantially and directly interested in the subject-matter of the investigation concerned or persons named in the reference made by both Houses of Parliament.

(7) A report required under this section shall be furnished as soon as possible after the Commission has concluded its involvement in the matter.

(8) The Commission may defer making a report under this section if it is satisfied that it is desirable to do so in the public interest, except as regards a matter referred to the Commission by both Houses of Parliament.

(9) In determining whether it is desirable in the public interest to defer making a report under this section, the Commission shall have regard as to whether or not the matter is before a court.

#### **Special reports**

75. The Commission may, at any time, make a special report to the Presiding Officer of each House of Parliament on any administrative or general policy matter relating to the functions of the Commission.

#### **Annual reports**

76. (1) The Commission shall, within the period of 4 months after each 30 June, prepare a report of its operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.

(2) A report by the Commission under this section in relation to a year shall include the following:

- (a) a description of the matters that were referred to the Commission;
- (b) a description of the matters investigated by the Commission;
- (c) any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made as a result of the exercise of its functions;
- (d) the general nature and extent of any information furnished under this Act by the Commission during the year to a law enforcement agency;
- (e) the extent to which its investigations have resulted in prosecutions or disciplinary action in that year;



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- (f) the number of search warrants issued by authorised justices and the Commissioner respectively under this Act in that year;
- (g) a description of its activities during that year in relation to its educating and advising functions.

**Reports relating to authorities**

77. (1) The Commission may furnish to the Presiding Officer of each House of Parliament a report setting out a recommendation referred to in section 55 which it is of the opinion should be adopted and the reasons for its opinion.

(2) Such a report shall not be furnished until after the period of 21 days referred to in section 55 (3) has passed.

**Provisions relating to reports**

78. (1) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Part shall be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.

(2) The Commission may include in a report a recommendation that the report be made public forthwith.

(3) If a report includes a recommendation by the Commission that the report be made public forthwith, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.

(4) If such a report is made public by the Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.

(5) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

**References to Presiding Officers**

79. (1) References in this Part to a Presiding Officer are references to the President of the Legislative Council or the Speaker of the Legislative Assembly.

(2) If there is a vacancy in the office of President, the reference to the President shall be taken to be a reference to the Clerk of the Legislative Council.

(3) If there is a vacancy in the office of Speaker, the reference to the Speaker shall be taken to be a reference to the Clerk of the Legislative Assembly.

**PART 9—CERTAIN OFFENCES****Obstruction of Commission**

**80.** A person shall not—

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Commission or an officer of the Commission in the exercise of functions under this Act; or
- (b) without reasonable excuse, refuse or wilfully fail to comply with any lawful requirement of the Commission or an officer of the Commission under this Act; or
- (c) wilfully make any false statement to or mislead, or attempt to mislead, the Commission or an officer of the Commission in the exercise of functions under this Act; or
- (d) disrupt a hearing before the Commission.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

**Complaints about possible corrupt conduct**

**81.** A person shall not, in making a complaint under this Act, wilfully make any false statement to or mislead, or attempt to mislead, the Commission or an officer of the Commission.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

**Offences relating to obtaining information**

**82.** A person shall not—

- (a) without reasonable excuse, fail to comply with a notice served on the person under section 21; or
- (b) in purported compliance with a notice served on the person or some other person under that section, knowingly furnish information that is false or misleading.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

**Offences relating to obtaining documents etc.**

**83.** A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under section 22.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

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**Obstruction of person executing search warrant**

**84.** A person shall not, without reasonable excuse, obstruct or hinder a person executing a search warrant.

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

**Public and private hearings**

**85.** A person who is present at a hearing in contravention of section 31 is guilty of an offence.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

**Failure to attend etc.**

**86. (1)** A person summoned to attend or appearing before the Commission at a hearing shall not, without reasonable excuse, fail—

- (a) to attend before the Commission in accordance with the summons; or
- (b) to be sworn or to make an affirmation; or
- (c) to answer any question relevant to an investigation put to the person by the Commissioner or other person presiding at the hearing; or
- (d) to produce any document or other thing in the person's custody or control which the person is required by the summons or by the person presiding to produce.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

**(2)** It is a defence to a prosecution for failing without reasonable excuse to produce a document or other thing if the defendant establishes that the document or other thing was not relevant to an investigation.

