

Passed by both Houses



New South Wales

Police Integrity Commission Amendment (Crime Commission) Bill 2008

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2008*



New South Wales

Police Integrity Commission Amendment (Crime Commission) Bill 2008

Act No , 2008

An Act to amend the *Police Integrity Commission Act 1996* to provide for the investigation, referral and oversight of matters relating to misconduct of New South Wales Crime Commission officers; to make consequential amendments to the *Independent Commission Against Corruption Act 1988*; and for other purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Integrity Commission Amendment (Crime Commission) Act 2008*.

2 Commencement

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

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 Independent Commission Against Corruption Act 1988 No 35

The *Independent Commission Against Corruption Act 1988* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which this Act commences.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Police Integrity Commission Act 1996

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

Crime Commission officer means any of the following:

- (a) the Commissioner for the New South Wales Crime Commission (*the Crime Commissioner*),
- (b) an Assistant Commissioner for the New South Wales Crime Commission,
- (c) a member of staff of the New South Wales Crime Commission within the meaning of the *New South Wales Crime Commission Act 1985*.

Crime Commission officer complaint means a complaint made under section 75C.

former Crime Commission officer means any person who is not a Crime Commission officer but who has been a Crime Commission officer at any time previously (whether before or after the commencement of the *Police Integrity Commission Amendment (Crime Commission) Act 2008*).

misconduct of a Crime Commission officer—see section 5B.

[2] Section 5B

Insert after section 5A:

5B Misconduct of Crime Commission officers

(1) Definition

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

- (a) whether or not it also involves participants who are not Crime Commission officers, and
- (b) whether or not it occurs while the Crime Commission 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**

Misconduct of a Crime Commission officer can involve (but is not limited to) any of the following:

- (a) the commission of a criminal offence by a Crime Commission officer,
- (b) any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law,
- (c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a Crime Commission officer.

(3) **Former Crime Commission officers**

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

[3] **Sections 13B and 13C**

Insert after section 13A:

13B Other functions of PIC in relation to Crime Commission officers

- (1) Other functions of the PIC include the following:
 - (a) to prevent misconduct of Crime Commission officers,
 - (b) to detect or investigate, or oversee other agencies in the detection or investigation of, misconduct of Crime Commission officers.
- (2) The PIC is, as far as practicable, required to turn its attention principally to serious misconduct of Crime Commission officers.
- (3) The reference in this section to *overseeing* other agencies in the detection or investigation of misconduct of Crime Commission officers is a reference to the provision by the PIC of guidance that relies on a system of guidelines prepared by it and progress reports and final reports furnished to it rather than the provision of detailed guidance in the planning and execution of such detection and investigation.
- (4) In overseeing other agencies for the purposes of this section, the PIC does not have a power of control or direction, and any such oversight is to be achieved by agreement. However, it is the duty

of Crime Commission officers to co-operate with the PIC in the exercise of its oversight functions.

- (5) However, nothing in subsection (2), (3) or (4):
- (a) affects the capacity of the PIC 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 PIC of any of those functions.

13C Special allocation of PIC's functions in relation to Crime Commission officers

The PIC Commissioner may allocate responsibility for the exercise of the functions of the PIC in relation to Crime Commission officers to an Assistant Commissioner and to such members of the staff of the PIC as are designated by the PIC Commissioner for the purposes of this section.

[4] Sections 15 (1) (b) (i) and 23 (3) (c)

Insert “, Crime Commission officer complaint” after “police complaint” wherever occurring.

[5] Section 16 Provisions regarding assessments, opinions and recommendations

Insert “, misconduct of a Crime Commission officer” before “or corrupt conduct” wherever occurring in section 16 (1) (a) and (3).

[6] Section 19 Application of Criminal Assets Recovery Act 1990

Insert after section 19 (3):

- (3A) Subsection (3) does not apply if the exercise of the function by the PIC under that Act relates to an investigation by the PIC concerning misconduct of a Crime Commission officer.

