



New South Wales

Police Integrity Commission Act 1996 No 28

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New South Wales

Police Integrity Commission Act 1996 No 28

Act No 28, 1996

An Act to constitute the Police Integrity Commission and to define its functions; and for other purposes. [Assented to 21 June 1996]

See also *Police Legislation Amendment Act 1996*.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Police Integrity Commission Act 1996*.

2 Commencement

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

3 Principal objects of Act

The principal objects of this Act are:

- (a) to establish a body whose principal function is to detect, investigate and prevent police corruption and other serious police misconduct, and
- (b) to provide special mechanisms for the detection, investigation and prevention of serious police misconduct and other police misconduct, and
- (c) to protect the public interest by preventing and dealing with police misconduct.

4 Definitions

- (1) In this Act:

agency means the Police Service or any other authority of the State.

Assistant Commissioner means an Assistant Commissioner for the Police Integrity Commission.

authorised justice means:

- (a) a Magistrate, or
- (b) a justice of the peace employed in the Attorney General's Department.

Category 1 complaint—see section 67.

Commission or **PIC** means the Police Integrity Commission constituted by this Act.

Commissioner or **PIC Commissioner** means the Commissioner for the Police Integrity Commission.

criminal offence, in relation to any conduct, 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.

exercise a function includes perform a duty.

facsimile means facsimile transmission, the Internet or other means of electronic transmission.

former police officer means a person who is not a police officer but who has been:

- (a) a member of the Police Force of New South Wales at any time before the commencement of the *Police Service Act 1990* other than a public servant, or
- (b) a police officer at any time after the commencement of that Act.

function includes a power, authority or duty.

hearing means a hearing under this Act.

ICAC Commissioner means the Commissioner for the Independent Commission Against Corruption.

Independent Commission Against Corruption or **ICAC** means the Independent Commission Against Corruption constituted by the *Independent Commission Against Corruption Act 1988*.

Inspector means the Inspector of the Police Integrity Commission, appointed under this Act.

investigate includes examine.

investigation means an investigation under this Act and (without limitation) includes a preliminary investigation referred to in section 24.

Joint Committee—see section 94.

Judge means a Judge of a court of the State.

legal practitioner means a barrister or solicitor within the meaning of the *Legal Profession Act 1987*.

officer of the Police Royal Commission means any legal practitioner appointed by the Crown to assist the Police Royal Commissioner or any other person employed seconded or otherwise engaged to assist the Police Royal Commission.

officer of the Commission means the Commissioner, an Assistant Commissioner or another member of the staff of the Commission.

officer of the Inspector means the Inspector or a member of the staff of the Inspector.

officer of the Ombudsman includes an acting Ombudsman, Deputy Ombudsman or Assistant Ombudsman.

police complaint means a complaint within the meaning of Part 8A of the *Police Service Act 1990*.

police misconduct—see section 5.

police officer means a member of the Police Service of New South Wales holding a position which is designated under the *Police Service Act 1990* as a position to be held by a police officer.

Police Royal Commission means a Royal Commission to which the *Royal Commission (Police Service) Act 1994* applies.

Police Royal Commissioner means a Royal Commissioner referred to in the *Royal Commission (Police Service) Act 1994*.

premises includes any structure, building, aircraft, vehicle, vessel or place (whether built on or not), or any part thereof.

Presiding Officer—see subsection (3).

public authority has the same meaning as in the *Independent Commission Against Corruption Act 1988*.

public official has the same meaning as in the *Independent Commission Against Corruption Act 1988*, and includes a former public official.

seconded police officer means a person referred to in section 10 (4) (b).

search warrant means a search warrant issued under this Act.

serious police misconduct means:

- (a) the conduct of a police officer that is the subject of a Category 1 complaint, or
- (b) the conduct of a police officer that would give rise to a Category 1 complaint if it were the subject of a complaint under the *Police Service Act 1990*.

special legal qualifications—see subsection (2).

staff of the Commission mean the persons referred to in section 10 (1)–(4).

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

(2) **Special legal qualifications** (cf ICAC Act Sch 1 cl 1)

A reference in this Act to a person who has special legal qualifications is a reference to a person who:

- (a) is or is qualified to be appointed as a Judge of the Supreme Court of the State or of any other State or Territory, a Judge of the Federal Court of Australia or a Justice of the High Court of Australia, or
- (b) is a former judge of any court of the State or elsewhere in Australia or a former Justice of the High Court.

(3) **Presiding Officers** (cf ICAC Act s 79)

A reference in this Act to a Presiding Officer is a reference to the President of the Legislative Council or the Speaker of the Legislative Assembly, and:

- (a) if there is a vacancy in the office of President, the reference to the President is a reference to the Clerk of the Legislative Council, or
- (b) if there is a vacancy in the office of Speaker, the reference to the Speaker is a reference to the Clerk of the Legislative Assembly.

(4) **Notes**

Notes in the text of this Act do not form part of the Act.

5 Police misconduct

(1) **Definition**

For the purposes of this Act, *police misconduct* means misconduct (by way of action or inaction or alleged action or inaction) of a police officer:

- (a) whether or not it also involves non-police participants, and
- (b) whether or not it occurs while the police officer is officially on duty, and
- (c) whether or not it occurred before the commencement of this subsection, and
- (d) whether or not it occurred outside the State or outside Australia.

(2) **Examples**

Police misconduct can involve (but is not limited to) any of the following:

- (a) police corruption,
- (b) the commission of a criminal offence or disciplinary offence by a police officer,
- (c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer,
- (d) any other matters about which a complaint can be made under the *Police Service Act 1990*.

(3) **Former police officers** (cf ICAC Act S 8 (3))

Conduct may be dealt with, or continue to be dealt with, under this Act even though any police officer involved has ceased to be a police officer. Accordingly, references in this Act to a police officer extend, where appropriate, to include a former police officer.

(4) **Serious and other misconduct**

References in provisions of this Act to “serious” police misconduct and “other” police misconduct are intended for general guidance and are not intended to indicate a precise distinction between the two concepts.

Part 2 Constitution of Commission

6 Commission (cf ICAC Act s 4)

- (1) There is constituted by this Act a corporation with the corporate name of the Police Integrity Commission.
- (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. 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, is 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.

7 Commissioner

- (1) **Appointment** (cf ICAC Act S 5 (1))

The Governor may appoint a Commissioner for the Police Integrity Commission.

- (2) **General functions** (cf ICAC Act S 5 (2))

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

- (3) **Schedule of provisions relating to Commissioner**

Schedule 1 has effect.

8 Assistant Commissioners

- (1) **Staff to include Assistant Commissioners**

The staff of the Commission may include one or more Assistant Commissioners for the Police Integrity Commission.

(2) **General functions** (cf ICAC Act s 6 (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) **Vacancies and removal from office**

Clause 7 of Schedule 1 applies to an Assistant Commissioner employed as referred to in section 10 (1) or (2) in the same way as it applies to the Commissioner, other than clause 7 (1)(c). The clause so applies to the exclusion of any provision of any Act or contract that provides for vacation of office or removal from office.

9 Functions of Assistant Commissioner (cf Omb Act S 8A (1))

An Assistant Commissioner may, to the extent to which he or she is directed by the Commissioner to do so, exercise any function of the Commissioner, other than such functions as may be prescribed by the regulations for the purpose of this section.

10 Staff of Commission

(1) **Public servants** (cf NSW CC Act S 32 (1))

Such staff as may be necessary to assist the Commission may be employed under Part 2 of the *Public Sector Management Act 1988*.

(2) **Employees** (cf NSW CC Act S 32 (2))

The Commission may also employ staff. Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of any such staff.

(3) **Consultants** (cf NSW CC Act S 33 (3))

The Commission may engage persons as consultants to the Commission or to perform services for it.

- (4) **Use of staff, facilities or certain police** (cf NSW CC Act s 33 (4); RC (PS) Act s 37J)

The Commission may arrange:

- (a) for the use of the services of any staff or facilities of a government department or a local or public authority, or
- (b) for:
 - (i) a member of the Australian Federal Police, or
 - (ii) a member of the Police Force of another State or Territory, or
 - (iii) a member of the Police Force of any country prescribed by the regulations for the purposes of this Act,to be seconded or otherwise engaged to assist the Commission.

- (5) **Police**

Police officers and former police officers cannot be appointed to, employed or engaged by, or seconded to the service of, the Commission, nor (without limiting the foregoing provisions of this subsection) can arrangements be made under subsection (4) for the use of their services.

- (6) **Limited use of police**

Subsection (5) does not, however, prevent arrangements being made by the Commission for police officers (in their capacity as police officers) to be involved in:

- (a) the work of task forces with which the Commission is involved, or
- (b) carrying out or participating in investigations for or on behalf of or under the direction of the Commission.

11 Delegation (cf ICAC Act S 107)

- (1) **Delegation by PIC**

The Commission may delegate to an officer of the Commission any of its functions, other than this power of delegation.

(2) **Delegation by PIC Commissioner**

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

(3) **Subdelegation**

An officer of the Commission may delegate to another officer of the Commission any of the functions delegated to the officer, subject to any condition to which the delegation is subject.

(4) **Limitations on delegation**

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

- (a) the making of an application for an injunction under section 30,
- (b) the powers of the Commission or the Commissioner under Division 4 of Part 3 at or in connection with a hearing, except the power to issue a warrant for the arrest of a person under section 39,
- (c) the powers of the Commissioner under Part 10 at or in connection with a hearing.