**False or misleading evidence**

**87.** A person who, at a hearing before the Commission, gives evidence that is, to the knowledge of the person, false or misleading in a material particular is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

**Offences relating to documents or other things**

**88. (1)** A person who, knowing that any document or other thing is or may be required in connection with an investigation, wilfully destroys it or renders it incapable of identification or, in the case of a document, renders it illegible, indecipherable or unusable, with intent to prevent it from being used in connection with the investigation, is guilty of an indictable offence.

Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.

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(2) A person who, with intent to delay or obstruct the carrying out by the Commission of any investigation—

- (a) destroys or alters any document or other thing relating to the subject-matter of the investigation; or
- (b) sends or attempts to send, or conspires with any other person to send, out of New South Wales any such document or other thing, or any property of any description belonging to or in the disposition of or under the control of any person whose affairs are the subject-matter of the investigation,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(3) A person who, with intent to delay or obstruct the carrying out by the Commission of any investigation, or with intent to mislead the Commission, fabricates any document or other thing is guilty of an offence, if the document or other thing is produced in evidence to the Commission or is produced in purported compliance with a requirement under section 21 or 22.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(4) If in any prosecution for an offence against subsection (2) it is proved that the person charged with the offence has destroyed or altered any document or other thing, or has sent or attempted to send, or conspired to send, out of New South Wales any such document or other thing, the onus of proving that in so doing the person had not acted in contravention of this section is on the person.

**Procuring false testimony by witness**

89. A person who procures or causes or attempts or conspires to procure or cause—

- (a) the giving of false testimony at a hearing before the Commission; or
- (b) in purported compliance with a notice served on any person under section 21, the furnishing of information that is, to the knowledge of the person so served, false or misleading in a material particular,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

**Bribery of witness**

90. A person who—

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- (a) gives, confers or procures, or promises to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, on or for any person, on any agreement or understanding that any person called or to be called as a witness before the Commission will give false testimony or withhold true testimony; or
- (b) attempts by any means to induce a person called or to be called before the Commission to give false testimony, or to withhold true testimony; or
- (c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or herself, or for any other person, on any agreement or understanding that any person will as a witness before the Commission give false testimony or withhold true testimony,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

**Fraud on witness**

**91.** A person who practises any fraud or deceit on, or knowingly makes or exhibits any false statement, representation or writing to, any person—

- (a) called or to be called as a witness before the Commission with intent to affect the testimony of that person as a witness; or
- (b) required to comply with a notice under section 21 or 22 with intent to affect that person's compliance with the notice,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

**Preventing witness from attending**

**92. (1)** A person who wilfully prevents or wilfully endeavours to prevent any person who has been summoned to attend as a witness before the Commission from attending as a witness or from producing anything in evidence pursuant to a summons to attend is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

**(2)** A person who wilfully prevents or wilfully endeavours to prevent any person from complying with a requirement under section 21 or 22 is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

**Injury to witness**

93. A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of his or her having—

- (a) appeared as a witness before the Commission, or for or on account of any evidence given by him or her before the Commission; or
- (b) complied with a requirement under section 21 or 22,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

**Dismissal of witness by employer**

94. (1) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee having—

- (a) appeared as a witness before the Commission, or for or on account of the employee having given evidence before the Commission; or
- (b) complied with a requirement under section 21 or 22,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(2) In any proceedings for an offence against this section, it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1).

**Impersonation of officer of Commission**

95. (1) A person shall not directly or indirectly represent that he or she is an officer of the Commission (whether generally or of a particular class of officer), unless the person is such an officer (or of that class).

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) For the purposes of subsection (1), a person represents that a state of affairs exists if the person does or says anything, or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

**Bribery of officer of Commission**

96. (1) An officer of the Commission shall not corruptly ask for, receive or obtain, or agree to receive or obtain, any money, property or benefit of any kind for himself or herself, or for another person—

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- (a) to forgo or neglect his or her duty, or influence him or her, in the exercise of his or her functions as an officer of the Commission; or
- (b) on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him or her in the exercise of those functions; or
- (c) to use, or take advantage of, his or her position as an officer of the Commission in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, another person.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(2) A person shall not corruptly give to, confer upon, or procure for, or promise or offer to give to, confer upon, or procure for, or attempt to procure for, an officer of the Commission, or for any other person, any money, property or benefit of any kind—

- (a) for the person who has those functions to forgo or neglect his or her duty, or to influence him or her in the exercise of his or her functions as an officer of the Commission; or
- (b) on account of anything already done, or omitted to be done, by him or her in the exercise of those functions; or
- (c) for the officer of the Commission to use or take advantage of his or her position as such an officer in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, the person first referred to in this subsection.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (3) An offence under this section is an indictable offence.

