

**ROYAL COMMISSION (POLICE SERVICE) AMENDMENT
ACT 1994 No. 75**

NEW SOUTH WALES



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**ROYAL COMMISSION (POLICE SERVICE) AMENDMENT
ACT 1994 No. 75**

NEW SOUTH WALES



Act No. 75, 1994

An Act to amend the Royal Commission (Police Service) Act 1994 to confer additional powers on the Police Royal Commission relating to the investigation of complaints against police; to confer additional powers on officers of the Commission and to make further provision with respect to the reporting of possible corrupt conduct; and to amend consequentially the Police Service Act 1990. [Assented to 2 December 1994]

Royal Commission (Police Service) Amendment Act 1994 No. 75

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Royal Commission (Police Service) Amendment Act 1994.

Commencement

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

Amendment of Royal Commission (Police Service) Act 1994 No. 60

3. The Royal Commission (Police Service) Act 1994 is amended as set out in Schedule 1.

Consequential amendment of Police Service Act 1990 No. 47

4. The Police Service Act 1990 is amended as set out in Schedule 2.

**SCHEDULE 1—AMENDMENT OF ROYAL COMMISSION
(POLICE SERVICE) ACT 1994**

(Sec. 3)

(1) Section 30A:

After section 30, insert:

Notification to ICAC of possible corrupt conduct

30A. (1) Section 11 of the ICAC Act (Duty to notify Commission of possible corrupt conduct) does not apply to the Commissioner, except as provided by this section.

(2) The Commissioner and the Commissioner for the Independent Commission Against Corruption may enter into an agreement relating to the matters that the Commissioner is required to report to the Independent Commission Against Corruption under that section.

Royal Commission (Police Service) Amendment Act 1994 No. 75

SCHEDULE 1—AMENDMENT OF ROYAL COMMISSION
(POLICE SERVICE) ACT 1994—*continued*

(2) Section 31 (**Disclosure of information and giving of evidence by Ombudsman**):

From section 31 (3), omit “section 169”, insert instead “sections 166 (Certain information to be confidential) and 169”.

(3) Parts 6A, 6B:

After Part 6, insert:

**PART 6A—INVESTIGATION OF POLICE
COMPLAINTS BY COMMISSION**

Definition of “relevant police complaint”

37A. In this Part:

“relevant police complaint” means a complaint within the meaning of Part 8A of the Police Service Act 1998, being a complaint received by the Ombudsman (whether it was received directly or was forwarded by the Commissioner of Police or any other person) that is of a class or kind that the Commissioner and the Ombudsman have agreed should be referred to the Commission.

Note. A complaint within the meaning of Part 8A of the Police Service Act 1990 is a complaint made in writing under Division 2 of that Part about the conduct of a police officer.

Application of Part

37B. (1) This Part applies only to relevant police complaints made after the commencement of this Part.

(2) The functions conferred on the Commission or Commissioner by this Part may be exercised only for the purposes of the Commission’s inquiry.

(3) This Part has effect despite Part 8A, or any other provision, of the Police Service Act 1998.

Ombudsman to forward copies of relevant police complaints to Commission

37C. (1) The Ombudsman must, as soon as practicable, forward copies of all relevant police complaints to the Commission.

SCHEDULE 1—AMENDMENT OF ROYAL COMMISSION
(POLICE SERVICE) ACT 1994—*continued*

(2) The Commissioner of Police and the Ombudsman retain their statutory functions with respect to a relevant police complaint sent to the Commission, except as otherwise provided by this Part.

Decision of Commission on referred police complaints

37D. (1) The Commission must, as soon as practicable after receiving a relevant police complaint under this Part, notify the Ombudsman of its decision under this section with respect to the complaint.

(2) The Commission may decide:

- (a) to take over the investigation of the complaint from the Commissioner of Police; or
- (b) not to take over the investigation of the complaint from the Commissioner of Police and to refer the complaint back to be dealt with in accordance with Part 8A of the Police Service Act 1990; or
- (c) to take over the investigation of part of the complaint from the Commissioner of Police and to refer the remainder of the complaint back to be dealt with in accordance with Part 8A of the Police Service Act 1990.

(3) The Commission may review any decision made by it under this section and notify the Ombudsman of a revised decision. The Ombudsman is to give effect to the revised decision in accordance with this Part.

(4) The Commission may investigate any matter relating to a relevant police complaint forwarded to the Commission under this Part even though it refers the complaint back to be dealt with in accordance with Part 8A of the Police Service Act 1990.

(5) The Commission may make a decision under this section before the commencement of an investigation by the Commissioner of Police under Part 8A of the Police Service Act 1990, during the progress of any such investigation or after any such investigation.

SCHEDULE 1—AMENDMENT OF ROYAL COMMISSION
(POLICE SERVICE) ACT 1994—*continued*

Decision of Commission to investigate complaint

37E. (1) This section applies to a decision of the Commission under section 37D (2) (a) to take over the investigation of a relevant police complaint from the Commissioner of Police.

(2) On being notified by the Commission of any such decision, the Ombudsman is required to notify the Commissioner of Police immediately of the Commission's decision and direct the Commissioner of Police not to investigate the complaint concerned.

(3) Section 141 (6) of the Police Service Act 1990 does not apply to any such direction.

(4) The Ombudsman is not required to give a direction under this section to the Commissioner of Police if the complaint concerned was not forwarded to the Ombudsman by the Commissioner of Police and the Ombudsman has not informed the Commissioner of Police of the existence of the complaint.

Decision of Commission not to investigate complaint

37F. (1) This section applies to a decision of the Commission under section 37D (2) (b) not to take over the investigation of a relevant police complaint from the Commissioner of Police.

