



New South Wales

Police Integrity Commission Amendment Bill 2006

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to amend the *Police Integrity Commission Act 1996*:
 - (i) to provide for a system of investigation, referral and oversight of complaints about certain members of NSW Police who are not police officers, and
 - (ii) to enable criminal proceedings in respect of certain summary offences under that Act to be brought within the period of 3 years of their commission, and
 - (iii) to confirm that the conduct of former officers of the Police Integrity Commission may be investigated by the Inspector of the Commission, and
- (b) to make consequential amendments to the *Independent Commission Against Corruption Act 1988*.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Police Integrity Commission Act 1996* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Independent Commission Against Corruption Act 1988* set out in Schedule 2.

Clause 5 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the *Interpretation Act 1987* provides that the repeal of an amending Act does not affect the amendments made by that Act.

Schedule 1 Amendment of Police Integrity Commission Act 1996

Dealing with corrupt conduct of administrative officers

Schedule 1 [3] inserts a new section 13A in the *Police Integrity Commission Act 1996* (the *PIC Act*) to confer on the Police Integrity Commission (the *PIC*) the following additional functions:

- (a) to prevent corrupt conduct of administrative officers,
- (b) to detect or investigate, or oversee other agencies in the detection or investigation of, corrupt conduct of administrative officers.

Schedule 1 [1] amends section 4 of the PIC Act to insert definitions of terms used in provisions to be inserted by the proposed Act. In particular, an *administrative officer* is defined to mean any member of NSW Police other than a police officer. **Schedule 1 [2]** inserts a new section 5A in the PIC Act which defines *corrupt conduct* of an administrative officer to mean any conduct of an administrative officer that is corrupt conduct for the purposes of the *Independent Commission Against Corruption Act 1988*. The proposed section also makes it clear that conduct of a former administrative officer may be dealt with by the PIC.

Schedule 1 [12] inserts a new Part 4A in the PIC Act dealing with the making of complaints to the PIC concerning corrupt conduct of administrative officers and the duty to report such conduct to the PIC.

Schedule 1 [21] amends section 135 of the PIC Act to enable certain public officials to make complaints to PIC about the conduct of administrative officers.

Schedule 1 [4]–[11] and [14]–[19] make consequential amendments to the PIC Act.

Schedule 1 [20] makes an amendment to section 132 of the PIC Act that is consequential on the amendment made to section 13 of the *Independent Commission Against Corruption Act 1988* by Schedule 2 [2] to the proposed Act.

Investigations concerning former officers of PIC

Schedule 1 [13] inserts a new section 93A in the PIC Act to confirm that the conduct of former officers of the PIC may be investigated by the Inspector of the PIC.

Time for instituting certain criminal proceedings

Schedule 1 [22] amends section 141 of the PIC Act to enable criminal proceedings for alleged offences under the following provisions of the Act to be brought within the period of 3 years after their commission:

- (a) section 25 (Failure to provide information to the PIC, or providing false information, when requested to do so by notice),
- (b) section 52 (Publication of evidence etc despite a direction not to do so given by the PIC),
- (c) section 53 (Publication of evidence given at private hearing of the PIC without authorisation),
- (d) section 54 (Disclosures prejudicing investigations being made by the PIC),
- (e) section 56 (Unauthorised divulging of information acquired by reason of, or in the course of, exercising functions under the Act),
- (f) section 106 (Failure to comply with a summons issued by the PIC).

Currently, section 141 of the PIC Act is limited to alleged offences under section 104 (c) of that Act (which prohibits a person from wilfully make any false statement to or mislead, or attempt to mislead, the PIC or an officer of PIC, or the Inspector of PIC or an officer of the Inspector, in the exercise of functions under the Act).

These offences are all summary offences. Accordingly, in the absence of the provisions of section 141, criminal proceedings in respect of these offences would need to be commenced within 6 months from when they are alleged to have been committed. See section 179 of the *Criminal Procedure Act 1986*.

Savings and transitional provisions

Schedule 1 [23] amends clause 1 of Schedule 3 to the PIC Act to enable the Governor to make regulations of a savings or transitional nature consequent on the enactment of the proposed Act.

Schedule 1 [24] inserts a new Part in Schedule 3 to the PIC Act containing savings and transitional provisions consequent on the enactment of the proposed Act. In particular, the new Part provides that:

- (a) the amendments concerning the detection and investigation of corrupt conduct of administrative officers or former administrative officers extend to conduct that occurred (or is alleged to have occurred) before the commencement of the amendments unless the conduct has already been the subject of a complaint made before that commencement, and
- (b) the amendment made to section 141 only applies to offences committed (or alleged to have been committed) after the commencement of the amendment.

Schedule 2 Amendment of Independent Commission Against Corruption Act 1988

Schedule 2 [1] amends section 11 of the *Independent Commission Against Corruption Act 1988* (the *ICAC Act*) to provide that the Commissioner of Police is not under a duty to report to the Independent Commission Against Corruption (*ICAC*) any matter that concerns or may concern corrupt conduct of a police officer or administrative officer unless the Commissioner suspects on reasonable grounds that the matter also concerns or may concern corrupt conduct of another public official.