## **PART 10—CONTEMPT OF COMMISSION**

### **Definition**

97. In this Part—

“offender” means a person guilty or alleged to be guilty of contempt of the Commission.

### **Contempt**

98. A person who—

- (a) having been served with a summons to attend before the Commission as a witness, fails to attend in obedience to the summons; or
- (b) having been served with a summons to attend before the Commission, fails to produce any document or other thing in the person’s custody or control that the person is required by the summons to produce; or

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- (c) being called or examined as a witness before the Commission, refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question put to the person by the Commissioner or Assistant Commissioner; or
- (d) wilfully threatens or insults—
  - (i) the Commissioner, an Assistant Commissioner or an officer of the Commission; or
  - (ii) a legal practitioner appointed to assist the Commission as counsel; or
  - (iii) any witness or person summoned to attend before the Commission; or
  - (iv) a legal practitioner or other person authorised to appear before the Commission; or
- (e) by writing or speech uses words that are false and defamatory of the Commission, the Commissioner or an Assistant Commissioner; or
- (f) misbehaves himself or herself before the Commission; or
- (g) interrupts the proceedings of the Commission; or
- (h) obstructs or attempts to obstruct the Commission, the Commissioner, an Assistant Commissioner or a person acting under the authority of the Commission or the Commissioner in the exercise of any lawful function; or
- (i) does any other thing that, if the Commission were a court of law having power to commit for contempt, would be contempt of that court; or
- (j) publishes, or permits or allows to be published, any evidence given before the Commission or any of the contents of a document produced at a hearing which the Commission has ordered not to be published,

is guilty of contempt of the Commission.

**Punishment of contempt**

**99. (1)** Any contempt of the Commission under section 98 may be punished in accordance with this section.

**(2)** The Commissioner may certify the contempt in writing to the Supreme Court.

**(3)** If the Commissioner certifies the contempt of a person to the Supreme Court—

- (a) the Supreme Court shall thereupon inquire into the alleged contempt; and



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- (b) after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt, and after hearing any statement that may be offered in defence, the Supreme Court (if satisfied that the person is guilty of the contempt) may punish or take steps for the punishment of the person in like manner and to the like extent as if the person had committed that contempt in or in relation to proceedings in the Supreme Court; and
  - (c) the provisions of the Supreme Court Act 1970 and the rules of court of the Supreme Court shall, with any necessary adaptations, apply and extend accordingly.
- (4) Such a certificate is prima facie evidence of the matters certified.
- (5) Neither liability to be punished nor punishment under this section for contempt referred to in section 98 (a) excuses the offender from attending before the Commission in obedience to the summons, and the Commissioner may enforce attendance by warrant.
- (6) A person is not liable to be punished under this section where the person establishes that there was a reasonable excuse for the act or omission concerned.

**General provisions regarding contempt**

100. (1) In the case of any alleged contempt of the Commission, the Commissioner may summon the offender to appear before the Commission at a time and place named in the summons to show cause why the offender should not be dealt with under section 99 for the contempt.

(2) If the offender fails to attend before the Commission in obedience to the summons, and no reasonable excuse to the satisfaction of the Commissioner is offered for the failure, the Commissioner may, on proof of the service of the summons, issue a warrant to arrest the offender and bring the offender before the Commissioner to show cause why the offender should not be dealt with under section 99 for the contempt.

(3) If a contempt of the Commission is committed in the face or hearing of the Commission, no summons need be issued against the offender, but the offender may be taken into custody then and there by a member of the Police Force and called upon to show cause why the offender should not be dealt with under section 99 for the contempt.

(4) The Commissioner may issue a warrant to arrest the offender while the offender (whether or not already in custody under this section) is before the Commission and to bring the offender forthwith before the Supreme Court.

(5) The warrant is sufficient authority to detain the offender in a prison or elsewhere, pending the offender's being brought before the Supreme Court.

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(6) The warrant shall be accompanied by either the instrument by which the Commissioner certifies the contempt to the Supreme Court or a written statement setting out the details of the alleged contempt.

(7) The Commissioner may revoke the warrant at any time before the offender is brought before the Supreme Court.