(5) The following functions may not be delegated (except as provided by subsection (6)):

- (a) a function of making a report under this Act,
- (b) the power of the Commissioner to issue a warrant for the arrest of a person under section 39 or 120,
- (c) the power of the Commissioner to issue search warrants under section 45,
- (d) the power to require a public authority or public official to produce a statement or information under section 25,
- (e) the power to require a person to attend and produce a document or other thing under section 26,
- (f) the power to authorise an officer of the Commission to enter premises under section 29.

- (6) The functions referred to in subsection (5) may be delegated to an Assistant Commissioner (and an Assistant Commissioner only) if the Assistant Commissioner has special legal qualifications.

12 Counsel assisting Commission (cf ICAC Act s 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.

Part 3 Functions of Commission

Division 1 Functions generally

13 Principal functions

- (1) The principal functions of the Commission are as follows:
 - (a) to prevent serious police misconduct and other police misconduct,
 - (b) to detect or investigate, or manage other agencies in the detection or investigation of, serious police misconduct,
 - (c) to detect or investigate, or oversee other agencies in the detection or investigation of, other police misconduct, as it thinks fit,
 - (d) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act.
- (2) The Commission is, as far as practicable, required to turn its attention principally to serious police misconduct.
- (3) The reference in this section to *managing* other agencies in the detection or investigation of serious police misconduct is a reference to the provision by the Commission of detailed guidance in the planning and execution of such detection or investigation.
- (4) The reference in this section to *overseeing* other agencies in the detection or investigation of other police misconduct is a reference to the provision by the Commission of a lower level of such guidance, relying rather on a system of guidelines prepared by it and progress reports and final reports furnished to it.
- (5) In managing or overseeing other agencies for the purposes of this section, the Commission does not have a power of control or direction, and any such management or oversight is to be achieved by agreement. However, it is the duty of members of

the Police Service to co-operate with the Commission in the exercise of its management and oversight functions and any other functions of the Commission.

- (6) However, nothing in subsection (2), (3), (4) or (5):
- (a) affects the capacity of the Commission to exercise any of the functions as referred to in subsection (1), or
 - (b) provides a ground for any appeal or other legal or administrative challenge to the exercise by the Commission of any of those functions.

14 Other functions regarding police activities and education programs

Other functions of the Commission include the following:

- (a) to undertake inquiries into or audits of any aspect of police activities for the purpose of ascertaining whether there is police misconduct or any circumstances that may be conducive to police misconduct,
- (b) in particular, to monitor the quality of the management of and investigations conducted within the Police Service and to undertake audits of those investigations,
- (c) to make recommendations concerning police corruption education programs, police corruption prevention programs, and similar programs, conducted within the Police Service or by the Ombudsman or the Independent Commission Against Corruption for the Police Service,
- (d) to advise police and other authorities on ways in which police misconduct may be eliminated.

15 Other functions regarding evidence and information collected
(cf ICAC Act s 14)

- (1) Other functions of the Commission include the following:
- (a) to assemble evidence that may be admissible in the prosecution of a person for a criminal offence against the law of the State and to furnish any such evidence to the Director of Public Prosecutions,

- (b) to assemble evidence that may be admissible in the prosecution of a police officer for a disciplinary offence under the law of the State and to furnish any such evidence to the Minister, the Police Board, the Commissioner of Police or other appropriate authority in the State,
 - (c) to assemble evidence that may be admissible in the prosecution of a person (other than a police officer) for a disciplinary offence under the law of the State and to furnish any such evidence to the appropriate authority in the State,
 - (d) to furnish 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 or a disciplinary offence under the law of the Commonwealth or another State or Territory) to the Attorney General or to the appropriate authority in the jurisdiction concerned.
- (2) Evidence of the kind referred to in subsection (1) (d) may be accompanied by any observations that the Commission thinks appropriate and (in the case of evidence furnished to the Attorney General) recommendations as to what action the Commission considers should be taken in relation to the evidence.
- (3) A copy or detailed description of any evidence furnished to the appropriate authority in another jurisdiction, together with a copy of any accompanying observations, is to be furnished to the Attorney General.
- (4) If the Commission obtains any information in the course of its investigations relating to the exercise of the functions of a public authority (other than the Ombudsman in the exercise of its functions in relation to police misconduct or police complaints), the Commission may, if it thinks it desirable to do so:
- (a) furnish the information or a report of the information to the authority or the Minister for the authority, and
 - (b) make to the authority or the Minister for the authority such recommendations (if any) relating to the exercise of the functions of the authority as the Commission thinks appropriate.

- (5) A copy of any information or report furnished to a public authority under subsection (4), together with a copy of any such recommendation, is to be furnished to the Minister for the authority.
- (6) 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 56 in relation to the evidence or information.

16 Provisions regarding assessments, opinions and recommendations

- (1) The Commission may:
 - (a) make assessments and form opinions, on the basis of its investigations or those of the Police Royal Commission or of agencies of which it has management or oversight under this Act, as to whether police misconduct or other misconduct:
 - has or may have occurred, or
 - is or may be occurring, or
 - is or may be about to occur, or
 - is likely to occur, and
 - (b) make recommendations as to whether consideration should or should not be given to the prosecution of or the taking of other disciplinary action against particular persons, and
 - (c) make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter of its assessments or opinions or the results of any such investigations.
- (2) However, the Commission may not:
 - (a) make a finding or form an opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence), or

-
- (b) make a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence).
- (3) An opinion that a person has engaged, is engaging or is about to engage:
- (a) in police misconduct (whether or not specified conduct), or
- (b) in specified conduct (being conduct that constitutes or involves or could constitute or involve police misconduct),
- is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit a criminal offence or disciplinary offence.
- (4) Nothing in this section prevents or affects the exercise of any function by the Commissioner that it considers appropriate for the purposes of or in the context of Division 1A of Part 9 of the *Police Service Act 1990*.

17 Task forces (cf ICAC Act s 15)

The Commission may, in connection with its 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,
- (d) co-ordinate or co-operate in co-ordinating any such task forces.

18 Co-operation with other agencies (cf ICAC Act S 16)

- (1) In exercising its investigative functions, the Commission may work in co-operation with investigative agencies and such other persons and bodies as the Commission thinks appropriate (whether or not they are in or of the State).

- (2) In exercising its other functions, the Commission may work in co-operation with the educational institutions and such other persons and bodies as the Commission thinks appropriate (whether or not they are in or of the State).
- (3) The Commission may consult with and disseminate intelligence and information to investigative agencies and such other persons and bodies (including any task force and any member of a task force) as the Commission thinks appropriate (whether or not they are in or of the State).
- (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 56 in relation to the information.
- (5) In this section:
investigative agency means:
 - (a) the Ombudsman, or
 - (b) the New South Wales Crime Commission, or
 - (c) the Independent Commission Against Corruption, or
 - (d) the Auditor-General, or
 - (e) the Police Service of New South Wales (or any unit or other part of it), or
 - (f) a police force of another State or Territory (or any unit or other part of it), or
 - (h) the Australian Federal Police (or any unit or other part of it), or
 - (i) the National Crime Authority, or
 - (j) the Australian Bureau of Crime Intelligence, or
 - (k) any other authority or person responsible for the enforcement of laws of the Commonwealth or of the State, another State or a Territory or charged under any such laws with investigating or detecting police or other misconduct.

19 Application of Drug Trafficking (Civil Proceedings) Act 1990

- (1) The *Drug Trafficking (Civil Proceedings) Act 1990* applies to the Police Integrity Commission in the same way as it applies to the New South Wales Crime Commission.

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- (2) Accordingly, references in that Act to the Crime Commission are taken to include references to the Police Integrity Commission, so that functions exercisable by the Crime Commission may be exercised by either body.
- (3) The Police Integrity Commission may exercise a function under that Act only:
- (a) after the PIC Commissioner has consulted with the Crime Commission, or
 - (b) in conformity with an arrangement referred to in section 84 of this Act,

and must consider whether any such function should instead be exercised by the Crime Commission.

- (4) It is intended that the Police Integrity Commission will exercise a function under that Act only in connection with matters arising during or out of its own investigations. However, this subsection does not provide any grounds for an appeal against or any other challenge to the exercise by the Commission of any such function.

20 Evidence and procedure (cf ICAC Act s 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 is required to exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission is required to accept written submissions as far as is possible and hearings are to be conducted with as little emphasis on an adversarial approach as is possible.
- (3) Despite subsection (1), section 127 (Religious confessions) of the *Evidence Act 1995* applies to any hearing before the Commission.

21 Court proceedings (cf ICAC Act s 18; RC (PS) Act s 38)

- (1) The Commission may do any or all of the following, despite any proceedings that may be in or before any court, tribunal, warden, coroner, Magistrate, justice of the peace or other person:
 - (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.

- (2) If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commission may, to the extent to which the Commission thinks it necessary to do so to ensure the accused's right to a fair trial is not prejudiced:
 - (a) ensure that, as far as practicable, any hearing or other matters relating to the investigation are conducted in private during the currency of the proceedings, and
 - (b) give directions under section 52, having effect during the currency of the proceedings, and
 - (c) defer making a report to Parliament in relation to the investigation during the currency of the proceedings.

