



New South Wales

# Crime Commission Legislation Amendment Act 2014 No 82

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# Crime Commission Legislation Amendment Act 2014 No 82

Act No 82, 2014

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An Act to amend the *Crime Commission Act 2012* with respect to the Crime Commission's powers to obtain evidence by way of compulsory examinations and the disclosure of evidence so obtained by the Commission, investigations by the Crime Commission in co-operation with external persons and authorities and other miscellaneous matters; and to amend the *Crimes (Appeal and Review) Act 2001* to limit certain appeals relating to Crime Commission examinations and evidence. [Assented to 28 November 2014]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Crime Commission Legislation Amendment Act 2014*.

**2 Commencement**

This Act commences on the date of assent to this Act.

## Schedule 1      **Amendment of Crime Commission Act 2012 No 66—provisions relating to compulsory examinations**

### [1]      **Section 4 Interpretation**

Insert in alphabetical order in section 4 (1):

*current charge*—see subsection (1B).

*member of an investigative agency* includes an officer or employee of, or any person otherwise engaged by or acting for or on behalf of, an investigative agency.

*prosecutor* means:

- (a) the Director of Public Prosecutions or a delegate of the Director of Public Prosecutions, or
- (b) a police officer, or
- (c) any other person acting in a public official capacity or a private capacity,

who is responsible for the conduct of a prosecution, and includes a reference to an Australian legal practitioner representing a person referred to in paragraphs (a)–(c).

### [2]      **Section 4 (1A) and (1B)**

Insert after section 4 (1):

- (1A) For the purposes of this Act, a person who is not physically present at a hearing or a part of a hearing before the Commission is taken to be present at a hearing or a part of a hearing if either:
  - (a) the person:
    - (i) views the hearing or part of the hearing, while it is occurring, by observing it from a concealed position (such as behind a glass partition), or by means of closed circuit television, or by any other means, and
    - (ii) can hear or otherwise understand anything being said or demonstrated while viewing the hearing or the part of the hearing, or
  - (b) the person hears or otherwise understands anything being said or demonstrated during the hearing or part of the hearing, while it is occurring, by means of an electronic system or by any other means, without viewing it.
- (1B) For the purposes of this Act, a person is the subject of a *current charge* for an offence if:
  - (a) the person has been charged with the offence and the charge has not been withdrawn, and
  - (b) any proceedings for the offence or any appeal against a court's decision on the offence are pending or not concluded, and
  - (c) the time for making any appeal or further appeal against a court's decision on the offence has not expired or the appeal has not been withdrawn, and
  - (d) a court has not made an order having the effect of granting a permanent stay of proceedings for the offence or any order so made ceases to have that effect.

**[3] Section 21 Hearings to be held in private**

Insert “(subject to section 21A)” after “may” where firstly occurring in section 21 (1).

**[4] Section 21 (4) and (5)**

Insert at the end of section 21:

- (4) A direction must not be given under subsection (1) permitting a person to be present during a hearing or part of a hearing while a witness is giving evidence, unless before the direction is given:
  - (a) the witness is informed that it is proposed that the person be present, and
  - (b) the witness has an opportunity to comment on the person being present.
- (5) To avoid doubt, a person does not cease to be entitled to be present at a hearing or a part of the hearing if:
  - (a) the Commission fails to comply with subsection (4), or
  - (b) a witness comments adversely on the presence of the person under subsection (4) (b).

**[5] Section 21A**

Insert after section 21:

**21A Provisions relating to directions as to presence at hearings**

- (1) This section applies where a hearing before the Commission involves a person (the *charged person*) who is the subject of a current charge for an offence.
- (2) A direction must not be given under section 21 for a person to be present during any part of the hearing that involves the charged person, unless the Commission or person presiding at the Commission is of the opinion that the presence of the first mentioned person is reasonably necessary to assist the Commission to exercise its functions properly.
- (3) A direction must not be given under section 21 for a person to be present at any part of the hearing while the charged person is being questioned about the subject matter of the offence, if the first mentioned person is a member of an investigative agency and is involved in the investigation of the charged person in relation to the offence.

