



New South Wales

Investigative Bodies Legislation Amendment Act 1997 No 60

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New South Wales

Investigative Bodies Legislation Amendment Act 1997 No 60

Act No 60, 1997

*An Act to amend the *Police Integrity Commission Act 1996*, the *Royal Commission (Police Service) Act 1994*, the *New South Wales Crime Commission Act 1985* and the *Independent Commission Against Corruption Act 1988* with respect to the conditional release of witnesses and contemnors, the protection of witnesses and other matters. [Assented to 2 July 1997]*

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Investigative Bodies Legislation Amendment Act 1997*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Police Integrity Commission Act 1996 No 28

The *Police Integrity Commission Act 1996* is amended as set out in Schedule 1.

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

The *Royal Commission (Police Service) Act 1994* is amended as set out in Schedule 2.

5 Amendment of New South Wales Crime Commission Act 1985 No 117

The *New South Wales Crime Commission Act 1985* is amended as set out in Schedule 3.

6 Amendment of Independent Commission Against Corruption Act 1988 No 35

The *Independent Commission Against Corruption Act 1988* is amended as set out in Schedule 4.

Schedule 1 Amendment of Police Integrity Commission Act 1996

(Section 3)

[1] Section 11 Delegation

Insert “or 5” after “Division 4” in section 11(4)(b).

[2] Section 39 Arrest of witness

Omit “custody” from section 39(6).
Insert instead “a prison or elsewhere”.

[3] Section 39(6)

Omit “Commission” where secondly occurring.
Insert instead “Commissioner”.

[4] Sections 39A and 39B

Insert after section 39:

39A Conditional release of witness

- (1) The release of a witness by order of the Commissioner under section 39(6) may (but need not) be made subject to one or more of the following conditions (or to any other conditions):
 - (a) that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the person presiding at the relevant hearing of the Commission, and
 - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

39B Review by Supreme Court

- (1) A witness who has not been released by the Commissioner under section 39 (6) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness.
- (3) Such an order is taken to be an order of the Commissioner.

[5] Section 43 Legal and financial assistance for witness

Insert after section 43 (4):

- (5) The Attorney General may delegate one or more of his or her functions under this section to the Director-General of the Attorney General's Department.

[6] Section 51 Protection of witnesses and persons assisting Commission

Omit section 51 (5). Insert instead:

- (5) **Orders**
Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3).

[10] Section 106 (3)

Insert after subsection (2):

- (3) A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 39 (6) or 120A is subject, is guilty of an offence.

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

[11] Section 112 Preventing witness from attending and threats to witnesses

Insert after section 112 (2):

- (3) A reference in subclause (1) to a person who has been summoned to attend as a witness before the Commission includes a reference to a person who is in detention under a warrant under section 39 (6) or who, having been released under that subsection on condition that the person appear and report himself or herself before the Commission, is still subject to that condition.

[12] Section 118 Contempt

Insert after section 118 (1)(a):

- (aa) having been released under section 39 (6) on condition (under section 39A (l) (a)) that the person appear and report himself or herself before the Commission, fails so to appear and report, or

[13] Section 119 Punishment of contempt

Insert “(or failure to appear and report as a witness in accordance with a condition of release)” after “summons” in section 119 (5).

[14] Section 120 General provisions regarding contempt

Insert “in a prison or elsewhere” after “custody” in section 120 (3) (a).

[15] Sections 120A and 120B

Insert after section 120:

120A Conditional release of offender

- (1) The Commissioner may by order release an offender detained under section 120 at any time before the offender is brought before the Supreme Court.
- (2) The release must be subject to the condition that the offender appear before the Supreme Court.
- (3) The release may (but need not) be made subject to:
 - (a) one or more conditions for the purpose of ensuring the appearance of the offender before the Supreme Court (for example the provision of sureties by the offender, the surrender of any passport held by the offender, a requirement as to where the offender is to live and regular reporting by the offender to the Commission), and
 - (b) any other conditions.
- (4) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

120B Review by Supreme Court

- (1) An offender who has not been released by the Commissioner under section 120A or whose release under that section is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the offender or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the offender or any condition imposed by the Commissioner on the release of the offender. The Supreme Court may also or instead make any order that the Commissioner may make in

relation to the detention or release of the offender. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the offender.

