



New South Wales

# Law Enforcement Conduct Commission Regulation 2023

under the

Law Enforcement Conduct Commission Act 2016

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Law Enforcement Conduct Commission Act 2016*.

JOHN GRAHAM, MLC  
Special Minister of State

## Explanatory note

The object of this regulation is to repeal and remake, with changes, the *Law Enforcement Conduct Commission Regulation 2017*, which would otherwise be repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

This regulation—

- (a) provides for the disclosure of pecuniary interests and other matters, including conflicts of interest, by officers of the Law Enforcement Conduct Commission (*the Commission*), and
- (b) enables the Chief Commissioner of the Commission, for the purposes of carrying out security checks, to require officers of the Commission, and applicants for appointment, employment or engagement as an officer of the Commission, to provide certain documents and information, and
- (c) gives the Inspector of the Commission the same power to require certain matters to be disclosed, and certain documents and information provided, by members of staff of the Inspector and applicants for employment or engagement as a member of staff of the Inspector.

This regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Section 12 may be made under a Henry VIII provision because the section impliedly amends the *Law Enforcement Conduct Commission Act 2016* by affecting the application of the Act.

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## Law Enforcement Conduct Commission Regulation 2023

under the

Law Enforcement Conduct Commission Act 2016

### Part 1 Preliminary

#### 1 Name of regulation

This regulation is the *Law Enforcement Conduct Commission Regulation 2023*.

#### 2 Commencement

This regulation commences on the day on which it is published on the NSW legislation website.

**Note**— This regulation repeals and replaces the *Law Enforcement Conduct Commission Regulation 2017*, which would otherwise be repealed on 1 September 2023 by the *Subordinate Legislation Act 1989*, section 10(2).

#### 3 Definitions

In this regulation—

**applicant**, for Parts 1 and 2, means an applicant for appointment, employment or engagement as an officer of the Commission.

**approved form** means the form approved by the Chief Commissioner.

**officer of the Commission** has the same meaning as in the Act, but does not include the Chief Commissioner.

**Note**— Under the Act, sections 4(1), definition of **officer of the Commission** and 21, officers of the Commission include—

- (a) persons employed in the Public Service under the *Government Sector Employment Act 2013* to enable the exercise of the Commission's and the Commissioners' functions, and
- (b) staff whose services the Commission uses under an arrangement under the Act, section 21(2)(a) or (b), and
- (c) persons, whether individuals, body corporates or partnerships, engaged by the Commission as consultants or to perform other services under the Act, section 21(2)(c), and
- (d) police officers whose services the Commission uses under an arrangement under the Act, section 21(3)(a), and
- (e) members of other police forces seconded or otherwise engaged to assist the Commission under the Act, section 21(3)(b).

**the Act** means the *Law Enforcement Conduct Commission Act 2016*.

**Note**— The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

#### 4 Meaning of “associate”

(1) In this regulation—

**associate**, of an applicant or an officer of the Commission, means—

- (a) if the applicant or officer is an individual—a personal associate or business associate of the individual, or
  - (b) if the applicant or officer is a body corporate or partnership—
    - (i) personnel of the body corporate or partnership, or
    - (ii) a personal associate or business associate of personnel of the body corporate or partnership, or
    - (iii) a related body corporate, within the meaning of the *Corporations Act 2001* of the Commonwealth, of the body corporate or partnership.
- (2) In this section—
- business associate**, of an individual, means—
- (a) the individual’s employer, or
  - (b) if the individual’s employer is a body corporate or partnership—the employer’s personnel, or
  - (c) if the individual is a member of a partnership—
    - (i) another partner in the partnership, or
    - (ii) an officer or employee of the partnership, or another person who has a contractual relationship with the partnership, as specified by the Chief Commissioner in relation to the partnership or a class to which the partnership belongs, or
  - (d) an employee of the individual, or
  - (e) another person who has a contractual relationship with the individual, as specified by the Chief Commissioner in relation to the individual or a class to which the individual belongs.
- personal associate**, of an individual, means—
- (a) the individual’s spouse or de facto partner,
  - (b) a child of the individual, or of the individual’s spouse or de facto partner, who is less than 18 years of age,
  - (c) another member of the individual’s household or family, or a person with whom the individual associates socially, as specified by the Chief Commissioner in relation to the individual or a class to which the individual belongs.
- personnel** means—
- (a) in relation to a body corporate—
    - (i) a director of the body corporate, or
    - (ii) the secretary of the body corporate, or
    - (iii) an officer, employee or shareholder of the body corporate, or another person who has a contractual relationship with the body corporate, as specified by the Chief Commissioner in relation to the body corporate or a class to which the body corporate belongs, or
  - (b) in relation to a partnership—
    - (i) a partner in the partnership, or
    - (ii) an officer or employee of the partnership, or another person who has a contractual relationship with the partnership, as specified by the Chief Commissioner in relation to the partnership or a class to which the partnership belongs.

## Part 2 Staff of Commission

### 5 Disclosure of pecuniary interests and other matters

- (1) For the Act, section 191(a) and (b), the Chief Commissioner may require an officer of the Commission to give the Chief Commissioner a statement, in the approved form, disclosing the interests of—
  - (a) the officer, or
  - (b) an associate of the officer.
- (2) In this section—

*interest*, of an officer of the Commission or an associate of the officer, means a pecuniary interest or other matter specified in the Act, section 191(a)(i)–(xi) relating to the person.