- (3) Subsection (2) does not apply:
 - (a) in the case of committal proceedings—before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings, and
 - (b) in any other case—after the proceedings cease to be proceedings for the trial of a person before a jury.

- (4) 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.

22 Incidental powers (cf ICAC Act s 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. Any specific powers conferred on the Commission by this Act are not taken to limit by implication the generality of this section.

Division 2 Investigations**23 Investigations generally** (cf ICAC Act S 20)

- (1) The Commission may conduct an investigation on its own initiative, on a police complaint made or referred to it, on a police complaint of which it has become aware, or on a report made to it.
- (2) The Commission may conduct an investigation even though no particular police officer or other person has been implicated and even though no police misconduct is suspected.
- (3) The Commission may, in considering whether or not to conduct, continue or discontinue an investigation, 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 or matter concerned occurred at too remote a time to justify investigation, or
 - (c) if the investigation was initiated as a result of a police complaint—the complaint was frivolous, vexatious or not in good faith.

24 Preliminary investigations

- (1) An investigation may be in the nature of a preliminary investigation.
- (2) A preliminary examination can be conducted, for example, for the purpose of assisting the Commission:
 - (a) to discover or identify conduct that might be made the subject of a more complete investigation under this Act, or

- (b) to decide whether to make particular conduct the subject of a more complete investigation under this Act.
- (3) Nothing in this section affects any other provision of this Act.

Division 3 Obtaining information, documents and other things

25 Power to obtain information (cf ICAC Act SS 21, 82; RC (PS) Act s 6)

- (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, an Assistant Commissioner or any other officer of the Commission) to whom 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.
- (4) A person must not:
 - (a) without reasonable excuse, fail to comply with a notice served on the person under this section, or
 - (b) in purported compliance with a notice served on the person or some other person under this section, furnish information knowing it to be false or misleading in a material particular.

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

- (5) This section does not apply to:
 - (a) the Independent Commission Against Corruption or an officer of the Commission as defined in the *Independent Commission Against Corruption Act 1988*, or
 - (b) the Ombudsman or an officer of the Ombudsman.

26 Power to obtain documents or other things (cf ICAC Act ss 22, 83; RC (PS) Act s 7)

- (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, an Assistant Commissioner or any other officer of the Commission) 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.
- (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.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.
Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.
- (4) This section does not apply to:
 - (a) the Independent Commission Against Corruption or an officer of the Commission as defined in the *Independent Commission Against Corruption Act 1988*, or
 - (b) the Ombudsman or an officer of the Ombudsman.

27 Privilege as regards information, documents or other things (cf ICAC Act s 24; RC (PS) Act s 8)

- (1) This section applies where, under section 25 or 26, the Commission requires any person:
 - (a) to produce any statement of information, or
 - (b) to produce any document or other thing.
- (2) The Commission must 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 that 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 that 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.

28 Self-incrimination (cf ICAC Act S 26; RC (PS) Act s 9)

- (1) This section applies where, under section 25 or 26, the Commission requires any person (other than a body corporate):
 - (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.

29 Power to enter public premises (ICAC Act ss 23 (1) (3), 25 (2) (3); RC (PS) Act s 10 (1) (3) (4) (5))

- (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) The public authority or public official must make available to the Commissioner or authorised officer such facilities as are necessary to enable the powers conferred by this section to be exercised.
- (3) The powers conferred by this section must 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.
- (4) The powers may however be exercised despite:
 - (a) any rule of law that, 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 that 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.
- (5) This section does not apply to:
 - (a) the Independent Commission Against Corruption or an officer of the Commission as defined in the *Independent Commission Against Corruption Act 1988*, or
 - (b) the Ombudsman or an officer of the Ombudsman.

30 Injunctions (cf ICAC Act ss 27, 28)

- (1) 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.

- (2) The Supreme Court is not to grant an injunction under this section unless it is of the opinion that:
 - (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 serious police misconduct or suspected serious police misconduct.
- (3) The Commission is not to be required, as a condition for the granting of an injunction under this section, to give any undertakings as to damages.

31 Powers exercisable whether or not hearings being held
(cf ICAC Act s 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 4 Hearings

32 Hearings (cf ICAC Act S 30)

- (1) For the purposes of an investigation, the Commission may hold hearings.
- (2) A hearing must be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner.
- (3) At each hearing, the person presiding must 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, unless the Commissioner is of the opinion that this would seriously prejudice the investigation concerned.

33 Public and private hearings (cf (ICAC Act S 31)

- (1) A hearing may be held in public or in private, or partly in public and partly in private, as decided by the Commission.

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- (2) Without limiting the above, the Commission may decide to hear closing submissions in private. This extends to a closing submission by a person appearing before the Commission or by a legal practitioner representing such a person, as well as to a closing submission by a legal practitioner assisting the Commission as counsel.
 - (3) In reaching these decisions, the Commission is obliged to have regard to any matters that it considers to be related to the public interest.
 - (4) The Commission may give directions as to the persons who may be present at a hearing when it is being held in private. A person must not be present at a hearing in contravention of any such direction.

34 Right of appearance of affected person (cf ICAC Act S 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.

35 Legal representation (cf ICAC Act S 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 34, 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.

36 Groups and unincorporated associations (cf ICAC Act S 33A)

- (1) Groups and unincorporated associations may be authorised to appear at a hearing or authorised or required to give evidence at a hearing.

- (2) Accordingly, references in sections 34 and 35 to a “person” extend for this purpose to a group or unincorporated association.
- (3) However, this section does not affect the application in any other context of the principle that a reference to a word in the singular form includes a reference to the word in the plural form.

37 Examination and cross-examination of witnesses (cf ICAC Act s 34)

- (1) A person authorised or required to appear at a hearing, 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) A legal practitioner appointed by the Commission to assist it may examine or cross-examine any witness on any matter that the Commission considers relevant.
- (3) Any witness examined or cross-examined under this section has the same protection and is subject to the same liabilities as if examined by the Commissioner or an Assistant Commissioner.

38 Power to summon witnesses and take evidence (cf ICAC Act s 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 Commission 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 make an affirmation in a form approved by the person presiding, and

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- (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 must 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 is taken to have failed to appear before the Commission in obedience to the summons.
- (6) A Judge or Magistrate may, on the application of the Commissioner, issue any summons that the Commissioner is authorised to issue under this section.
- (7) The purpose of subsection (6) is to enable the summons to be given the character of a summons by a judicial officer, for the purposes of the *Service and Execution of Process Act 1992* of the Commonwealth and any other relevant law.

Division 5 Attendance before Commission

39 Arrest of witness (cf ICAC Act S 36; RC (PS) Act s 11)

- (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) The Commissioner may issue a warrant for the arrest of a person whose evidence is desired and is necessary and relevant to an investigation, if the Commissioner is satisfied by evidence on oath or affirmation that it is probable that the person:
- (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.
- (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 Commission.
- (7) A warrant issued under this section may be executed by any police officer, 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.

40 Privilege as regards answers, documents etc (cf ICAC Act S 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 that the witness is required by the summons or by the person presiding to produce.

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- (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, but is admissible 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 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.
- (5) Where:
- (a) a legal practitioner or other person is required to answer a question or produce a document or other thing at a hearing before the Commission, and
 - (b) the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between a legal practitioner (in his or her capacity as a legal practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a hearing before the Commission,
- the legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.

41 Declaration as to objection by witness (cf ICAC Act s 38; RC (PS) Act s 12)

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.

42 Reimbursement of expenses of witnesses (cf ICAC Act s 51; RC (PS) Act s 13(1))

A witness attending or appearing before the Commission is to 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 scale prescribed for the purposes of section 51 of the *Independent Commission Against Corruption Act 1988* or, if there is no such prescribed scale, such amount as the Commission determines.

43 Legal and financial assistance for witness (cf ICAC Act S 52)

- (1) A witness who is appearing or about to appear before the Commission may apply to the Attorney General for legal or financial assistance.
- (2) The Attorney General may approve the provision of legal or financial assistance to the applicant if of the opinion that this is appropriate, having regard to any one or more of the following:
 - (a) the prospect of hardship to the witness if assistance is declined,
 - (b) the significance of the evidence that the witness is giving or appears likely to give,
 - (c) any other matter relating to the public interest.
- (3) On giving the approval, the Attorney General may authorise the provision to the witness of legal or financial assistance determined by the Attorney General in respect of the witness's appearance before the Commission. The assistance is to be provided out of money provided by Parliament for the purpose.

- (4) The assistance may be provided unconditionally or subject to conditions determined by the Attorney General.

44 Attendance of prisoner before Commission (cf ICAC Act S 39; RC (PS) Act s 14)

- (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 the prisoner or having the prisoner produced, and the prisoner must be produced accordingly.
- (3) A prisoner is, when produced under this section in the actual custody of the governor of the prison, a prison officer or a police officer, taken to be in lawful custody.
- (4) The governor, prison officer or police officer must in due course return the prisoner to the prison.
- (5) In this section, *governor of a prison*, *prison* and *prisoner* have the same meanings as in the *Prisons Act 1952*.