**[6] Part 2, Division 6A**

Insert after Division 6 of Part 2:

**Division 6A Evidence of accused persons**

**35A Leave of Supreme Court to take evidence from accused person about the offence**

- (1) This section applies to a person who is the subject of a current charge for an offence, and relates to the taking of evidence from the person in relation to the subject matter of the offence.
- (2) The person cannot be:
  - (a) questioned under section 24 at a hearing before the Commission, or
  - (b) required under section 24 or 29 to produce a document or thing, in relation to matters relating to the subject matter of the offence without the leave of the Supreme Court.

- (3) Evidence obtained pursuant to leave granted for the purposes of this section cannot be used against the person in any civil or criminal proceeding (other than a proceeding for an offence against this Act or an offence relating to the falsity of evidence given by the witness) or in any disciplinary proceeding, but is not inadmissible as against other persons.  
**Note.** See section 39A (3) and (4) for derivative evidence.
- (4) The Commission may apply to the Supreme Court *ex parte* for leave supported by an affidavit of an officer of the Commission stating:
  - (a) that the officer:
    - (i) believes that the questioning or requirement is in the public interest notwithstanding that the questioning or requirement relates or may relate to the subject matter of the offence, and
    - (ii) suspects that the questioning or requirement is necessary to fully investigate the matter referred to in the copy of a notice accompanying a summons issued to the person, and
  - (b) the grounds on which the belief and suspicion are based.
- (5) The Supreme Court may grant leave if it is satisfied that any prejudicial effect that is likely to arise to the person's trial from the proposed questioning or requirement is outweighed by the public interest in using the Commission's powers to ensure that a matter referred to in the copy of a notice accompanying a summons issued to the person is fully investigated.
- (6) Leave may be granted unconditionally or subject to conditions imposed by the Supreme Court.
- (7) If leave is granted, the Commission must, before the person is questioned in relation to matters the subject of the grant of leave, serve on the person notice of the grant of leave.
- (8) The notice must inform the person of any right under another law to seek a review of the grant of leave and of the right to make an application for assistance under section 42.
- (9) Nothing in this section limits the application to an application for leave of any of the functions and procedures of the Supreme Court in relation to proceedings that may be dealt with *ex parte* before that Court.

**[7] Section 39A**

Insert after section 39:

**39A Derivative evidence**

- (1) Any further information, evidence, document or thing (the *derivative evidence*) obtained as a result of:
  - (a) the questioning under section 24 of a witness at a hearing before the Commission, or
  - (b) the production under section 24 or 29 of a document or thing, (the *original evidence*) is not inadmissible in any civil or criminal proceeding or in any disciplinary proceeding.
- (2) Without limiting subsection (1), the derivative evidence is not inadmissible on the ground:
  - (a) that the original evidence had to be given or produced, or
  - (b) that the original evidence might incriminate the witness, or

- (c) that the witness was questioned (or required to produce the document or thing) in relation to the subject matter of the offence for which the witness was charged before the charge was laid, or
  - (d) that the original evidence was obtained at a hearing when the witness was questioned (or required to produce the document or thing) pursuant to leave granted for the purposes of section 35A in relation to a particular offence and the original evidence related to another offence, being an offence with which the witness was not yet charged.
- (3) The derivative evidence is not admissible against the witness where the witness was questioned (or required to produce the document or thing) pursuant to leave granted for the purposes of section 35A in relation to the subject matter of the offence for which the witness was charged.
  - (4) However, an exception under subsection (3) does not apply if the derivative evidence could have been obtained (or its significance understood) without the testimony of the witness.
  - (5) Nothing in this section affects the operation of section 39.

**[8] Section 42 Legal and financial assistance**

Insert after section 42 (2):

- (2A) A person who proposes to make, or has made, an application for the review under another law of a decision of the Supreme Court to grant leave under section 35A may make an application to the Attorney General for the provision of assistance under this section in respect of the application for review.

**[9] Section 45 Publication or disclosure of evidence**

Insert “and to the prosecutor” after “the person” where secondly occurring in section 45 (4) (b).

**[10] Section 45 (5)**

Insert “and to the prosecutor” after “the person” where secondly occurring.