(8) When the offender is brought before the Supreme Court, the Court may, pending determination of the matter, direct that the offender be kept in such custody as the Court may determine or direct that the offender be released.

**Act or omission that is both an offence and contempt**

101. (1) An act or omission may be punished as a contempt of the Commission even though it could be punished as an offence.

(2) An act or omission may be punished as an offence even though it could be punished as a contempt of the Commission.

(3) If an act or omission constitutes both an offence and a contempt of the Commission, the offender is not liable to be punished twice.

**PART 11—MISCELLANEOUS****Act binds Crown**

102. This Act binds the Crown.

**Provisions relating to Commissioner and Assistant Commissioners**

103. Schedule 1 has effect.

**Staff etc. of Commission**

104. (1) The Commission may employ a Director of Operations, a Director of Administration and such other staff as may be necessary to enable the Commission to exercise its functions.

(2) The Director of Operations and Director of Administration shall be appointed for terms not exceeding 5 years, but are eligible for re-appointment.

(3) The Commission may, with the concurrence of the Minister, fix the salaries, wages, allowances and conditions of employment of any such staff in so far as they are not fixed by or under another Act or law.

(4) The Commission may—

- (a) with the approval of the Minister responsible for the department, office or authority concerned; and
- (b) on such terms and conditions as may be approved by the Minister administering this provision,

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arrange for the use (by secondment or otherwise) of the services of any staff or facilities of a government department, administrative office or public authority.

(5) The Commission may—

- (a) with the approval of the Minister for Police after that Minister has consulted the Commissioner of Police; and
- (b) on such terms and conditions as may be approved by the Minister administering this provision,

arrange for one or more members of the Police Force to be made available (by way of secondment or otherwise) to perform services for the Commission.

(6) The Commission may engage any suitably qualified person to provide the Commission with services, information or advice.

(7) Members of the staff of the Commission are under the control and direction of the Commissioner in their capacity as such members.

(8) The Commission may make arrangements for or in connection with the discipline of members of the staff of the Commission whose services are made use of under subsection (4), or who perform services for the Commission under subsection (5), to be carried out in accordance with procedures applicable to their principal employment.

(9) For the purposes of this Act, a person who is employed under subsection (1), or whose services are made use of under subsection (4), or who performs services for the Commission under subsection (5), is a member of the staff of the Commission.

(10) The Public Service Act 1979 does not apply to the appointment of staff of the Commission and a member of the staff is not, as a member, subject to that Act (except in so far as arrangements may be made for that purpose under subsection (8)).

(11) Schedule 3 has effect with respect to the rights of certain staff of the Commission.

**Powers of seconded police**

105. While a member of the Police Force is a member of the staff of the Commission, the member may continue to act as a constable.

**Counsel assisting Commission**

106. The Commissioner may appoint a legal practitioner to assist the Commission as counsel, either generally or in relation to a particular matter or matters.

**Delegation**

107. (1) The Commission may delegate to an Assistant Commissioner or an officer of the Commission any of its functions.

(2) The Commissioner may delegate to an Assistant Commissioner or an officer of the Commission any of his or her functions.

(3) An Assistant Commissioner or officer of the Commission may delegate to an officer of the Commission any of the functions delegated to the Assistant Commissioner or officer, subject to any conditions to which the delegation is subject.

(4) The following functions may not be delegated:

- (a) a power of delegation conferred by this section;
- (b) a function of making a report under this Act;
- (c) the power of the Commissioner to issue a warrant for the arrest of a person under section 36 or 100;
- (d) the power of the Commissioner to issue search warrants under section 40.

(5) The following functions may be delegated only to an Assistant Commissioner:

- (a) the power to require a public authority or public official to produce a statement of information under section 21;
- (b) the power to require a person to attend and produce a document or other thing under section 22;
- (c) the power to authorise an officer of the Commission to enter premises under section 23;
- (d) the making of an application for an injunction under section 27;
- (e) the powers of the Commission or the Commissioner under Division 3 of Part 4 at or in connection with a hearing, except the power to issue a warrant for the arrest of a person under section 36;
- (f) the powers of the Commissioner under Part 10 at or in connection with a hearing.

(6) The functions referred to in subsection (4) may however be delegated to an Assistant Commissioner (and to an Assistant Commissioner only) if the Commissioner is of the opinion that there would or might be a conflict of interest or that it would be in the interests of justice to do so.