Division 6 Search warrants

45 Issue of search warrant

- (1) **Power of authorised justice to issue warrant** (cf ICAC Act s 40 (1); RC (PS) Act s 15 (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) **Power of commissioner to issue warrant** (cf ICAC Act S 40 (2); RC (PS) Act s 15 (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) **Preference for issue by authorised justice** (cf ICAC Act s 40 (3); RC (PS) Act s 15 (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) **Application for warrant** (cf ICAC Act s 40 (4); RC (PS) Act s 15 (4) (a))

An authorised person may apply to an authorised justice or the Commissioner for a search warrant if the person 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 72 hours, be brought into or onto the premises.

- (5) **Definition** (cf RC (PS) Act s 15 (5))

In this section:

authorised person means an officer of the Commission and, in relation to an application to an authorised justice for a search warrant, includes the Commissioner.

46 Authority conferred by search warrant (cf ICAC Act S 41; RC (PS) Act s 16 (1) (2))

- (1) A search warrant authorises a police officer, or any other person, named in the warrant:
- (a) to enter the premises specified in the warrant, 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 police officer, or a senior Commission investigator, named in and executing a search warrant may search a person found in or on the premises whom the police officer or senior Commission investigator reasonably suspects of having a document or other thing mentioned in the warrant.

- (3) In this section:

senior Commission investigator means an officer of the Commission who is designated by the Commissioner as a senior investigator and who is issued by the Commissioner with means of identification as such a senior Commission investigator.

47 Seizure of other documents and things

- (1) **Seizure** (cf ICAC Act S 47 (1); RC (PS) Act s 22)

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,

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

- (2) **Retention or return** (cf ICAC Act S 47 (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 must 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.

48 Application of provisions of Search Warrants Act 1985 (cf ICAC Act s 48; RC (PS) Act s 23)

- (1) Part 3 of the *Search Warrants Act 1985* 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.

49 Obstruction of person executing search warrant (cf ICAC Act s 84; RC (PS) Act s 24)

A person must 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.

Division 7 Listening device warrants

50 Listening devices (cf ICAC Act S 19 (2); RC (PS) Act S 25)

The Commissioner or an officer of the Commission may seek the issue of a warrant under the *Listening Devices Act 1984*.

Division 8 Protection of witnesses and evidence

51 Protection of witnesses and persons assisting Commission

- (1) **Arrangements for protection** (cf ICAC Act S 50; RC (PS) Act s 26 (1))

If it appears to the Commissioner that, because a person is assisting the Commission, 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:

- (a) to protect the safety of any such person, or
- (b) to protect any such person from intimidation or harassment.

(2) **Meaning of “assisting the Commission”** (cf RC (PS) Act s 26 (2))

In this section, a reference to a person who is assisting the Commission is a reference to a person who:

- (a) has appeared, is appearing or is to appear 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, or
- (c) has assisted, is assisting or is to assist the Commission in some other manner.

(3) **Directions**

Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public official:

- (a) to provide any protection referred to in subsection (1), or
- (b) to provide personnel or facilities or both to assist in providing that protection, or
- (c) to otherwise assist in the provision of that protection.

(4) **Duty to comply with directions**

The Commissioner of Police, or such a public authority or public official, is under a duty to comply with any such direction as far as reasonably possible.

(5) **Orders**

Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person and containing directions of a kind or kinds referred to in subsection (3).

(6) **Offence**

A person who contravenes an order applying to the person under subsection (5) without reasonable excuse is guilty of an indictable offence.

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

(7) **Witness Protection Act not affected**

Nothing in this section affects the *Witness Protection Act 1995*.

52 Publication of evidence in contravention of direction

(1) **Direction regarding publication** (cf ICAC Act s 112 (l); RC (PS) Act s 27 (1))

The Commission may direct that:

- (a) any evidence given before the Commission, 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
- (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 before the Commission, must not be published except in such manner, and to such persons, as the Commission specifies.

(2) **Public interest** (cf RC (PS) Act s 27 (2))

The Commission is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

(3) **Offence** (cf ICAC Act s 112 (2); RC (PS) Act s 27 (3))

A person must 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.

53 Publication of evidence given at private hearing

- (1) A person who was present at a hearing of the Commission held in private must not publish, or permit or allow to be published, any evidence given before the Commission at the hearing or any of the contents of a document produced at the hearing, except to an officer of the Commission or as permitted by the Commission or by the regulations.

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

- (2) Nothing in this section affects section 52, but a person cannot be punished under both sections for the same publication.
- (3) This section does not apply to an officer of the Commission.

54 Disclosures prejudicing investigations (cf ICAC Act S 114; RC (PS) Act s 28)

- (1) A person who is required:
 - (a) by a notice under section 25 or 26 to produce a document or other thing, or
 - (b) by a summons under section 38 to give evidence or to produce a document or other thing,

must 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 of summons, or
 - (c) the disclosure is made for the purposes of, or in the course of, legal proceedings, or
 - (d) the disclosure is made in accordance with guidelines issued by the Commission or in accordance with the regulations.
- (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.

55 Indemnities and undertakings (cf ICAC Act S 49; RC (PS) Act s 29)

- (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.

- (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.

Division 9 Secrecy, disclosure, admissibility

56 Secrecy (cf ICAC Act S 111; RC (PS) Act S 30)

- (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 an officer of the Inspector, and
 - (c) 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
 - (d) a person or body referred to in section 15 (6), 18 (4), 77 (5) or 83 (6).
- (2) A person to whom this section applies must 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:
- (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 cannot be 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,

except for the purposes of a prosecution or disciplinary proceedings, instituted as a result of an investigation conducted by the Commission in the exercise of its functions.

- (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 or disciplinary proceedings 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 or Inspector, if the Commissioner or Inspector 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, is subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) in respect of that information 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.

57 Disclosure of information and giving of evidence by Ombudsman to Commission (cf RC (PS) Act s 31)

- (1) The Ombudsman, and any officer of the Ombudsman acting with the approval of the Ombudsman, may:

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- (a) furnish to the Commission information obtained by the Ombudsman or officer in exercising functions under the *Ombudsman Act 1974*, Part 8A (Complaints about the conduct of police officers) of the *Police Service Act 1990* or any other Act, or
 - (b) give evidence before the Commission and produce any document to the Commission, in respect of any such information.
 - (2) Neither the Ombudsman nor any officer of the Ombudsman can be compelled to give any evidence before the Commission or produce any document before the Commission in respect of information obtained by the Ombudsman or officer in exercising functions as referred to in subsection (1).
 - (3) This section applies despite sections 34 (Disclosure by Ombudsman or officer) and 35 (Ombudsman, officer or expert as witness) of the *Ombudsman Act 1974* or sections 166 (Certain information to be confidential) and 169 (Ombudsman or officer as witness) of the *Police Service Act 1990*, and any other law.
 - (4) Section 35 of the *Ombudsman Act 1974* and section 169 of the *Police Service Act 1990* do not apply in respect of any proceedings for an offence under this Act.

58 Disclosure of information and giving of evidence by Police Royal Commission to Commission (cf RC (PS) Act s 31)

- (1) The Police Royal Commissioner, and any officer of the Police Royal Commissioner acting with the approval of the Police Royal Commissioner, may:
 - (a) furnish to the Commission information obtained by the Police Royal Commissioner or officer in exercising functions in relation to the Police Royal Commission, or
 - (b) give evidence before the Commission and produce any document to the Commission, in respect of any such information.

- (2) Neither the Police Royal Commissioner nor any officer of the Police Royal Commission can be compelled to give any evidence before the Commission or produce any document before the Commission in respect of information obtained by the Police Royal Commissioner or officer in exercising functions as referred to in subsection (1).
- (3) This section applies despite section 30 (Secrecy) of the *Royal Commission (Police Service) Act 1994*, and any other law.
- (4) Section 30 of the *Royal Commission (Police Service) Act 1994* does not apply in respect of any proceedings for an offence under this Act.

59 Disclosure of information and giving of evidence by Commission to Police Royal Commission

- (1) The PIC Commissioner, and any officer of the Commission acting with the approval of the Commissioner, may:
 - (a) furnish to the Police Royal Commission information obtained by the PIC Commissioner or officer in exercising functions in relation to the Police Integrity Commission, or
 - (b) give evidence before the Police Royal Commission and produce any document to the Police Royal Commission, in respect of any such information.
- (2) Neither the PIC Commissioner nor any officer of the Commission can be compelled to give any evidence before the Police Royal Commission or produce any document before the Police Royal Commission in respect of information obtained by the PIC Commissioner or officer in exercising functions as referred to in subsection (1).
- (3) This section applies despite section 56 and any other law.
- (4) Section 56 does not apply in respect of any proceedings for an offence under this Act.

60 Disclosure of information and giving of evidence by Commission to Ombudsman

- (1) The PIC Commissioner, and any officer of the Commission acting with the approval of the Commissioner, may:
 - (a) furnish to the Ombudsman information obtained by the Commissioner or officer in exercising functions in relation to the Police Integrity Commission, or
 - (b) give evidence before the Ombudsman and produce any document to the Ombudsman in respect of any such information.
- (2) Neither the PIC commissioner nor any officer of the Commission can be compelled to give any evidence before the Ombudsman or produce any document before the Ombudsman in respect of information obtained by the PIC Commissioner or officer in exercising functions as referred to in subsection (1).
- (3) This section applies despite section 56 and any other law.
- (4) Section 56 does not apply in respect of any proceedings for an offence under this Act.