[7] Section 23 Investigations generally

Insert after section 23 (1) (c):

- (c1) on a Crime Commission officer complaint made to it, or

[8] Section 23 (2)

Omit the subsection. Insert instead:

- (2) The Commission may conduct an investigation even though no particular police officer, administrative officer, Crime Commission officer or other person has been implicated and even

though no police misconduct, misconduct of a Crime Commission officer or corrupt conduct of an administrative officer is suspected.

[9] Section 30 Injunctions

Insert at the end of section 30 (2) (c):

or

- (d) it is necessary to restrain the conduct in order to prevent irreparable harm being done because of misconduct, or suspected misconduct, of a Crime Commission officer.

[10] Section 40 Privilege as regards answers, documents etc

Insert “(including for the purposes of taking disciplinary action under Part 2.7 of the *Public Sector Employment and Management Act 2002*)” after “disciplinary proceedings” in section 40 (3).

[11] Section 61 Secrecy provisions in other Acts

Insert after section 61 (1) (e):

- (f) sections 13 and 29 of the *New South Wales Crime Commission Act 1985*.

[12] Section 75B Duty to notify Commission of possible corrupt conduct of administrative officers

Omit “The regulations” from section 75B (5).

Insert instead “For the purposes of this section and section 75D, the regulations”.

[13] Section 75B (6)

Insert “and section 75D” after “this section”.

[14] Part 4B

Insert after Part 4A:

Part 4B Complaints against Crime Commission officers

75C Complaints about possible misconduct of Crime Commission officers

- (1) Any person may make a complaint to the PIC about a matter that involves or may involve misconduct of a Crime Commission officer.

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- (2) The PIC may investigate any such complaint or decide that the complaint need not be investigated.
 - (3) The PIC may discontinue an investigation of any such complaint.

75D Duty to notify PIC of possible misconduct of Crime Commission officers

- (1) This section applies to the following officers:
 - (a) the Crime Commissioner,
 - (b) the Commissioner of Police,
 - (c) the principal officer of a public authority,
 - (d) an officer who constitutes a public authority.
- (2) An officer to whom this section applies is under a duty to report to the PIC any matter that the officer suspects on reasonable grounds involves or may involve misconduct of a Crime Commission officer.
- (3) The PIC may issue guidelines as to what matters need or need not be reported.
- (4) This section has effect despite any duty of secrecy or other restriction on disclosure.

[15] Part 5, Division 1, heading

Insert “**or NSW Crime Commission**” after “**police**”.

[16] Section 76 Definitions

Omit “In this section”. Insert instead “In this Division”.

[17] Section 76

Insert in alphabetical order:

Crime Commission means the New South Wales Crime Commission.

[18] Section 77 Referral of matter

Omit section 77 (1). Insert instead:

- (1) The Commission may, before or after investigating a matter (whether or not the investigation is completed), refer the matter for investigation or action:
 - (a) to a police authority, or
 - (b) if the matter relates to a Crime Commission officer—to the Crime Commission.

[19] Sections 77 (2) and (3) and 80

Insert “or the Crime Commission” after “police authority” wherever occurring.

[20] Section 77 (4A)

Insert after section 77 (4):

- (4A) The PIC must not refer a matter to the Crime Commission except after appropriate consultation with the Crime Commissioner and after taking into consideration the views of the Crime Commissioner.

[21] Section 78 Report to Commission

Omit section 78 (1). Insert instead:

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

[22] Section 79A

Insert after section 79:

79A Referrals to Crime Commission—further action by PIC

- (1) If the PIC is not satisfied that the Crime Commission has duly and properly taken action in connection with a matter referred to it under this Division, the PIC must inform the Crime Commissioner of the grounds of the PIC’s dissatisfaction and must give the Crime Commissioner an opportunity to comment within a specified time.
- (2) If, after considering any comments received from the Crime Commissioner within the specified time, the PIC is still not satisfied, the PIC 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 Crime Commissioner and the PIC.
- (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 PIC is still of the opinion that the recommendation should be adopted, the PIC may make a report as referred to in section 100.