### 6 Disclosure of conflicts of interest

For the Act, section 191(a) and (b), an officer of the Commission must, immediately after becoming aware of a conflict of interest, or an apparent conflict of interest, between the officer's duties as an officer and the officer's private interests, notify the Chief Commissioner of the conflict.

### 7 Statement of personal particulars

- (1) For the Act, sections 191(a) and (b) and 197(2)(f), the Chief Commissioner may require an applicant or an officer of the Commission to give the Chief Commissioner a statement of personal particulars relating to—
  - (a) the applicant or officer, or
  - (b) an associate of the applicant or officer, or
  - (c) a former associate of the applicant or officer who is or has been a member of the NSW Police Force or a Crime Commission officer.
- (2) The statement must be accompanied by the following—
  - (a) a statutory declaration disclosing current or former associations the applicant or officer has with—
    - (i) known criminals, and
    - (ii) persons the applicant or officer reasonably suspects have committed criminal offences,
  - (b) if requested by the Chief Commissioner—
    - (i) an authority for the release of information contained in the statement, or
    - (ii) consent to the conduct of inquiries relating to the information.
- (3) A statement or other document given under this section must be in the approved form.

### 8 Other documents Chief Commissioner may require

- (1) For the Act, sections 191(a) and (b) and 197(2)(f), the Chief Commissioner may require an applicant or an officer of the Commission to give the Chief Commissioner one or more of the prescribed documents relating to—
  - (a) the applicant or officer, or
  - (b) an associate of the applicant or officer.
- (2) Subsection (1) applies only to documents in the person's possession or to which the person is entitled to immediate possession.

- (3) The **prescribed documents**, in relation to an individual, are as follows—
- (a) a birth certificate or a duly certified extract of a birth certificate,
  - (b) a marriage certificate or a duly certified extract of a marriage certificate,
  - (c) a current passport,
  - (d) a current driver licence,
  - (e) a duly certified copy of a registered deed by which the individual has formally changed the individual's name,
  - (f) a certificate of naturalisation or citizenship,
  - (g) a certificate of discharge from the Australian Defence Force,
  - (h) a certificate evidencing the individual's educational, professional or trade qualifications,
  - (i) the most recent income tax return, within the meaning of the *Income Tax Assessment Act 1997* of the Commonwealth, lodged by the individual,
  - (j) the most recent notice of assessment issued in relation to the individual under the *Income Tax Assessment Act 1936* of the Commonwealth, section 174.
- (4) The **prescribed documents**, in relation to a body corporate or partnership, are as follows—
- (a) a copy of the body corporate's constitution or the agreement establishing the partnership,
  - (b) the most recent annual report of the body corporate or partnership,
  - (c) the most recent audited financial statement relating to the body corporate or partnership,
  - (d) the most recent income tax return lodged by, and the most recent income tax assessment issued in relation to, the body corporate or partners.

## 9 Fingerprint imprints

- (1) For the Act, section 197(2)(f), the Chief Commissioner may require an applicant or an officer of the Commission to give the Chief Commissioner an imprint of the fingerprints of the applicant or officer.
- (2) If the applicant or officer is a body corporate or partnership, the Chief Commissioner may require the body corporate or partnership to give the Chief Commissioner an imprint of the fingerprints of specified personnel.
- (3) An imprint of the fingerprints of an applicant, or personnel of an applicant, must be destroyed not later than 6 months after the application is determined, unless the applicant becomes an officer of the Commission within that period.
- (4) Subject to subsection (5), an imprint of the fingerprints of an officer, or personnel of an officer, must be destroyed not later than 6 months after the officer ceases to be an officer.
- (5) If the officer is under investigation by the Commission when the officer ceases to be an officer, or becomes subject to an investigation by the Commission within 6 months after ceasing to be an officer, the Chief Commissioner may keep the fingerprint imprint until the investigation and any legal proceedings arising from the investigation have ceased.

## 10 Notice of change in information

- (1) For the Act, sections 191(a) and (b) and 197(2)(f), an officer of the Commission who has given a statement under this part must give the Chief Commissioner notice of a significant change concerning the information contained in the statement.

- (2) Notice must be given—
  - (a) in the approved form, and
  - (b) immediately after the officer becomes aware of the change.

**11 Chief Commissioner may require further information**

For the Act, sections 191(a) and (b) and 197(2)(f), the Chief Commissioner may require an applicant or an officer of the Commission to give the Chief Commissioner further information relating to a matter disclosed under this part by the applicant or officer.

## Part 3 Staff of Inspector

### 12 Application of regulation to members of staff of Inspector

- (1) For the Act, section 128(6), the Act, sections 191 and 197(2)(f) are prescribed.
- (2) Part 2 applies to a person listed in Column 1 of the table to this subsection in the same way as the part applies to the person listed opposite in Column 2.

<b>Column 1</b>	<b>Column 2</b>
Inspector	Chief Commissioner
A member of staff of the Inspector	An officer of the Commission
An applicant for employment or engagement as a member of staff of the Inspector	An applicant for appointment, employment or engagement as an officer of the Commission

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## **Part 4 Miscellaneous**

### **13 Repeal and savings**

- (1) The *Law Enforcement Conduct Commission Regulation 2017* is repealed.
- (2) An act, matter or thing that, immediately before the repeal of the *Law Enforcement Conduct Commission Regulation 2017*, had effect under that regulation continues to have effect under this regulation.