61 Secrecy provisions in other Acts (cf RC (PS) Act s 32)

- (1) The following provisions do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under this Act:
 - (a) section 15 (Secrecy) of the *Companies (Administration) Act 1981*,
 - (b) section 155A (Secrecy) of the *Liquor Act 1982*,
 - (c) section 206 (Disclosure of information relating to Police Board functions) of the *Police Service Act 1990*,
 - (d) section 72C (Secrecy) of the *Registered Clubs Act 1976*.
- (2) For the purposes of section 13 (Unlawful disclosure of information concerning spent convictions) of the *Criminal Records Act 1991*, the Commission is taken to be a law enforcement agency.

62 Admissibility of documents relating to complaints about police
(cf RC (PS) Act s 33)

- (1) A document brought into existence for the purposes of Part 8A (Complaints about conduct of police officers) of the *Police Service Act 1990* is admissible in evidence before the Commission.
- (2) This section applies despite section 172A (Certain documents privileged) of the *Police Service Act 1990*.

63 Admissibility of documents from Police Royal Commission

A document brought into existence for the purposes of or in relation to the Police Royal Commission is admissible in evidence before the Commission.

64 Telecommunications (Interception) (New South Wales) Act 1987
(cf RC (PS) Act s 34)

Section 21 (Disclosure by persons under the Minister's administration) of the *Telecommunications (Interception) (New South Wales) Act 1987* does not apply to prevent the disclosure of any information or record for the purposes of any proceedings for an offence under this Act.

65 Legal Profession Act 1987 (cf RC (PS) Act s 35)

Section 171R of the *Legal Profession Act 1987* does not apply to proceedings for an offence under this Act.

66 Privacy Committee Act 1975

- (1) **Disclosure of information by members or officers of Privacy Committee** (cf RC (PS) Act s 36 (1))

Section 20 of the *Privacy Committee Act 1975* does not apply to the disclosure of information for the purposes of any proceedings for an offence under this Act.

- (2) **Members or officers of Privacy Committee as witnesses** (cf RC (PS) Act s 36 (2))

Section 21 of the *Privacy Committee Act 1975* does not apply in respect of any proceedings for an offence under this Act.

Part 4 Police complaints

67 Definition of Category 1 complaint

In this Act:

Category 1 complaint means a police complaint:

- (a) that is of a class or kind that the PIC Commissioner and the Ombudsman have agreed should be referred to the Commission, or
- (b) that the PIC Commissioner has requested should be referred to the Commission, or
- (c) that is of a class or kind prescribed by the regulations.

68 Application of this Part

- (1) This Part applies only to police complaints made after the commencement of Part 6A of the *Royal Commission (Police Service) Act 1994*.
- (2) This Part has effect despite Part 8A, or any other provision, of the *Police Service Act 1990*.
- (3) Nothing in this Part prevents the Commission from investigating the whole, or any aspects of, the subject-matter of a police complaint that is not a Category 1 complaint.

69 Copies of Category 1 complaints to be forwarded to Commission

- (1) The Ombudsman must cause copies of all Category 1 complaints to be sent to the Commission in accordance with Part 8A of the *Police Service Act 1990*.
- (2) The Commissioner of Police or a police officer nominated by the Commissioner of Police must cause copies of all Category 1 complaints received by a member of the Police Service to be sent to the Commission in accordance with Part 8A of the *Police Service Act 1990*.

- (3) The Ombudsman and the Commissioner of Police retain their statutory functions with respect to a Category 1 complaint sent to the Commission, except as provided by this Part.

70 Powers of Commission in respect of Category 1 complaints

- (1) The Commission may exercise powers under this section in respect of
- (a) Category 1 complaints sent to the Commission as referred to in section 69 (such a complaint being referred to in this section as a *referred complaint*), or
 - (b) other Category 1 complaints (such a complaint being referred to in this section as a *non-referred complaint*).
- (2) The Commission must notify the Ombudsman of its decision under this section with respect to a referred complaint as soon as practicable after the complaint was received by the Commission. The Commission may, but need not, notify the Ombudsman of its decision under this section with respect to a non-referred complaint.
- (3) The Commission may decide in relation to a referred complaint:
- (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*.
- (4) The Commission may decide in relation to a non-referred complaint:
- (a) to take over the investigation of the complaint, or
 - (b) to take over the investigation of part of the complaint, or
 - (c) to refer the complaint or part of the complaint to be dealt with in accordance with Part 8A of the *Police Service Act 1990*.

- (5) The Commission may review any decision made by it under this section and notify the Ombudsman of the revised decision.
- (6) The Commission may investigate any matter relating to a Category 1 complaint even though it refers the complaint or a part of it back to be dealt with in accordance with Part 8A of the *Police Service Act 1990*.
- (7) 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 such an investigation.
- (8) A Category 1 complaint, to the extent that it is taken over by the Commission, cannot be dealt with as a complaint under Part 8A of the *Police Service Act 1990* and for that purpose is taken not to be a police complaint, except as directed by the Commission either generally or in any particular case or as directed by the regulations.

71 Decision of Commission to investigate complaint (cf RC (PS) Act s 37E)

- (1) This section applies to a decision of the Commission under section 70 (3) (a) or (4) (a) to take over the investigation of a Category 1 complaint from the Commissioner of Police.
- (2) The Commission may request the Ombudsman to 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 given by the Ombudsman.

72 Decision of Commission not to investigate complaint (cf RC (PS) Act s 37F)

- (1) This section applies to a decision of the Commission under section 70 (3) (b) not to take over the investigation of a Category 1 complaint from the Commissioner of Police or under section 70 (4) (c) to refer a complaint.
- (2) When the Ombudsman is notified of the decision, the complaint is to be dealt with in accordance with Part 8A of the *Police Service Act 1990*.

73 Decision of commission to investigate part of complaint (cf RC (PS) Act s 37G)

- (1) This section applies to a decision of the Commission under section 70 (3) (c) or (4) (b) to take over the investigation of part of a Category 1 complaint from the Commissioner of Police or under section 70 (4) (c) to refer part of a complaint.
- (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 its decision and provide a copy of the revised complaint to the Ombudsman.
- (3) The Commission may request the Ombudsman to direct the Commissioner of Police not to investigate the conduct that was part of the original complaint but not part of the revised complaint.
- (4) Section 141 (6) of the *Police Service Act 1990* does not apply to any such direction given by the Ombudsman.
- (5) When the Ombudsman is notified of the decision, the revised complaint is to be dealt with in accordance with Part 8A of the *Police Service Act 1990*.
- (6) 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.

74 Termination of police investigations (cf RC (PS) Act S 37H)

- (1) If the Commissioner of Police is directed under this Part not to investigate a Category 1 complaint (or any part of a Category 1 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.
- (2) Subsection (1) applies to an 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.

75 This Part does not require matters to be disclosed by Commission (cf RC (PS) Act S 371)

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 5 Referral of matters by Commission

Division 1 Referral to police

76 Definition

In this section:

police authority means the Commissioner of Police or such other police officer or police officers or such unit or other part of the Police Service as are agreed on by the PIC Commissioner and the Commissioner of Police or as are prescribed by the regulations.

77 Referral of matter (cf ICAC Act s 53)

- (1) The Commission may, before or after investigating a matter (whether or not the investigation is completed), refer the matter for investigation or action to a police authority.
- (2) The Commission may, when referring a matter, recommend what action should be taken by a police authority and the time within which it should be taken.
- (3) The Commission may communicate to a police authority information that the Commission has obtained during the investigation of conduct connected with the matter.
- (4) The Commission must not refer a matter to a police authority except after appropriate consultation with a police authority and after taking into consideration the views of the police authority with whom it has consulted.
- (5) If the Commission communicates information to a person or body under this section, the person or body is subject to the secrecy provisions of section 56 in relation to the information.

78 Report to Commission (cf ICAC Act S 54)

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

- (2) A report must be of such a nature as the Commission directs.
- (3) A report must be submitted to the Commission within such time as the Commission directs.

79 Further action by Commission (cf ICAC Act s 55)

- (1) If the Commission is not satisfied that a police authority has duly and properly taken action in connection with a matter referred under this Division, the Commission must inform the Commissioner of Police of the grounds of the Commission's dissatisfaction and must give the Commissioner of Police an opportunity to comment within a specified time.
- (2) If, after considering any comments received from the Commissioner of Police within the specified time, the Commission is still not satisfied, the Commission may submit a report to the Minister for Police setting out the recommendation concerned and the grounds of dissatisfaction, together with any comments from the Commissioner of Police and the Commission.
- (3) If, after considering any comments received from the Minister for Police 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 98.

80 Responsibility of police authority (cf ICAC Act S 56)

It is the duty of a police authority to comply with any requirement or direction of the Commission under this Division.

81 Revocation of referral, recommendation etc (cf ICAC Act S 57)

- (1) The Commission may revoke a referral under this Division.
- (2) The Commission may revoke or vary a recommendation, requirement or direction of the Commission under this Division.

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

Division 2 Referral to other authorities or persons

82 Definition

In this Division:

authority means any person or authority, but does not include a police officer, the Police Service or any unit or other part of the Police Service.