- (3) Such an order is taken to be an order of the Commissioner.

[16] Section 130 Functions of PIC where other public officials involved

Omit “public officials who are not” from section 130 (2).

[17] Schedule 3 Savings, transitional and other provisions

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

Police Legislation Amendment Act 1996

Investigative Bodies Legislation Amendment Act 1997

[18] Schedule 3, Part 2 heading

Omit the heading. Insert instead:

Part 2 Continuity with Police Royal Commission

[19] Schedule 3, clause 2A

Insert after clause 2:

2A Continuing protection of witnesses

- (1) An order, arrangement or direction in force under section 26 (or a direction in force under section 27) of the *Royal Commission (Police Service) Act 1994* immediately before a Police Royal Commissioner discharges his or

her functions under the Royal Commission issued to him or her continues in force under that Act despite that discharge and without the need for a further Royal Commission that provides that that Act is to apply to the Commission.

- (2) After the commencement of this subclause, whether or not there is a Royal Commission in force that provides that the *Royal Commission (Police Service) Act 1994* is to apply to the Commission, the PIC Commissioner has the same powers as a Police Royal Commissioner would have if a Police Royal Commissioner were to have functions under that Act:
- (a) to make an order, arrangement or direction under section 26 of that Act or a direction under section 27 of that Act, and
- (b) to vary or revoke such an order, arrangement or direction, whether made by a Police Royal Commissioner or the PIC Commissioner.
- (3) The PIC Commissioner has the powers referred to in subclause (2) in respect of a person whether or not an order, arrangement or direction was in force in respect of the person under the *Royal Commission (Police Service) Act 1994* before the commencement of that subclause.

[20] Schedule 3, Part 4

Insert after Part 3:

**Part 4 Provisions consequent on enactment of
Schedule 1 to Investigative Bodies
Legislation Amendment Act 1997**

5 Definition

In this Part, *amending Act* means the *Investigative Bodies Legislation Amendment Act 1997*.

6 Conditional release

- (1) Section 39A only applies to any release ordered on or after the commencement of that section.
- (2) Section 39B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

7 Secrecy of identity and location of witness

A reference in section 52, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment.

8 Preventing witness from attending and threats to witnesses

A reference in section 112 (3), as inserted by the amending Act, to a person who is in detention includes a reference to a person in detention at the commencement of that subsection even if the person was detained before that commencement.

9 Release of contemnor

- (1) The power, contained in section 120A, to release an offender detained under section 120 may be exercised in relation to an offender already in detention at the commencement of section 120A or detained at any time afterwards.
- (2) Section 120B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

Schedule 2 Amendment of Royal Commission (Police Service) Act 1994

(Section 4)

[1] Section 11 Arrest of witness

Omit “custody” from section 11 (7).
Insert instead “a prison or elsewhere”.

[2] Sections 11A and 11B

Insert after section 11:

11A Conditional release of witness

- (1) The release of a witness by order of the Commissioner under section 11 (7) may (but need not) be made subject to one or more of the following conditions (or to any other conditions):
 - (a) that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the Commissioner or other officer of the Commission, and
 - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement, as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.
- (3) A witness who without reasonable excuse fails to comply with a condition to which the release of the witness under section 11 (7) is subject, is guilty of an offence.

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

11B Review by Supreme Court

- (1) A witness who has not been released by the Commissioner under section 11 (7) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness.
- (3) Such an order is taken to be an order of the Commissioner.