(7) No person shall be concerned to inquire whether circumstances exist warranting a delegation under subsection (6), and a statement in the instrument of delegation of the Commissioner's opinion referred to in that subsection is sufficient.

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**Service of documents**

**108.** For the purposes of this Act, service of a document on a person may be effected—

(a) on a natural person—

- (i) by delivering it to the person personally; or
- (ii) by leaving it at, or by sending it by pre-paid post to, the residential or business address of the person last known to the person serving the document; or

(b) on a body corporate—by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate,

or in any other way in which service could have been effected had this section not been enacted.

**Protection from liability**

**109. (1)** No matter or thing done by the Commission, the Commissioner or any person acting under the direction of the Commission or Commissioner shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Commissioner or a person so acting personally to any action, liability, claim or demand.

**(2)** In proceedings for defamation in relation to any hearing before the Commission or any other matter relating to the functions of the Commission, there is a defence of absolute privilege for a publication to or by the Commission or the Commissioner or to any officer of the Commission, as such an officer.

**(3)** A legal practitioner assisting the Commission or representing a person before the Commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

**(4)** Subject to this Act, a person summoned to attend or appearing before the Commission as a witness, or producing a document or other thing to the Commission, has the same protection as a witness in proceedings in the Supreme Court.

**(5)** No criminal or civil liability (apart from this Act) attaches to any person for compliance, or purported compliance in good faith, with any requirement made under this Act.

**(6)** In particular, if a person gives any statement of information or produces any document or other thing under section 21 or 22, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

**Disclosure of pecuniary interests and other matters**

**110.** The regulations may make provision for or with respect to—

- (a) the disclosure by officers of the Commission of all or any of the following pecuniary interests or other matters:
  - (i) real or personal property;
  - (ii) income;
  - (iii) gifts;
  - (iv) financial or other contributions to any travel;
  - (v) shareholdings or other beneficial interests in corporations;
  - (vi) partnerships;
  - (vii) trusts;
  - (viii) positions (whether remunerated or not) held in, or membership of, corporations, trade unions, professional associations or other organisations or associations;
  - (ix) occupations, trades, professions or vocations;
  - (x) debts;
  - (xi) payments of money or transfers of property to relatives or other persons by, or under arrangements made by, officers of the Commission;
  - (xii) any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not, of a kind specified in the regulations; and
- (b) prescribing the manner in which, and the times at which, pecuniary interests or other matters shall be disclosed and providing for the verification by statutory declaration or otherwise of any such disclosure; and
- (c) the compilation and maintenance of registers of pecuniary interests or other matters by officers of the Commission and the inspection and publication of any such register.

**Secrecy**

**111. (1)** This section applies to—

- (a) a person who is or was an officer of the Commission; and
- (b) a person who is or was a legal practitioner appointed to assist the Commission or who is or was a person who assists, or performs services for or on behalf of, such a legal practitioner in the exercise of the legal practitioner's functions as counsel to the Commission; and
- (c) a person who is or was a member of the Operations Review Committee; and
- (d) a person or body referred to in section 14 (3), 16 (4) or 53 (6).

**(2)** A person to whom this section applies shall not, directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's functions under this Act—

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- (a) make a record of any information; or
- (b) divulge or communicate to any person any information,

being information acquired by the person by reason of, or in the course of, the exercise of the person's functions under this Act.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(3) A person to whom this section applies is not required—

- (a) to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act; or
- (b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's functions under this Act.

(4) Despite this section, a person to whom this section applies may divulge any such information—

- (a) for the purposes of and in accordance with this Act; or
- (b) for the purposes of a prosecution instituted as a result of an investigation conducted by the Commission in the exercise of its functions; or
- (c) in accordance with a direction of the Commissioner, if the Commissioner certifies that it is necessary to do so in the public interest; or
- (d) to any prescribed authority or person.

(5) An authority or person to whom information is divulged under subsection (4), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) as if he or she were a person to whom this section applies and had acquired the information in the exercise of functions under this Act.

(6) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to.

**Publication of evidence etc.**

**112. (1)** The Commission may direct that—

- (a) any evidence given before it; or
- (b) the contents of any document, or a description of any thing, produced to the Commission or seized under a search warrant issued under this Act; or

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- (c) any information that might enable a person who has given evidence before the Commission to be identified; or
- (d) the fact that any person has given or may be about to give evidence at a hearing,

shall not be published or shall not be published except in such manner, and to such persons, as the Commission specifies.