83 Referral of matter (cf ICAC Act s 53)

- (1) The Commission may, before or after investigating a matter (whether or not the investigation is completed), refer the matter for investigation or action to any authority considered by the Commission to be appropriate in the circumstances.
- (2) The authority to whom a matter is referred is called in this Division 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 that the Commission has obtained during the investigation of conduct connected with the matter.
- (5) The Commission must not refer a matter to an authority except after appropriate consultation with the authority and with the concurrence of the authority.
- (6) If the Commission communicates information to a person or body under this section, the person or body is subject to the secrecy provisions of section 56 in relation to the information.

The Commission may revoke a referral under this section.

84 Referral of matter for action under confiscation legislation

- (1) Section 83 authorises the Commission to refer a matter to the Director of Public Prosecutions or the Crime Commission for action under the *Confiscation of Proceeds of Crime Act 1989* or the *Drug Trafficking (Civil Proceedings) Act 1990*. This subsection does not affect the generality of section 83.
- (2) Such a referral may be made even though the Commission has functions under either or both of those Acts.

Note. Schedule 2 to the *Police Legislation Amendment Act 1996* amends the *Confiscation of Proceeds of Crime Act 1989* to confer functions on the Commission. Section 19 of this Act extends the operation of the *Drug Trafficking (Civil Proceedings) Act 1990* so as to confer functions on the Commission.

- (3) The Commission may enter into arrangements with the Director of Public Prosecutions or the Crime Commission (or both) regarding the class or kind of matters that might appropriately be dealt with by the respective parties to the arrangements.
- (4) An arrangement does not prevent any of the parties to it from exercising any functions.

85 Report to Commission (cf ICAC Act s 54 (1))

The Commission may, when referring a matter under this Division, request 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.

86 Further action by Commission (cf ICAC Act s 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 Division, the Commission must inform the relevant authority of the grounds of the Commission's dissatisfaction and must 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 100.

87 Role of relevant authority

The relevant authority may deal with a matter referred to under this Division in such manner as it thinks appropriate, having regard to and subject to any statutory requirements applicable to it.

Part 6 Inspector of the Police Integrity Commission

88 Inspector of the Police Integrity Commission

(1) **Appointment**

The Governor may appoint an Inspector of the Police Integrity Commission.

(2) **Schedule of provisions relating to Inspector**

Schedule 2 has effect.

89 Principal functions of Inspector

(1) The principal functions of the Inspector are:

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
- (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
- (c) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

(2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Ombudsman, the ICAC, the New South Wales Crime Commission, the Joint Committee or any other agency.

(3) The Inspector is not subject to the Commission in any respect.

90 Powers of Inspector

(1) The Inspector:

- (a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and
- (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and

- (c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and
- (d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and
- (e) may investigate and assess complaints about the Commission or officers of the Commission, and
- (f) may refer matters relating to the Commission or officers of the Commission to other agencies for consideration or action, and
- (g) may recommend disciplinary action or criminal prosecution against officers of the Commission.

91 Inquiries (cf Omb Act S 19 (1) (2))

- (1) For the purposes of its functions, the Inspector may make or hold inquiries.
- (2) For the purposes of any inquiry under this section, the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923* and that Act (section 13 excepted) applies to any witness summoned by or appearing before the Inspector in the same way as it applies to a witness summoned by or appearing before a commissioner.

92 Staff of Inspector

- (1) Such staff as may be necessary to assist the Inspector may be employed under Part 2 of the *Public Sector Management Act 1988*.
- (2) The Inspector may also employ staff. Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of any such staff.
- (3) The Inspector may engage persons as consultants to the Inspector or to perform services for the Inspector.

- (4) The Inspector may arrange for the use of the services of
 - (a) any staff or facilities of the Commission, a government department or a local or public authority, or
 - (b) any staff who are employed by or for or assigned to the person who is Inspector, in his or her capacity as the holder of some other position (for example, as a Judge).
- (5) Police officers and former police officers cannot be appointed to, employed or engaged by, or seconded to the service of, the Inspector, nor (without limiting the foregoing provisions of this subsection) can arrangements be made under subsection (4) for the use of their services.
- (6) Such provisions of this Act as are prescribed by the regulations apply to persons referred to in subsections (1)–(4) in the same way as they apply to staff of the Commission, with any necessary adaptations and with such modifications as are prescribed.

93 Incidental powers

The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions. Any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this section.

Part 7 Parliamentary Joint Committee

94 Definition

In this Act:

Joint Committee means the joint committee called the Committee on the Office of the Ombudsman and the Police Integrity Commission, constituted under the *Ombudsman Act 1974*.

95 Functions

- (1) The Joint Committee has the following functions under this Act:
 - (a) to monitor and review the exercise by the Commission and the Inspector of their functions,
 - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of their 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 of the Inspector and report to both Houses of Parliament on any matter appearing, or arising out of, any such report,
 - (d) to examine trends and changes in police corruption, and practices and methods relating to police corruption, and report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector,
 - (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, a particular matter or particular conduct, or

- (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular complaint.
- (3) The provisions of Part 4A of the *Ombudsman Act 1974* apply in relation to the Joint Committee's functions under this Act in the same way as they apply in relation to the Joint Committee's functions under that Act.

Part 8 Reports to Parliament

Division 1 Reports by Commission

96 Reports on investigations

- (1) **Report where investigation** (cf ICAC Act s 74 (1))

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

- (2) **Report where public hearing** (cf ICAC Act s 74 (3))

The Commission must prepare reports in relation to matters as to which the Commission has conducted a public hearing.

- (3) **Report to be furnished to Presiding Officer** (cf ICAC Act s 74 (4))

The Commission is to furnish reports prepared under this section to the Presiding Officer of each House of Parliament.

- (4) **Timing of report** (cf ICAC Act s 74 (7))

A report required under this section is to be furnished as soon as possible after the Commission has concluded its involvement in the matter.

- (5) **Deferral** (cf ICAC Act S 74 (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.

97 Content of reports to Parliament

- (1) The Commission is authorised to include in a report under section 96:
- (a) statements as to any of its assessments, opinions and recommendations, and
 - (b) statements as to the Commission's reasons for any of its assessments, opinions and recommendations.

- (2) The report must include, in respect of each “affected” person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:
 - (a) the prosecution of a person for a specified criminal offence,
 - (b) the taking of action against the person for a specified disciplinary offence,
 - (c) the taking of action against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services or otherwise terminating the services of the police officer.
- (3) An “affected” person is a person against whom, in the Commission’s opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.
- (4) Subsection (2) does not limit the kind of statement that a report can contain concerning any such “affected” person and does not prevent a report from containing a statement described in that subsection in respect of any other person.

98 Special reports (cf ICAC Act S 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.

99 Annual reports

- (1) The Commission is required to prepare, within the period of 4 months after each 30 June, 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 must include the following:
 - (a) a description of the types of matters that were referred to the Commission,

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- (b) a description of the types of matters investigated by the Commission,
 - (c) an evaluation of the response of the Commissioner of Police, relevant members of the Police Service Senior Executive Service and other relevant authorities to the findings and recommendations of the Commission,
 - (d) 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,
 - (e) the general nature and extent of any information furnished under this Act by the Commission during the year to a law enforcement agency,
 - (f) the extent to which its investigations have resulted in prosecutions or disciplinary action in that year,
 - (g) the number of search warrants issued by authorised justices and the Commissioner respectively under this Act in that year,
 - (h) a description of its activities during that year in relation to its educating and advising functions.
- (3) **Modification of Annual Reports (Departments) Act 1985**
(cf Omb Act s 30 (2))

The *Annual Reports (Departments) Act 1985* is, in its application to the annual report of the Commission, modified as follows:

- (a) letters of submission under that Act are to be made to the Presiding Officer of each House of Parliament and not to the appropriate Minister,
- (b) the annual report is to be submitted to the Presiding Officer of each House of Parliament and not to the appropriate Minister,
- (c) provisions of that Act relating to the presentation of annual reports to the appropriate Minister and to the public availability of annual reports do not apply to the Commission or the Commissioner.

100 Reports relating to authorities (cf ICAC Act S 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 79 which it is of the opinion should be adopted and the reasons for its opinion.
- (2) Such a report must not be furnished until after the period of 21 days referred to in section 79 (3) has passed.

Division 2 Reports by Inspector

101 Special reports

The Inspector may, at any time, make a special report to the Presiding Officer of each House of Parliament on:

- (a) any matters affecting the Commission, including, for example, its operational effectiveness or needs,
- (b) any administrative or general policy matter relating to the functions of the Inspector.

102 Annual reports

The Inspector is required to prepare, within the period of 4 months after each 30 June, 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.

Division 3 General

103 Provisions relating to reports (cf ICAC Act s 78)

- (1) A copy of a report furnished to the Presiding Officer of a House of Parliament is to 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 a 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.

Part 9 Certain offences

104 Obstruction of Commission or Inspector (cf ICAC Act s 80)

A person must not:

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Commission or an officer of the Commission, or the Inspector or an officer of the Inspector, 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, or the Inspector or an officer of the Inspector, 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, or the Inspector or an officer of the Inspector, 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.

105 Public and private hearings (cf ICAC Act s 85)

A person who is present at a hearing in contravention of section 33 is guilty of an offence.

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

106 Failure to attend etc (cf ICAC Act s 86)

- (1) A person summoned to attend, or appearing before the Commission at a hearing must 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 that 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.

107 False or misleading evidence (cf ICAC Act s 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.

108 Offences relating to documents or other things (cf ICAC Act s 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.

- (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 indictable 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 25 or 26.