[3] Section 26 Protection of witnesses and persons assisting Commission

Omit section 26 (5). Insert instead:

- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3).

[4] Section 27 Restriction on publication of evidence

Omit section 27 (1) (c). Insert instead:

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

[5] Section 43 and Schedule 1

Insert at the end of the Act:

43 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 43)

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Investigative Bodies Legislation Amendment Act 1997

- (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 or omitted to be done before the date of its publication.

**Part 2 Provisions consequent on enactment of
Schedule 2 to Investigative Bodies
Legislation Amendment Act 1997**

2 Definition

In this Part, *amending Act* means the *Investigative Bodies Legislation Amendment Act 1997*.

3 Conditional release

- (1) Section 11A only applies to any release ordered on or after the commencement of that section.
- (2) Section 11B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

4 Secrecy of identity and location of witness

A reference in section 27, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment.

Schedule 3 Amendment of New South Wales Crime Commission Act 1985

(Section 5)

[1] Section 13 Hearings

Omit section 13 (9) (c). Insert instead:

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

[2] Section 18 Failure of witnesses to attend and answer questions etc

Omit section 18 (3). Insert instead:

- (3) A witness who without reasonable excuse fails to comply with a condition to which the release of the witness under section 18AA (5) is subject, is guilty of an offence.

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

[3] Section 18AA Arrest of witness

Omit “custody” from section 18AA (5).
Insert instead “a prison or elsewhere”.

[4] Sections 18AB and 18AC

Insert after section 18AA:

18AB Conditional release of witness

- (1) The release of a witness by order of the Commissioner under section 18AA (5) may (but need not) be made subject to one or more of the following conditions (or to any other conditions):
 - (a) that the witness appear and report himself or herself before the Commission in accordance with

the terms of the order unless excused from attendance or until released from further attendance by a member, and

- (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

18AC Review by Supreme Court

- (1) A witness who has not been released by the Commissioner under section 18AA (5) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness.
- (3) Such an order is taken to be an order of the Commissioner.

[5] Section 21 Protection of witnesses

Insert at the end of section 21:

- (2) Nothing in this section affects the *Witness Protection Act 1995*.

[6] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Investigative Bodies Legislation Amendment Act 1997

[7] Schedule 4, Part 4

Insert after Part 3:

**Part 4 Provisions relating to enactment of
Schedule 3 to Investigative Bodies
Legislation Amendment Act 1997**

7 Definition

In this Part, *amending Act* means the *Investigative Bodies Legislation Amendment Act 1997*.

8 Secrecy of identity and location of witness

A reference in section 13, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment.

9 Conditional release

- (1) Section 18AB only applies to any release ordered on or after the commencement of that section.
- (2) Section 18AC only applies to any decision, failure or order made or occurring on or after the commencement of that section.

Schedule 4 Amendment of Independent Commission Against Corruption Act 1988

(Section 6)

[1] Section 36 Arrest of witness

Omit “custody” from section 36 (6).
Insert instead “a prison or elsewhere”.

[2] Sections 36A and 36B

Insert after section 36:

36A Conditional release of witness

- (1) The release of a witness by order of the Commissioner under section 36 (6) may (but need not) be made subject to one or more of the following conditions (or any other conditions):
 - (a) that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the person presiding at the relevant hearing of the Commission, and
 - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

36B Review by Supreme Court

- (1) A witness who has not been released by the Commissioner under section 36 (6) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness.
- (3) Such an order is taken to be an order of the Commissioner.

[3] Section 50 Protection of witnesses and persons assisting Commission

Omit section 50 (5). Insert instead:

- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3).

[4] Section 52 Legal and financial assistance for witness

Insert after section 52 (4):

- (5) The Attorney General may delegate one or more of his or her functions under this section to the Director-General of the Attorney General's Department.

[5] Section 86 Failure to attend etc

Omit “50 penalty units or imprisonment for 12 months, or both” from section 86 (1).