**[11] Section 45 (6) and (7)**

Insert after section 45 (5):

- (6) This section has effect subject to section 45A.
- (7) In this section:  
*publish* includes:
  - (a) disclose to a person, and
  - (b) in relation to evidence or a record of evidence—disclose any information directly contained in or implied from that evidence or record, except where the information could be obtained elsewhere.

**[12] Sections 45A–45C**

Insert after section 45:

**45A Disclosure of evidence of accused about offence for which charged**

- (1) This section applies where:
  - (a) evidence involving the subject matter of an offence (the *offence concerned*) is given before the Commission, and

- (b) the evidence was provided by a person (the *witness*) who is at that time the subject of a current charge for the offence concerned, and
  - (c) the witness objected to providing the evidence.
- (2) The Commission must not allow any of the evidence or a record of any of the evidence to be disclosed to a member of an investigative agency or a prosecutor if the member of the agency or the prosecutor is involved in the investigation or prosecution of the offence concerned.
- (3) Subject to subsection (2), the Commission may direct any of the evidence or a record of any of the evidence to be disclosed to a member of an investigative agency, if:
  - (a) the Commission considers the disclosure is desirable in the interests of justice, and
  - (b) the Commission restricts the use of the disclosed evidence or record of evidence so that it is used only in the investigation or prosecution of:
    - (i) the witness for an offence against a provision of this Act or an offence related to the falsity of the evidence given by the witness, or
    - (ii) the witness for an offence, other than the offence concerned, or
    - (iii) a person other than the witness, and
  - (c) before the evidence was given, the Commission informed the witness of the Commission's power to direct disclosure to a member of an investigative agency under this subsection.
- (4) Despite subsection (2), the Commission may direct any of the evidence or a record of any of the evidence to be disclosed to the Director of Public Prosecutions for the purposes of:
  - (a) a request or advice to the Attorney General in respect of granting the witness indemnity from prosecution in relation to the matter the subject of the current charge, or
  - (b) advice to the Attorney General on a proposed undertaking by the Attorney General under section 33 of the *Criminal Procedure Act 1986* in relation to the evidence.
- (5) The Commission may make orders placing restrictions or further restrictions on the further disclosure of any evidence or record of evidence allowed to be disclosed under subsection (3) or (4).
- (6) A person must not make a disclosure in contravention of an order made under subsection (5).  
Maximum penalty: 100 penalty units or imprisonment for 2 years, or both.
- (7) A reference in this section to the disclosure of evidence or a record of evidence includes a reference to disclosure of any information directly contained in or implied from that evidence or record, except where the information could be obtained elsewhere.

#### **45B Disclosure of evidence to DPP for indemnities and undertakings**

The Commission may direct any of the evidence or a record of any of the evidence given before the Commission by a person in relation to a matter



about which the person was subsequently charged with an offence to be disclosed to the Director of Public Prosecutions for the purposes of:

- (a) a request or advice to the Attorney General in respect of granting the person indemnity from prosecution in relation to the matter the subject of the charge, or
- (b) advice to the Attorney General on a proposed undertaking by the Attorney General under section 33 of the *Criminal Procedure Act 1986* in relation to the evidence.

#### **45C Stay of proceedings**

- (1) This section applies when a court is considering an application for a stay of proceedings arising from the compulsory examination of a person before the Commission or from the disclosure of any evidence or a record of any evidence given before the Commission.
- (2) The court must consider whether any of the following matters (whether individually or in any combination and without limitation) have led, or have a real potential to lead, to unfair consequences for a person's trial for an offence:
  - (a) the questions asked and answers given during the hearing concerned,
  - (b) whether the person was the subject of a current charge for the offence at the time of the hearing,
  - (c) the role of any member of an investigative agency attending the hearing in the investigation of the offence,
  - (d) the nature and results of any steps taken by members of an investigative agency in the investigation as a result of access (if any) to compulsorily obtained material,
  - (e) the availability of independent sources of any evidence alleged to be derived from compulsorily obtained material,
  - (f) the extent to which any prosecutor has had access to compulsorily obtained material,
  - (g) the role in the investigation of the offence of any member of an investigative agency who has been given access to a transcript or other record of evidence.
- (3) None of the following matters is capable of giving rise to a presumption that there is a fundamental defect in criminal proceedings against a person for an offence in respect of which the Commission has exercised any of its powers:
  - (a) the fact that the Commission examined the person about the subject matter of the offence, whether or not the person was the subject of a current charge for the offence,
  - (b) the fact that a transcript or other record of proceedings before the Commission was given to an investigative agency, whether before or after the person was charged with the offence,
  - (c) the fact that a transcript or other record of proceedings before the Commission was given to a prosecutor, whether before or after the person was charged with the offence,
  - (d) the fact that a transcript or other record of proceedings before the Commission was given to a prosecutor of another offence,
  - (e) the fact that there has been a failure to comply with section 21A (3),
  - (f) the fact that another person has been examined by the Commission,