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.

109 Procuring false testimony by witness (cf ICAC Act s 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 25, 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.

110 Bribery of witness (cf ICAC Act s 90)

A person who:

- (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.

111 Fraud on witness (cf ICAC Act S 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 25 or 26 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.

112 Preventing witness from attending and threats to witnesses (cf ICAC Act s 92)

- (1) A person who:
- (a) 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, or
 - (b) threatens to do or cause, or does or causes, any injury or detriment to any person intending to influence a person summoned as a witness before the Commission to give false testimony or to withhold true testimony or to not attend as a witness or not produce anything in evidence pursuant to a summons to attend,

is guilty of an indictable offence.

- (2) A person who:
- (a) wilfully prevents or wilfully endeavours to prevent any person from complying with a requirement under section 25 or 26, or
 - (b) threatens to do or cause, or does or causes, any injury or detriment to any person intending to influence a person to not comply with a requirement under section 25 or 26,

is guilty of an indictable offence.

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

113 Injury to witness or person assisting Commission

- (1) **Offence** (cf ICAC Act s 93)

A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of

- (a) his or her assisting the Commission, or

(b) any evidence given by him or her before the Commission, is guilty of an indictable offence.

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

(2) Meaning of assisting the Commission (cf RC (PS) Act s 26 (2))

In this section, a reference to a person assisting the Commission is a reference to a person who:

- (a) has appeared, is appearing or is to appear as a witness before the Commission, or
- (b) has complied with or proposes to comply with a requirement under section 25 or 26, or
- (c) has assisted, is assisting or is to assist the Commission in some other manner.

114 Dismissal of witness, or person assisting Commission, by employer

(1) Offence (cf ICAC Act s 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 assisting the Commission is guilty of an indictable offence.

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

(2) Meaning of assisting the Commission (cf RC (PS) Act s 26 (2))

In this section, a reference to a person assisting the Commission is a reference to a person who:

- (a) has appeared, is appearing or is to appear as a witness before the Commission, or
- (b) has complied with or proposes to comply with a requirement under section 25 or 26, or
- (c) has assisted, is assisting or is to assist the Commission in some other manner.

(3) **Onus on employer** (cf ICAC Act s 94 (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).

115 Impersonation of officer of Commission (cf ICAC Act s 95)

- (1) A person must 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.

116 Bribery of officer of Commission (cf ICAC Act s 96)

- (1) An officer of the Commission must 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:
- (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 7 years, or both.

- (2) A person must 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 7 years, or both.

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

Part 10 Contempt of commission

117 Definition (cf ICAC Act s 97; RC Act s 18A (2))

In this Part:

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

118 Contempt (cf ICAC Act s 98)

- (1) 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
 - (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 an Assistant Commissioner, or
 - (d) wilfully threatens or insults:
 - (i) the Commissioner, an Assistant Commissioner or another 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) misbehaves himself or herself before the Commission, or
 - (f) interrupts the proceedings of the Commission, or
 - (g) obstructs or attempts to obstruct the Commission, the Commissioner, an Assistant Commissioner or a person acting with the authority of the Commission or the Commissioner in the exercise of any lawful function, or

- (h) 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
- (i) 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, or
- (j) publishes, or permits or allows to be published, any evidence given before the Commission at a hearing held in private or any of the contents of a document produced at a hearing held in private, except to an officer of the Commission or as permitted by the Commission or by the regulations,

is guilty of contempt of the Commission.

- (2) Subsection (1) (j) does not apply to an officer of the Commission.

119 Punishment of contempt (cf ICAC Act s 99; RC Act s 18B)

- (1) A contempt of the Commission may be punished in accordance with this section.
- (2) The Commissioner may present to the Supreme Court a certificate setting out the details which the Commissioner considers constitutes the contempt.
- (3) If the Commissioner presents such a certificate to the Supreme court:
 - (a) the Supreme Court is required thereupon to inquire into the alleged contempt, and
 - (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 same 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, 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 consisting of failure to attend as a witness in obedience to a summons excuses the offender from such attendance, 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.

120 General provisions regarding contempt (cf ICAC Act s 100; RC Act s 18C)

- (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 119 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 119 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:
 - (a) taken into custody then and there by a police officer or by an officer of the Commission authorised for the purpose by the Commissioner, and
 - (b) called on to show cause why the offender should not be dealt with under section 119 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.
- (6) The warrant is to 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.

121 Act or omission that is both an offence and contempt (cf ICAC Act s 101; RC Act s 18D)

- (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 Special powers and weapons

122 Definitions (cf RC (PS) Act s 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 by the Commissioner 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 by the Commissioner with means of identification as such an officer.

123 Commission investigator who is seconded police officer to have all powers of NSW police officer (cf RC (PS) Act s 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 and may exercise under any law of the State (including the common law and this Act).
- (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*, but may be made to the Inspector.

124 Firearms and other police equipment (cf RC (PS) Act s 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.
- (2) For the purposes of section 6 of the *Prohibited Weapons Act 1989*, Commission investigators, and Commission surveillance officers, who are seconded police officers are authorised to possess handcuffs and body armour vests, but only when acting in their capacity as officers of the Commission.

Part 12 Relationship of Commission with other agencies

125 Relationship with Ombudsman regarding conduct of PIC

- (1) Conduct of the PIC Commissioner or an officer of the Commission cannot be made the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1974*, except in relation to matters referred to the Ombudsman by the Inspector.
- (2) Conduct of the Inspector cannot be made the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1974*.

126 Relationship with ICAC regarding conduct of PIC

- (1) Conduct of the PIC Commissioner or an officer of the Commission cannot be made the subject of a complaint, inquiry, investigation or other action under the *Independent Commission Against Corruption Act 1988*, except in relation to matters referred to the ICAC by the Inspector.
- (2) Conduct of the Inspector can be made the subject of a complaint, inquiry, investigation or other action under the *Independent Commission Against Corruption Act 1988*.

127 Statutory notification by PIC to ICAC

Section 11 of the *Independent Commission Against Corruption Act 1988* does not apply to the PIC.

Note. Section 131 provides for arrangements to be entered into regarding notification of matters by the PIC to the ICAC.

128 Notification of police complaints by ICAC to Ombudsman or PIC

- (1) The ICAC is required to refer to the Ombudsman all complaints received by it involving police officers, whether or not involving conduct of other public officials.

- (2) However, such a complaint may instead be referred by the ICAC to the PIC if the ICAC is of the opinion that the complaint involves serious police misconduct.
- (3) A complaint referred to the Ombudsman under this section must be referred by the Ombudsman to the PIC if the Ombudsman is of the opinion that the complaint or matter involves serious police misconduct.

129 Functions of ICAC where police officers involved

- (1) The ICAC cannot investigate or otherwise deal with a matter involving the conduct of police officers if the matter does not also involve the conduct of public officials who are not police officers.
- (2) The ICAC may investigate and otherwise deal with a matter involving the conduct of police officers, provided this is done in the context of matters that also involve public officials who are not police officers.
- (3) This section has effect subject to arrangements under section 131.

130 Functions of PIC where other public officials involved

- (1) The PIC cannot investigate or otherwise deal with a matter involving the conduct of public officials if the matter does not also involve the conduct of police officers.
- (2) The PIC may investigate and otherwise deal with a matter involving the conduct of public officials, provided this is done in the context of matters that also involve public officials who are not police officers.
- (3) This section has effect subject to arrangements under section 131.

131 Arrangements between PIC and ICAC

(1) Arrangements may be entered into

The PIC Commissioner and the ICAC Commissioner may enter into arrangements regarding:

- (a) matters about which the ICAC will notify the PIC where the ICAC suspects police misconduct may exist, and

- (b) matters about which the PIC will notify the ICAC where the PIC suspects corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* may exist, and
- (c) matters that the ICAC will investigate or otherwise deal with where conduct involves both police officers and other public officials, and
- (d) matters that the PIC will investigate or otherwise deal with where conduct involves both police officers and other public officials.

(2) **Arrangements to be observed**

The PIC and the ICAC are empowered and required to exercise their functions in conformity with any relevant arrangements entered into under this section.

132 Other roles of ICAC not affected

Nothing in this Act prevents the ICAC from exercising its educative and advisory roles, including its functions referred to in section 13 (1) (d)–(k) of the *Independent Commission Against Corruption Act 1988*, even though they may involve the Police Service.

133 Relationship with Auditor-General

The Commissioner may enter into arrangements with the Auditor-General regarding the identity and qualifications (including security clearance) of the persons who will audit the books and accounts of the Commission or exercise any other functions of the Auditor-General in relation to the Commission.

134 Relationship with Police Royal Commission

The PIC Commissioner may enter into arrangements with the Police Royal Commissioner regarding:

- (a) the co-operative exercise of the respective functions of the PIC and the Police Royal Commission, and
- (b) the joint use of facilities and staff, and
- (c) the transfer of records and other material from the Police Royal Commission to the PIC.

135 Complaints by public officials

- (1) A public official within the meaning of the *Protected Disclosures Act 1994* may complain to the Commission (orally or in writing) about the conduct of a police officer.
- (2) A public official within the meaning of the *Protected Disclosures Act 1994* may complain to the Inspector (orally or in writing) about the conduct of the Commission, an officer of the Commission or an officer of the Inspector.
- (3) In this section:

conduct includes conduct by way of action or inaction or alleged action or inaction.