(2) A person shall not make a publication in contravention of a direction given under this section.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

**Evidence in criminal proceedings****113. (1) If—**

- (a) a person has been charged with an offence before a court of the State; and
- (b) the court considers that it is desirable in the interests of justice that particular evidence given before the Commission, being evidence in relation to which the Commission has given a direction under section 112, be made available to the person or to a legal practitioner representing the person or to the prosecutor,

the court may give to the Commission a certificate to that effect.

(2) The Commissioner may appear before the court for the purpose of making representations concerning the giving of such a certificate.

(3) On such a certificate being given, the Commission shall make the evidence or information available to the court.

(4) The court may make the evidence or information available to the person charged with the offence concerned, to a legal practitioner representing the person charged or to the prosecutor, if the court has examined the evidence or information and is satisfied that the interests of justice so require.

(5) Nothing in section 111 prevents a person to whom that section applies from producing any document or other thing, or divulging or communicating any matter or thing, to the extent necessary to give effect to this section.

(6) Nothing in section 112 prevents the evidence or information being made available under this section.

**Disclosures prejudicing investigations****114. (1) A person who is required—**



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- (a) by a notice under section 21 or 22 to produce a statement of information or to attend and produce a document or other thing; or
- (b) by a summons under section 35 to give evidence or to produce a document or other thing,

shall not disclose any information about the notice or summons that is likely to prejudice the investigation to which it relates.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(2) Subsection (1) does not apply to a notice or summons unless it specifies that information about the notice or summons must not be disclosed.

(3) A person does not contravene this section if—

- (a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter; or
- (b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons; or
- (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

(4) A reference in this section to the disclosure of any information about a notice or summons includes a reference to—

- (a) a disclosure about the existence or nature of the notice or summons or of the investigation to which it relates; and
- (b) a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the notice or summons or of the investigation to which it relates.

**Penalties for offences committed by corporations**

**115.** The maximum penalty applicable to a corporation convicted of an offence against this Act or the regulations is (except in so far as other provision is made by section 116) double the pecuniary penalty otherwise applying to the offence.

**Proceedings for offences**

**116. (1)** Except where otherwise expressly provided by this Act, proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

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(2) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.

(3) If, in accordance with subsection (2), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is—

(a) in the case of an individual—the smaller of:

(i) a fine of 50 penalty units or imprisonment for 2 years, or both;  
or

(ii) the maximum penalty otherwise applicable to the offence when committed by an individual; or

(b) in the case of a corporation—the smaller of:

(i) a fine of 100 penalty units; or

(ii) the maximum penalty otherwise applicable to the offence when committed by a corporation.

**Regulations**

117. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) In particular, the regulations may make provision for or with respect to—

(a) the appointment, conditions of employment, discipline, code of conduct and termination of employment of staff of the Commission;  
and

(b) security checks of officers of the Commission and applicants for appointment or engagement as officers of the Commission; and

(c) the service of a notice to an occupier whose premises are entered under a search warrant; and

(d) the issue of identity cards to officers of the Commission and their use; and

(e) forms to be used for the purposes of this Act; and

(f) the use and custody of the seal of the Commission.

(3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.

(4) Regulations may be made only on the recommendation of the Commissioner, except regulations made under section 110.

*Independent Commission Against Corruption 1988***Amendment of Ombudsman Act 1974 No. 68—Schedule 1 (Excluded Conduct of Public Authorities)**

**118.** The Ombudsman Act 1974 is amended by inserting at the end of Schedule 1 the following item:

20. Conduct of the Independent Commission Against Corruption, the Commissioner or an Assistant Commissioner or an officer of the Commission, where exercising functions under the Independent Commission Against Corruption Act 1988.

**Amendment of Statutory and Other Offices Remuneration Act 1975 (1976 No. 4)—Schedule 4 (Excluded Offices)**

**119.** The Statutory and Other Offices Remuneration Act 1975 is amended by inserting at the end of Schedule 4 the words “Commissioner or Assistant Commissioner of the Independent Commission Against Corruption.”.

**Amendment of Public Finance and Audit Act 1983 No. 152—Schedule 2 (Statutory Bodies)**

**120.** The Public Finance and Audit Act 1983 is amended by inserting in Schedule 2, in appropriate alphabetical order, the words “Independent Commission Against Corruption.”.