- (g) in the case of an offence against this Act or an offence relating to the falsity of evidence—the fact that a transcript or other record of proceedings before the Commission was given to an investigative agency or prosecutor at any time,
- (h) the fact that evidence has been derived from the holding of a hearing or from the dissemination of a record or other record of a hearing.

**[13] Schedule 4 Savings, transitional and other provisions**

Insert after Part 3:

**Part 4 Provisions relating to Crime Commission  
Legislation Amendment Act 2014**

**12 Presence at hearing before Commission**

Section 4 (1A), as inserted by the *Crime Commission Legislation Amendment Act 2014*, is declared to be for the avoidance of doubt and is accordingly taken to have always been in force.

**13 Stay of proceedings**

- (1) Section 45C applies in relation to proceedings pending immediately before the commencement of that section, as well as to proceedings commenced on or after the commencement of that section.
- (2) Section 45C applies in relation to applications pending immediately before the commencement of that section for a stay of proceedings, as well as to applications for a stay of proceedings made on or after the commencement of that section.
- (3) Section 45C applies to acts or omissions relating to proceedings held, or evidence obtained, under the *New South Wales Crime Commission Act 1985* in the same way as it applies to proceedings held, or evidence obtained, under this Act.

## **Schedule 2      Amendment of Crime Commission Act 2012 No 66—provisions relating to working with interstate and Commonwealth persons or authorities and other matters**

### **[1] Section 13 Liaison with other bodies**

Insert “or country” after “Territory” in section 13 (a).

### **[2] Section 17 Search warrants**

Omit section 17 (1). Insert instead:

- (1) An executive officer may apply to an authorised officer for the issue of a search warrant if:
  - (a) the Commission has reasonable grounds for suspecting that there is, or within one month may be, in or on any premises things of a relevant kind, and
  - (b) the Commission believes on reasonable grounds that, if a summons were issued for the production of the things, the things might be concealed, lost, mutilated or destroyed.

### **[3] Section 33 Applications to Supreme Court for review of Commission’s decisions concerning entitlement to refuse to take oath or affirmation, produce documents or things or answer questions**

Insert at the end of section 33 (1) (b):

, or

- (c) to comply with a requirement to take an oath or affirmation, to answer a question or to produce a document or thing at a hearing referred to in section 24.

### **[4] Section 35 Time for commencing prosecutions**

Insert at the end of the section:

- (2) A prosecution for an offence under section 25 (2) must not be commenced in respect of a refusal or failure by a person to take an oath or affirmation, to answer a question or to produce a document or thing:
  - (a) if the person has claimed to be entitled to refuse to take an oath or affirmation, answer the question or produce the document or thing, and the Commission decides that, in its opinion, the claim is not justified—until the expiration of the period of 5 days (excluding days on which the appropriate Registry of the Supreme Court is closed) immediately after the Commission has notified the person of the decision, or
  - (b) if the person has made an application to the Supreme Court under this Division for a review of such a decision of the Commission—until the application and any appeal from an order made by the Supreme Court on the application have been determined or otherwise disposed of.

### **[5] Section 51 Functions of the Management Committee**

Omit “section 54” wherever occurring in section 51 (1) (a), (b), (b1) and (c).

Insert instead “section 54 (1)”.

**[6] Section 51 (1) (c1)**

Insert after section 51 (1) (c):

- (c1) to refer (by a written notice in accordance with section 54 (1A)) to the Commission for investigation matters (*joint task matters*) relating to the subject of co-operation approved under section 10 (1) (g), and

**[7] Section 51 (2)**

Insert “under subsection (1) (a), (b), (b1) or (c)” after “investigation” where firstly occurring.

