

Passed by both Houses



New South Wales

Law Enforcement Conduct Commission Amendment (Commissioners) Bill 2021

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2021

Clerk of the Parliaments



New South Wales

Law Enforcement Conduct Commission Amendment (Commissioners) Bill 2021

Act No , 2021

An Act to amend the *Law Enforcement Conduct Commission Act 2016* to remove the office of the Commissioner for Oversight and to rename the office of the Commissioner for Integrity as the Commissioner; and for related purposes.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Law Enforcement Conduct Commission Amendment (Commissioners) Act 2021*.

2 Commencement

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

Schedule 1 Amendment of Law Enforcement Conduct Commission Act 2016 No 61

[1] Section 4 Definitions

Omit the definition of *Commissioner*. Insert instead—

Commissioner means the Chief Commissioner or other Commissioner of the Commission appointed under section 18.

[2] Section 4(1), definitions of “Commissioner for Integrity” and “Commissioner for Oversight”

Omit the definitions.

[3] Section 18 The Commissioners

Omit section 18(1) and (2). Insert instead—

- (1) The Commission consists of a Chief Commissioner and 1 other Commissioner appointed by the Governor.
- (2) The other Commissioner may only be appointed with the concurrence of the Chief Commissioner.

[4] Section 18(5)

Omit the subsection. Insert instead—

- (5) A person is not eligible to be appointed as the other Commissioner or to act in that office if the person is a police officer or a former police officer.

[5] Section 19 Exercise of Commission’s functions

Omit “and at least one other Commissioner” from section 19(2).

Insert instead “after consulting with the other Commissioner”.

[6] Section 19(4)

Omit “Except as provided by subsection (2), a decision”. Insert instead “A decision”.

[7] Section 23 Delegation

Omit the note to section 23(3). Insert instead—

Note— Subsection (3)(a) prevents the delegation of functions of the Commission that may only be exercised by the Chief Commissioner after consulting with the other Commissioner.

[8] Section 32 Inspection of records and reports

Omit section 32(8). Insert instead—

- (8) If the Commission makes a recommendation in the report, it may require the Commissioner of Police or Crime Commissioner—
 - (a) to advise on whether the recommendation will be implemented, and
 - (b) if the recommendation will not be implemented—to give the reasons for not implementing the recommendation.

[9] Section 62 Examinations

Omit “by the Commissioner for Integrity” from section 62(1).

Insert instead “Commissioner”.

[10] Section 105 Commission may request review of decision on action to be taken on misconduct matter

Omit section 105(3)(b). Insert instead—

- (b) must notify the Commission whether the decision is to be changed and if not, the reasons the decision is not to be changed.

[11] Section 111 Declaration of critical incident

Omit section 111(1), note. Insert instead—

Note— The Commissioner of Police may delegate the Commissioner of Police's functions under this Part to another member of the NSW Police Force—see the *Police Act 1990*, section 31.

[12] Section 113 Critical incident investigations

Omit section 113(5). Insert instead—

- (5) Despite subsection (2)(c) and (d), the Commissioner of Police may, if the Commissioner of Police considers it appropriate, refer a complaint about a member of the Police Force involved in a critical incident to the Commission with a recommendation that—
 - (a) the Commission investigate the complaint, or
 - (b) the Commission investigate the complaint concurrently with the investigation by the NSW Police Force.

[13] Schedule 1 Provisions relating to members of the Commission, Assistant Commissioners and alternate Commissioners

Omit clause 3. Insert instead—

3 Terms of office

- (1) Subject to this Schedule, a person may hold office as each of the following for 1 or more terms, not exceeding 5 years in total for each office—
 - (a) the Chief Commissioner,
 - (b) a Commissioner, other than the Chief Commissioner.
- (2) Nothing in this clause prevents an instrument of appointment from specifying a term of less than 5 years.

[14] Schedule 1 Provisions relating to members of the Commission, Assistant Commissioners and alternate Commissioners

Omit “A person is not to be appointed as Chief Commissioner, Commissioner for Integrity or Commissioner for Oversight” from clause 10(1).

Insert instead “A person must not be appointed as Chief Commissioner or Commissioner”.

[15] Schedule 3 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on enactment of Law Enforcement Conduct Commission Amendment (Commissioners) Act 2021

Definitions

In this Part—

amending Act means the *Law Enforcement Conduct Commission Amendment (Commissioners) Act 2021*.

Commissioner for Integrity means the Commissioner for Integrity referred to in this Act, as in force immediately before the relevant day.

Commissioner for Oversight means the Commissioner for Oversight referred to in this Act, as in force immediately before the relevant day.

new Commissioner means the other Commissioner referred to in section 18, as amended by the amending Act.

relevant day means the day on which the amending Act commences.

Commissioner for Integrity continued as new Commissioner

On the relevant day, the person holding office as the Commissioner for Integrity is taken to be appointed to the office of the new Commissioner for the balance of the person's term of office.

Powers of Commissioner for Integrity and Oversight regarding matters relating to Commissioner for Integrity and Commissioner for Oversight

- (1) Anything done or omitted to be done under this Act or another Act by the Commissioner for Integrity or the Commissioner for Oversight is taken to have been done by the new Commissioner.
- (2) Without limiting subclause (1) or another power of the new Commissioner, the new Commissioner may—
 - (a) continue an investigation, inquiry, examination or other matter commenced but not completed by the Commissioner for Integrity or the Commissioner for Oversight, and
 - (b) adopt evidence taken, assessments made or opinions formed by the Commissioner for Integrity or the Commissioner for Oversight.

Schedule 2 Other consequential amendments

2.1 Law Enforcement and National Security (Assumed Identities) Act 2010 No 73

Section 39 Delegation of chief officer's functions

Omit "the Commissioner for Integrity" from section 39(4), definition of *senior officer*, paragraph (d).

Insert instead "a Commissioner, not being the Chief Commissioner".

2.2 Law Enforcement (Controlled Operations) Regulation 2017

Clause 14 Delegations

Omit "for Integrity" from clause 14(b).

Insert instead ", not being the Chief Commissioner".

2.3 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Section 46C Authority to apply for covert search warrant

Omit ", or the Commissioner for Integrity," from section 46C(1)(b).

Insert instead "or other Commissioner".

2.4 Police Act 1990 No 47

Section 121 Interpretation

Omit ", Commissioner for Integrity and Commissioner for Oversight" from section 121(1), definition of *officers of the LECC*, paragraph (a).

Insert instead "and Commissioner".

2.5 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

Schedule 1 Public offices

Omit "Full-time Commissioner for Integrity of the Law Enforcement Conduct Commission" and "Full-time Commissioner for Oversight of the Law Enforcement Conduct Commission".

Insert instead "Full-time Commissioner of the Law Enforcement Conduct Commission".

2.6 Telecommunications (Interception and Access) (New South Wales) Act 1987 No 290

Section 3 Definitions

Omit “for Integrity” from section 3(1), definition of *certifying officer*, paragraph (d)(ii).