**Amendment of Crimes (Confiscation of Profits) Act 1985 No. 181**

**121.** The Crimes (Confiscation of Profits) Act 1985 is amended—

- (a) by inserting after paragraph (a) of the definition of “appropriate officer” in section 3 (1) the following paragraph:
  - (a1) in relation to restraining orders—the Commissioner for the Independent Commission Against Corruption;
- (b) by inserting after section 36 the following section:

**Commissioner for the Independent Commission Against Corruption**

36A. The Commissioner for the Independent Commission Against Corruption may exercise any functions under this Act only after consultation with the Director of Public Prosecutions, and shall consider whether any such function should instead be exercised by the Director.

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**SCHEDULE 1—PROVISIONS RELATING TO COMMISSIONER AND ASSISTANT COMMISSIONERS**

(Sec. 103)

**Eligibility for appointment**

1. (1) A person is not eligible to be appointed as Commissioner or Assistant Commissioner or to act in either of those offices unless the person is—

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SCHEDULE 1—PROVISIONS RELATING TO COMMISSIONER AND  
ASSISTANT COMMISSIONERS—*continued*

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- (a) qualified to be appointed as a Judge of the Supreme Court; or
  - (b) a former judge of any court of the State or elsewhere in Australia.
- (2) A person is not eligible to be appointed as Commissioner or Assistant Commissioner if the person is—
- (a) the holder of any judicial office; or
  - (b) a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth.

**Acting Commissioner or Assistant Commissioner**

2. (1) The Governor may, from time to time, appoint a person to act in the office of Commissioner or Assistant Commissioner during the illness or absence of the Commissioner or Assistant Commissioner, and the person, while so acting, has all the functions of the Commissioner or Assistant Commissioner and shall be taken to be the Commissioner or Assistant Commissioner.

(2) The Governor may, at any time, remove a person from the office to which the person was appointed under this clause.

(3) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine.

(4) For the purposes of this clause—

- (a) a vacancy in the office of Commissioner or Assistant Commissioner shall be regarded as an absence from office of Commissioner or Assistant Commissioner; and
- (b) an Assistant Commissioner shall be regarded as absent from office as an Assistant Commissioner during any period when the Assistant Commissioner acts in the office of the Commissioner pursuant to an appointment under this clause.

**Offices to be full-time**

3. The office of Commissioner or Assistant Commissioner is a full-time office, and the holder of the office is required to hold it on that basis, except to the extent permitted by the Governor.

**Terms of office**

4. (1) Subject to this Schedule, the Commissioner or an Assistant Commissioner shall hold office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

(2) A person may not hold the office of Commissioner for terms totalling more than 5 years.

(3) A person may not hold the office of Assistant Commissioner for terms totalling more than 5 years.

**Remuneration**

5. (1) The Commissioner or an Assistant Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as may be specified in the instrument of appointment or as may be afterwards determined by the Governor from time to time.

*Independent Commission Against Corruption 1988***SCHEDULE 1—PROVISIONS RELATING TO COMMISSIONER AND ASSISTANT COMMISSIONERS—*continued***

(2) A determination does not operate so as to reduce the rate at which remuneration is payable during the person's current term of office.

(3) Remuneration is payable out of the Consolidated Fund, which is accordingly appropriated to the necessary extent.

**Vacancy in office**

6. (1) The office of Commissioner or Assistant Commissioner becomes vacant if the holder—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) holds office for longer than the relevant period mentioned in clause 4; or
- (d) resigns the office by instrument in writing addressed to the Governor; or
- (e) becomes the holder of a judicial office; or
- (f) is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth; or
- (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (h) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or
- (i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable; or
- (j) is removed from office under subclause (2) or (3).

(2) The Commissioner may be removed from office by the Governor on the address of both Houses of Parliament.

(3) The Governor may remove an Assistant Commissioner from office for incapacity, incompetence or misbehaviour.

**Filling of vacancy**

7. (1) If the office of Commissioner becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

(2) If the office of Assistant Commissioner becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

**Public Service Act 1979**

8. The Public Service Act 1979 does not apply to the appointment of the Commissioner or an Assistant Commissioner, and the holder of either office is not, as holder, subject to that Act.

*Independent Commission Against Corruption 1988***SCHEDULE 2—PROVISIONS APPLYING TO APPOINTED MEMBERS OF  
OPERATIONS REVIEW COMMITTEE**

(Sec. 60 (2))

**Definitions**

1. In this Schedule—

“appointed member” means an appointed member of the Committee;

“Committee” means the Operations Review Committee.