**[8] Section 51 (3)**

Insert after section 51 (2):

- (3) The Management Committee is not to refer a matter to the Commission for investigation under subsection (1) (c1) unless it is satisfied that:
  - (a) the use of the Commission’s powers appears to be necessary for the Commission to fully investigate the joint task matters, and
  - (b) it is in the public interest that the Commission investigate the joint task matters, and
  - (c) the joint task matters are matters that may be the subject of a referral under subsection (1) (a), (b) or (b1) or that are connected with this State and are comparable in seriousness to matters that may be so referred, and
  - (d) the joint task matters are sufficiently serious or prevalent to warrant the investigation by the Commission.

**[9] Section 53 Limitations on references or renewal of reference**

Omit “or criminal activity of a criminal group” from section 53 (a).

Insert instead “, criminal activity of a criminal group or joint task matter”.

**[10] Section 54 Notices referring matters for investigation**

Insert after section 54 (1):

- (1A) The notice referring a joint task matter referred to in section 51 (1) (c1):
  - (a) must specify the person or authority with whom the Commission is approved to work in co-operation, and
  - (b) must specify the general nature of the joint task matters, and
  - (c) must set out the general purpose of the approval and the referral.

**[11] Section 56 Commission may request reference**

Omit “or criminal activity of a criminal group” from section 56 (1) (a).

Insert instead “, criminal activity of a criminal group or joint task matter”.

**[12] Section 71 Functions**

Omit “section 51 (1) (a)–(c)” from section 71 (2) (a).

Insert instead “section 51 (1) (a)–(c1)”.

**[13] Section 75 Disclosure of certain financial information**

Insert after section 75 (2):

- (3) A person engaged by the Commission as a consultant under section 74 (2) is not required to comply with subsection (1) if the Commission waives the requirement in relation to the person or a class of persons of which the person is a member.

**[14] Section 82 Annual report**

Omit section 82 (2) (c).

**[15] Section 82 (2A)**

Insert after section 82 (2):

- (2A) A report by the Commission under this section in relation to a year may also include recommendations for changes in the laws of the State, or for administrative action, that, as a result of the exercise of its functions, the Commission considers should be made.

## **Schedule 3 Amendment of Crimes (Appeal and Review) Act 2001 No 120—provisions relating to compulsory examinations before the Crime Commission**

### **[1] Section 79 Consideration of applications**

Insert after section 79 (3A):

- (3B) This section does not authorise a direction to be given, or a referral to be made to the Court of Criminal Appeal, if the Supreme Court is satisfied that the grounds for the direction or referral arise only from:
- (a) the fact that the convicted person was:
    - (i) questioned under section 24 of the *Crime Commission Act 2012*, or
    - (ii) required under section 24 or 29 of that Act to produce a document or thing, or
  - (b) either or both of the following:
    - (i) evidence obtained directly from that questioning or requirement,
    - (ii) any further information, evidence, document or thing obtained as a result of the questioning or the production of the document or thing.

### **[2] Schedule 1 Savings, transitional and other provisions**

Insert after Part 10:

## **Part 11 Provisions consequent on the enactment of Crime Commission Legislation Amendment Act 2014**

### **23 Pending applications to Supreme Court for inquiry into a conviction or sentence**

- (1) In this clause, *relevant application* means an application to the Supreme Court under section 78.
- (2) Section 79 (3B) applies in relation to relevant applications pending immediately before the commencement of that subsection, as well as to either or both of the following:
  - (a) relevant applications made on or after the commencement of that subsection,
  - (b) any action proposed to be done by the Supreme Court on or after that commencement when acting on its own motion under section 79.
- (3) A reference in section 79 (3B):
  - (a) to section 24 of the *Crime Commission Act 2012* is taken to include a reference to section 16 of the *New South Wales Crime Commission Act 1985*, and

- (b) to section 29 of the *Crime Commission Act 2012* is taken to include a reference to section 17 of the *New South Wales Crime Commission Act 1985*.

[Second reading speech made in—  
Legislative Assembly on 11 November 2014  
Legislative Council on 18 November 2014]