(2) On being notified by the Commission of any such decision, the Ombudsman is required to deal with the complaint in accordance with Part 8A of the Police Service Act 1990.

Decision of Commission to investigate part of complaint

37G. (1) This section applies to a decision of the Commission under section 37D (2) (c) to take over the investigation of part of a relevant police complaint from the Commissioner of Police.

(2) If the Commission makes such a decision, the Commission is to revise the complaint by removing the reference to that part of the conduct concerned that it has decided to investigate itself. The Commission is to notify the Ombudsman of the decision and furnish the Ombudsman with the revised complaint.

SCHEDULE 1—AMENDMENT OF ROYAL COMMISSION
(POLICE SERVICE) ACT 1994—*continued*

(3) On being so notified by the Commission, the Ombudsman is required to notify the Commissioner of Police immediately of the Commission's decision and direct the Commissioner of Police not to investigate conduct that was part of the original complaint but not part of the revised complaint.

(4) The Ombudsman is required to deal with the revised complaint in accordance with Part 8A of the Police Service Act 1990.

(5) The Commission is not the complainant for a revised complaint and the original complainant continues to be the complainant for the purposes of the revised Complaint.

(6) The Ombudsman is not required to give a direction under this section to the Commissioner of Police if the original complaint concerned was not forwarded to the Ombudsman by the Commissioner of Police and the Ombudsman has not informed the Commissioner of Police of the existence of the original complaint.

Termination of police investigations

37H. (1) If the Commissioner of Police is directed under this Part not to investigate a relevant police complaint (or any part of a relevant police complaint):

- (a) the Commissioner of Police must not commence any such investigation or, if such an investigation has already commenced, must discontinue the investigation; and
- (b) the Commissioner of Police must take all reasonable steps to ensure that any such investigation is not conducted by a police officer; and
- (c) the direction not to investigate absolves the Commissioner of Police and other police officers from any duty with respect to crime and the preservation of the peace so far as it relates to that investigation or to the bringing of an offender concerned before the courts to be dealt with according to law.

SCHEDULE 1—AMENDMENT OF ROYAL COMMISSION
(POLICE SERVICE) ACT 1994—*continued*

(2) Subsection (1) applies to any investigation by the Commissioner of Police or a police officer, whether or not under Part 8A of the Police Service Act 1990. However, subsection (1) does not prevent an investigation relating to an alleged offence that is conducted in accordance with arrangements made between the Commission and the Commissioner of Police.

(3) Despite anything to the contrary in this Part, an investigation by the Commissioner of Police may be commenced or resumed if the Commission notifies the Ombudsman that it has completed its investigation into the complaint or that it has decided to discontinue the investigation. Any such investigation may also be commenced or resumed after the end of the Royal Commission.

This Part does not require matters to be disclosed by Commission

37I. Nothing in this Part is to be construed as requiring the Commission to disclose any matter to the Commissioner of Police or the Ombudsman.

PART 6B—POLICE POWERS AND WEAPONS

Definitions

37J. In this Part:

“**Commission investigator**” means an officer of the Commission who is designated by the Commissioner as an investigator and who is issued with means of identification as such an investigator;

“**Commission surveillance officer**” means an officer of the Commission who is designated by the Commissioner as a surveillance officer and who is issued with means of identification as such a surveillance officer;

“**seconded police officer**” means:

- (a) a member of the Australian Federal Police; or
- (b) a member of the Police Force of another State or a Territory; or

SCHEDULE 1—AMENDMENT OF ROYAL COMMISSION
(POLICE SERVICE) ACT 1994—*continued*

- (c) a member of the Police Force of any country prescribed by the regulations for the purposes of this Part,

who is seconded or otherwise engaged to assist the Commission.

Commission investigator who is seconded police officer to have all powers of NSW police officer

37K. (1) A Commission investigator who is a seconded police officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the Police Service Act 1990 has or may exercise by or under any law (including the common law) of the State.

(2) Those functions extend to functions conferred after the commencement of this Part.

(3) A Commission investigator has and may exercise those functions by virtue of this section only when acting in the person's capacity as an officer of the Commission.

(4) This section does not operate to subject a Commission investigator to the control and direction of the Commissioner of Police or any other police officer when acting in the person's capacity as an officer of the Commission.

(5) A complaint about the conduct of a Commission investigator when exercising the functions of a police officer may not be made under Part 8A of the Police Service Act 1990.

Firearms and other police equipment

37L. (1) Commission investigators, and Commission surveillance officers, who are seconded police officers are exempt from the requirement made by the Firearms Act 1989 to be authorised by a licence or permit to possess or use semi-automatic pistols (or to possess ammunition for any such pistol), but only when acting in their capacity as officers of the Commission.

**SCHEDULE 1—AMENDMENT OF ROYAL COMMISSION
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(2) For the purposes of section 6 of the Prohibited Weapons Act 1989, Commission investigators and Commission surveillance officers are authorised to possess handcuffs and body armour vests, but only when acting in their capacity as officers of the Commission.

**SCHEDULE 2—CONSEQUENTIAL AMENDMENT OF POLICE
SERVICE ACT 1990**

(Sec. 4)

(1) Part 8A, Division 1, heading:

Omit the heading, insert instead:

Division 1—Preliminary

(2) Section 122A:

After section 122, insert:

**This Part subject to Royal Commission (Police Service)
Act 1994**

122A. The provisions of this Part are subject to the Royal Commission (Police Service) Act 1994.

*[Minister's second reading speech made in—
Legislative Assembly on 23 November 1994
Legislative Council on 30 November 1994]*