**Eligibility for appointment**

2. A Minister or a Parliamentary Secretary is not eligible to be appointed as an appointed member.

**Term of office**

3. Subject to this Schedule, an appointed member shall hold office for such period not exceeding 12 months as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

**Acting appointed member**

4. (1) If for any reason there is a vacancy in the office of appointed member, the Governor may appoint a person to act in that office.

(2) While a person is acting as appointed member, the person has and may exercise all the functions of the member.

**Remuneration**

5. An appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

**Vacancy in office**

6. (1) The office of appointed member becomes vacant if the member—

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) becomes a Minister of the Crown or a Parliamentary Secretary; or
- (e) is removed from office by the Governor under this clause; or
- (f) is absent from 4 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or
- (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (h) becomes a temporary patient or a continued treatment patient within the meaning of the Mental Health Act 1958, a forensic patient within the meaning of the Mental Health Act 1983 or a protected person within the meaning of the Protected Estates Act 1983; or

*Independent Commission Against Corruption 1988***SCHEDULE 2—PROVISIONS APPLYING TO APPOINTED MEMBERS OF  
OPERATIONS REVIEW COMMITTEE—*continued***

- (i) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

- (2) The Governor may remove an appointed member from office at any time.

**Filling of vacancy in office of appointed member**

7. If the office of appointed member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Effect of certain other Acts**

8. (1) The Public Service Act 1979 does not apply to the appointment of an appointed member and an appointed member is not, as a member, subject to that Act.

- (2) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

- (3) The office of an appointed member is not, for the purposes of any Act, an office or place of profit under the Crown.

**SCHEDULE 3—RIGHTS OF CERTAIN STAFF OF COMMISSION**

(Sec. 104 (11))

**Definitions**

- 1. In this Schedule—

“member of staff” means an employee of the Commission, other than a person employed on a temporary basis;

“proclaimed body” means any body or organisation constituted or regulated by or under an Act that is declared by the Governor to be a body or organisation to which this Schedule applies;

“superannuation scheme” means a scheme, fund or arrangement, under which any superannuation or retirement benefits are provided and which is established by or under any Act.

**Preservation of rights of staff previously public servants etc.**

2. (1) This clause applies where a member of staff was, immediately before being employed as a member of staff—

- (a) an officer of the Public Service or a Teaching Service; or
- (b) a member of the Police Force; or
- (c) a contributor to a superannuation scheme; or

*Independent Commission Against Corruption 1988***SCHEDULE 3—RIGHTS OF CERTAIN STAFF OF COMMISSION—*continued***

- (d) an officer employed by a proclaimed body; or
- (e) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

**(2) The member of staff—**

- (a) shall retain any rights accrued or accruing to him or her as such an officer, member, contributor or person; and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being employed as a member of staff; and
- (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, member, contributor or person during his or her service as a member of staff.

(3) Service as a member of staff shall be regarded as service as an officer or employee for the purposes of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred.

(4) The member of staff shall be regarded as an officer or employee, and the Commission shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.

(5) If the member of staff would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme—

- (a) he or she is not so entitled on becoming (whether on being employed as a member of staff or at any later time while a member of staff) a contributor to any other superannuation scheme; and
- (b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Commission in any case where he or she becomes a contributor to any such other superannuation scheme.

(6) Subclause (5) does not prevent the payment to the member of staff (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.

(7) A member of staff is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

**Member of staff entitled to re-appointment to former employment in certain cases****3. A person who—**

- (a) being a member of staff, ceases to be employed by the Commission (except through dismissal on the ground of misbehaviour); and
- (b) was, immediately before being employed as a member of staff—
  - (i) an officer of the Public Service or a Teaching Service; or
  - (ii) an officer employed by a proclaimed body; and
- (c) has not reached the age at which the person would have been entitled to retire had the person continued to be such an officer, member or employee,



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SCHEDULE 3—RIGHTS OF CERTAIN STAFF OF COMMISSION—*continued*

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of the proclaimed body, as the case may be, not lower in classification and salary than that which the person held immediately before being employed as a member of staff.

**Rank etc. of seconded police**

4. While a member of the Police Force is a member of the staff of the Commission by reason of performing services for the Commission, the member shall retain rank, seniority and remuneration as a member of the Police Force.

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