[23] Section 82 Definition

Insert “the New South Wales Crime Commission,” after “but does not include” in the definition of *authority*.

[24] Section 99 Annual reports

Insert after section 99 (2):

- (2A) Any such information that relates to investigations or other matters involving Crime Commission officers must be kept separate from other matters in the report.

[25] Section 100 Reports relating to authorities

Insert “or 79A” after “section 79” in section 100 (1).

[26] Section 100 (2)

Insert “or 79A (3) (as the case requires)” after “section 79 (3)”.

[27] Section 129 Functions of ICAC where police officers, Crime Commission officers or administrative officers involved

Insert “, Crime Commission officers” after “police officers” wherever occurring.

[28] Section 130 Functions of PIC where other public official involved

Insert “, Crime Commission officers” after “police officers” wherever occurring.

[29] Section 130 (2), note

Insert at the end of section 130 (2):

Note. A *public official* includes a member of the New South Wales Crime Commission Management Committee constituted by the *New South Wales Crime Commission Act 1985*.

[30] Section 131 Arrangements between PIC and ICAC

Omit section 131 (1). Insert instead:

(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, misconduct of a Crime Commission officer or corrupt conduct of an administrative officer 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* (other than by a police officer, Crime Commission officer or administrative officer) may exist, and
- (c) matters that the ICAC will investigate or otherwise deal with where conduct involves:
 - (i) both police officers and other public officials, or
 - (ii) both Crime Commission officers and other public officials, or
 - (iii) both administrative officers and other public officials, and
- (d) matters that the PIC will investigate or otherwise deal with where conduct involves:
 - (i) both police officers and other public officials, or
 - (ii) both Crime Commission officers and other public officials, or
 - (iii) both administrative officers and other public officials.

[31] Section 132 Other roles of ICAC not affected

Insert “or the New South Wales Crime Commission” after “NSW Police Force”.

[32] Section 135 Complaints by public officials

Insert “, Crime Commission officer” after “police officer” in section 135 (1).

[33] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

*Police Integrity Commission Amendment (Crime Commission)
Act 2008*

[34] **Schedule 3**

Insert at the end of the Schedule (with appropriate Part and clause numbering):

**Part Provisions consequent on enactment of
Police Integrity Commission Amendment
(Crime Commission) Act 2008**

Definition

In this Part:

amending Act means the *Police Integrity Commission Amendment (Crime Commission) Act 2008*.

**Application of amendments to previous conduct of Crime
Commission officers**

The amendments made to this Act by the amending Act concerning the detection and investigation of misconduct of Crime Commission officers or former Crime Commission officers extend to conduct that occurred (or is alleged to have occurred) before the commencement of the amending Act.

Existing matters being dealt with by ICAC

- (1) The amendments made to this Act by the amending Act do not affect any matter relating to the New South Wales Crime Commission or a Crime Commission officer that was being dealt with by the ICAC before the commencement of the amending Act.
- (2) Any such existing matter cannot be referred by the ICAC to another person or body under section 53 of the *Independent Commission Against Corruption Act 1988*. However, nothing in this subclause prevents the ICAC from referring, in accordance with that section, any other matter that arises out of its dealing with the existing matter.

Existing arrangements between PIC and ICAC

Any arrangement made under section 131 and in force immediately before the commencement of the amending Act is taken to be an arrangement in force under that section as amended by the amending Act.

Schedule 2 Amendment of Independent Commission Against Corruption Act 1988

(Section 4)

[1] Section 11 Duty to notify Commission of possible corrupt conduct

Insert after section 11 (2A):

- (2B) Despite subsection (2), the Commissioner for the New South Wales Crime Commission (*the Crime Commissioner*) is not under a duty to report to the Commission any matter that concerns or may concern corrupt conduct of a Crime Commission officer (within the meaning of the *Police Integrity Commission Act 1996*) unless the Crime Commissioner suspects on reasonable grounds that the matter also concerns or may concern corrupt conduct of another public official.

[2] Section 13 Principal functions

Insert “, Crime Commission officers” after “police officers” in section 13 (1A).