Insert instead “20 penalty units or imprisonment for 2 years, or both”.

[6] Section 86 (3)

Insert after subsection (2):

- (3) A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 36 (6) or 100A is subject, is guilty of an offence.

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

[7] Section 92 Preventing witness from attending

Insert after section 92 (2):

- (3) A reference in subsection (1) to a person who has been summoned to attend as a witness before the Commission includes a reference to a person who is in detention under a warrant under section 36 (6) or who, having been released under that subsection on condition that the person appear and report himself or herself before the Commission, is still subject to that condition.

[8] Section 98 Contempt

Insert after section 98 (a):

- (aa) having been released under section 36 (6) on condition (under section 36A (1) (a)) that the person appear and report himself or herself before the Commission, fails so to appear and report, or

[9] Section 99 Punishment of contempt

Insert “or (aa)” after “section 98 (a)” in section 99 (5).

[10] Section 100 General provisions regarding contempt

Insert “in a prison or elsewhere” after “custody” in section 100 (3).

[11] Sections 100A and 100B

Insert after section 100:

100A Conditional release of offender

- (1) The Commissioner may by order release an offender detained under section 100 at any time before the offender is brought before the Supreme Court.
- (2) The release must be subject to the condition that the offender appear before the Supreme Court.
- (3) The release may (but need not) be made subject to:
 - (a) one or more conditions for the purpose of ensuring the appearance of the offender before the Supreme Court (for example the provision of sureties by the offender, the surrender of any passport held by the offender, a requirement as to where the offender is to live and regular reporting by the offender to the Commission), and
 - (b) any other conditions.
- (4) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

100B Review by Supreme Court

- (1) An offender who has not been released by the Commissioner under section 100A or whose release under that section is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the offender or of the terms of one or more of those conditions.

- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the offender or any condition imposed by the Commissioner on the release of the offender. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the offender. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the offender.
- (3) Such an order is taken to be an order of the Commissioner.

[12] Section 112 Restriction on publication of evidence

Omit section 112(1) (c). Insert instead:

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

[13] Schedule 4 Savings, transitional and other provisions

Omit “*Independent Commission Against Corruption (Amendment) Act 1990*” appearing before the heading to clause 1.

[14] Schedule 4, Parts 1 and 2

Omit clause 1. Insert instead:

Part 1 Preliminary

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Independent Commission Against Corruption
(Amendment) Act 1990*

Investigative Bodies Legislation Amendment Act 1997

- (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 or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Independent Commission Against Corruption (Amendment) Act 1990

1A Definition

In this Part, *amending Act* means the *Independent Commission Against Corruption (Amendment) Act 1990*.

[15] Schedule 4, Part 3 heading

Insert before clause 5:

Part 3 Provision consequent on enactment of Statute Law Revision (Local Government) Act 1995

[16] Schedule 4, Part 4

Insert at the end of the Schedule:

**Part 4 Provisions consequent on the enactment of
Schedule 4 to Investigative Bodies
Legislation Amendment Act 1997**

6 Definition

In this Part, *amending Act* means the *Investigative Bodies Legislation Amendment Act 1997*.

7 Conditional release

- (1) Section 36A only applies to any release ordered on or after the commencement of that section.
- (2) Section 36B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

8 Preventing witness from attending

A reference in section 92 (3), as inserted by the amending Act, to a person who is in detention includes a reference to a person in detention at the commencement of that subsection even if the person was detained before that commencement.

9 Release of contemnor

- (1) The power, contained in section 100A, to release an offender detained under section 100 may be exercised in relation to an offender already in detention at the commencement of section 100A or detained at any time afterwards.
- (2) Section 100B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

10 Secrecy of identity and location of witness

A reference in section 112, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment.

[Minister's second reading speech made in—
Legislative Assembly on 18 June 1997
Legislative Council on 26 June 1997]



New South Wales

Local Government Amendment Act 1997 No 61

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