Part 13 Miscellaneous

136 Act binds Crown (cf ICAC Act s 102)

This Act binds the Crown.

137 Protection from liability (cf ICAC Act s 109)

- (1) A matter or thing done or omitted to be done by the Commission, the Commissioner, the Inspector or any person acting under the direction of the Commission, Commissioner or Inspector does not, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Commissioner, Inspector or a person so acting personally to any action, liability, claim or demand.
- (2) 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.
- (3) 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.
- (4) No criminal or civil liability (apart from this Act) attaches to a person for compliance, or purported compliance in good faith, with any requirement made under this Act.
- (5) In particular, if a person gives any statement of information or produces any document or other thing under section 25 or 26, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

138 Disclosure of pecuniary interests and other matters (cf ICAC Act s 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 are to 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.

139 Service of documents (cf ICAC Act s 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.

140 Penalties for offences committed by corporations (cf ICAC Act s 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 141) double the pecuniary penalty otherwise applying to the offence.

141 Proceedings for offences (cf ICAC Act s 116)

- (1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (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.
- (4) Proceedings for an alleged offence under section 104 (c) may be commenced within 3 years after the commission of the alleged offence.

142 Exercise of functions by police

- (1) A police officer may not exercise investigative, surveillance or enforcement functions under or for the purposes of this Act unless authorised to do so by the Commissioner. Such an authorisation may not be given without concurrence of the Minister.
- (2) This section has effect despite any other provision of this Act, but does not apply to functions specified or described in the regulations for the purposes of this subsection.

143 Regulations**(1) General regulation making power**

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) Particular powers

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 (except in so far as, where the staff are public servants, provision is made for these matters by or under the *Public Sector Management Act 1988*), 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) the use and custody of the seal of the Commission.

(3) Regulations may create offences

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

144 Savings, transitional and other provisions

Schedule 3 has effect.

145 Parliament (cf ICAC Act s 122)

Nothing in this Act is to be taken to affect the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.

146 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as practicable after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Schedule 1 Provisions relating to Commissioner

(Section 7)

1 Eligibility for appointment (cf ICAC Act Sch 1, cl 1 (2))

- (1) A person is not eligible to be appointed as Commissioner or to act in that office unless the person has special legal qualifications.
- (2) A person is not eligible to be appointed as Commissioner or to act in that office if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.

2 Acting Commissioner (cf ICAC Act Sch 1, cl 2)

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

3 Basis of office (cf ICAC Sch 1, cl 3 (1) (3))

- (1) The office of Commissioner is a full-time office.
- (2) The holder of the office of Commissioner is required to hold it on that basis, except to the extent permitted by the Governor.

4 Terms of office (cf ICAC Act Sch 1, cl 4)

- (1) Subject to this Schedule, the Commissioner holds 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.

5 Remuneration (cf ICAC Act Sch 1, 5; NSW CC Act Sch 1, cl 4 (2))

- (1) The 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.
- (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) The Commissioner is not, if a Judge of a New South Wales Court and while receiving remuneration as such a Judge, entitled to remuneration under this Act.

6 Provisions where Judge is holding office as Commissioner (cf NSW CC Act Sch 1, cl 5)

- (1) The appointment of a person who is the holder of a judicial office as Commissioner or service by a person who is the holder of a judicial office as Commissioner does not affect:
- (a) the person's tenure of that judicial office, or
 - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as Commissioner is, for all purposes, taken to be service as the holder of that judicial office.
- (3) In this clause:

judicial office means an office of Judge of a court of New South Wales.

7 Vacancy in office

- (1) **Vacancies** (cf ICAC Act Sch 1, cl 6 (1))

The office of 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 term mentioned in clause 4, or
- (d) resigns the office by instrument in writing addressed to the Governor, or
- (e) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
- (f) 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
- (g) becomes a mentally incapacitated person, or
- (h) 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
- (i) is removed from office under subclause (2).

(2) **Removal from office** (cf ICAC Act Sch 1, cl 6 (2))

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

8 Filling of vacancy (cf ICAC Act Sch 1, cl 7 (1))

If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

9 Public Sector Management Act 1988 (cf ICAC Act Sch 1, cl 8)

The *Public Sector Management Act 1988* does not apply to the appointment of the Commissioner, and the holder of the office is not, as holder, subject to that Act.

10 Veto of proposed appointment of Commissioner (cf ICAC Act s 5A)

- (1) A person is not to be appointed as Commissioner until:
 - (a) a proposal that the person be so appointed has been referred to the Joint Committee under section 31BA of the *Ombudsman Act 1974*, and
 - (b) the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this clause, *appointment* includes re-appointment.

Schedule 2 Provisions relating to Inspector

(Section 88)

1 Eligibility for appointment

- (1) A person is not eligible to be appointed as Inspector or to act in that office unless the person has special legal qualifications.
- (2) A person is not eligible to be appointed as Inspector or to act in that office if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.

2 Acting Inspector

- (1) The Governor may, from time to time, appoint a person to act in the office of Inspector during the illness or absence of the Inspector. The person, while so acting, has all the functions of the Inspector and is taken to be the Inspector.
- (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 vacancy in the office of Inspector is taken to be an absence from office of Inspector.

3 Basis of office

- (1) The office of Inspector may be a full-time or part-time office, according to the terms of appointment.
- (2) The holder of a full-time office referred to in subclause (1) is required to hold it on that basis, except to the extent permitted by the Governor.

4 Terms of office

- (1) Subject to this Schedule, the Inspector holds 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 Inspector for terms totalling more than 5 years.

5 Remuneration

- (1) The Inspector 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.
- (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) The Inspector is not, if a Judge of a New South Wales Court and while receiving remuneration as such a Judge, entitled to remuneration under this Act.

6 Provisions where Judge is holding office as Inspector

- (1) The appointment of a person who is the holder of a judicial office as Inspector or service by a person who is the holder of a judicial office as Inspector does not affect:
 - (a) the person's tenure of that judicial office, or
 - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as Inspector is, for all purposes, taken to be service as the holder of that judicial office.
- (3) In this clause:

judicial office means an office of Judge of a court of New South Wales.

7 Vacancy in office

- (1) **Vacancies** (cf ICAC Act Sch 1, cl 6 (1))

The office of Inspector 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 term mentioned in clause 4, or
- (d) resigns the office by instrument in writing addressed to the Governor, or

- (e) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
 - (f) 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
 - (g) becomes a mentally incapacitated person, or
 - (h) 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
 - (i) is removed from office under subclause (2).
- (2) **Removal from office** (cf ICAC Act Sch 1, cl 6 (2))

The Inspector may be removed from office by the Governor on the address of both Houses of Parliament.

8 Filling of vacancy

If the office of Inspector becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

9 Public Sector Management Act 1988

The *Public Sector Management Act 1988* does not apply to the appointment of the Inspector, and the holder of that office is not, as holder, subject to that Act.

10 Veto of proposed appointment of Inspector

- (1) A person is not to be appointed as Inspector until:
 - (a) a proposal that the person be so appointed has been referred to the Joint Committee under section 31BA of the *Ombudsman Act 1974*, and

- (b) the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this clause, *appointment* includes re-appointment.

Schedule 3 Savings, transitional and other provisions

(Section 144)

Part 1 General

1 Saving and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:
this Act,
the Police Legislation Amendment Act 1996.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

Part 2 Provisions consequent on enactment of this Act

2 Powers of Commission regarding matters related to Police Royal Commission

- (1) The PIC may exercise any of its functions under this Act in relation to anything done or omitted to be done by, to or in relation to the Police Royal Commission (including, for example, the punishment of contempt of the Police Royal Commission).

- (2) Without limiting subclause (1) or any other power of the PIC, the PIC may continue any investigation or other matter commenced but not completed by the Police Royal Commission, and may for this purpose adopt any evidence taken or assessments made by the Police Royal Commission.
- (3) Accordingly, this Act has effect, for the purposes of this clause, with any necessary adaptations and with such modifications as may be prescribed by the regulations.

Part 3 Provisions consequent, on enactment of Police Legislation Amendment Act 1996

3 Definitions

In this Part:

amending Act means the *Police Legislation Amendment Act 1996*.

new Part 8A means Part 8A of the *Police Service Act 1990* as substituted by the amending Act.

old Part 8A means Part 8A of the *Police Service Act 1990* as in force before the substitution of Part 8A by the amending Act.

4 Application of provisions relating to complaints

- (1) The new Part 8A extends to conduct that occurred after the commencement of the *Police Regulation (Allegations of Misconduct) Act 1978* and before the commencement of the new Part 8A.
- (2) Anything duly done under the old Part 8A is taken to have been duly done under the corresponding provision of the new Part 8A.
- (3) Without limiting subclause (2), a complaint duly made under the old Part 8A and subsisting at the time of its repeal by the amending Act is taken to have been duly made under the new Part 8A.

- (4) A reference in section 124 of the *Police Service Act 1990* to a complaint already made in accordance with that Act is taken to include a reference to a complaint made in accordance with that Act before the commencement of the new Part 8A.
- (5) This clause has effect subject to the regulations under this Schedule.

[Minister's second reading speech made in—
Legislative Assembly on 4 June 1996
Legislative Council on 17 June 1996]