Schedule 2 [2] amends section 13 of the *ICAC Act* to limit the functions of *ICAC* in relation to the conduct of police officers and administrative officers.



New South Wales

Police Integrity Commission Amendment Bill 2006

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Police Integrity Commission Act 1996 No 28	2
4 Amendment of Independent Commission Against Corruption Act 1988 No 35	2
5 Repeal of Act	2
Schedule 1 Amendment of Police Integrity Commission Act 1996	3
Schedule 2 Amendment of Independent Commission Against Corruption Act 1988	10

Police Integrity Commission Amendment Bill 2006

Contents

Page

Contents page 2



New South Wales

Police Integrity Commission Amendment Bill 2006

No. , 2006

A Bill for

An Act to amend the *Police Integrity Commission Act 1996* to provide for a system of investigation, referral and oversight of complaints against certain members of NSW Police who are not police officers; to make consequential amendments to the *Independent Commission Against Corruption Act 1988*; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Police Integrity Commission Amendment Act 2006</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5
3 Amendment of Police Integrity Commission Act 1996 No 28	6
The <i>Police Integrity Commission Act 1996</i> is amended as set out in Schedule 1.	7 8
4 Amendment of Independent Commission Against Corruption Act 1988 No 35	9 10
The <i>Independent Commission Against Corruption Act 1988</i> is amended as set out in Schedule 2.	11 12
5 Repeal of Act	13
(1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.	14 15
(2) The repeal of this Act does not, because of the operation of section 30 of the <i>Interpretation Act 1987</i> , affect any amendment made by this Act.	16 17

Schedule 1	Amendment of Police Integrity Commission Act 1996	1
		2
	(Section 3)	3
[1] Section 4 Definitions		4
Insert in alphabetical order in section 4 (1):		5
	<i>administrative officer</i> means any member of NSW Police other than a police officer.	6
		7
	<i>administrative officer complaint</i> means a complaint made under section 75A.	8
		9
	<i>corrupt conduct</i> of an administrative officer—see section 5A.	10
	<i>disciplinary proceedings</i> means proceedings for a disciplinary offence.	11
		12
	<i>former administrative officer</i> means any person who is not an administrative officer but who has been an administrative officer at any time previously (whether before or after the commencement of Schedule 1 [1] to the <i>Police Integrity Commission Amendment Act 2006</i>).	13
		14
		15
		16
		17
	<i>former officer of the Commission</i> means any person who is not an officer of the Commission but who has been an officer of the Commission at any time previously (whether before or after the commencement of Schedule 1 [1] to the <i>Police Integrity Commission Amendment Act 2006</i>).	18
		19
		20
		21
		22
[2] Section 5A		23
Insert after section 5:		24
5A Corrupt conduct of administrative officers		25
(1) Definition		26
	For the purposes of this Act, <i>corrupt conduct</i> of an administrative officer means any conduct of an administrative officer that is corrupt conduct for the purposes of the <i>Independent Commission Against Corruption Act 1988</i> .	27
		28
		29
		30
(2) Former administrative officers		31
	Conduct may be dealt with, or continue to be dealt with, under this Act even though any administrative officer involved has ceased to be an administrative officer. Accordingly, references in this Act to an administrative officer extend, where appropriate, to include a former administrative officer.	32
		33
		34
		35
		36

[3] Section 13A	1
Insert after section 13:	2
13A Other functions regarding administrative officers	3
(1) Other functions of the Commission include the following:	4
(a) to prevent corrupt conduct of administrative officers,	5
(b) to detect or investigate, or oversee other agencies in the	6
detection or investigation of, corrupt conduct of	7
administrative officers.	8
(2) The Commission is, as far as practicable, required to turn its	9
attention principally to serious corrupt conduct of administrative	10
officers.	11
(3) The reference in this section to <i>overseeing</i> other agencies in the	12
detection or investigation of corrupt conduct of administrative	13
officers is a reference to the provision by the Commission of	14
guidance that relies on a system of guidelines prepared by it and	15
progress reports and final reports furnished to it rather than the	16
provision of detailed guidance in the planning and execution of	17
such detection and investigation.	18
(4) In overseeing other agencies for the purposes of this section, the	19
Commission does not have a power of control or direction, and	20
any such oversight is to be achieved by agreement. However, it is	21
the duty of members of NSW Police to co-operate with the	22
Commission in the exercise of its oversight functions and any	23
other functions of the Commission.	24
(5) However, nothing in subsection (2), (3) or (4):	25
(a) affects the capacity of the Commission to exercise any of	26
the functions as referred to in subsection (1), or	27
(b) provides a ground for any appeal or other legal or	28
administrative challenge to the exercise by the	29
Commission of any of those functions.	30
[4] Section 15 Other functions regarding evidence and information	31
collected	32
Insert “or administrative officer complaint” after “police complaint” in section	33
15 (1) (b) (i).	34
[5] Section 16 Provisions regarding assessments, opinions and	35
recommendations	36
Insert “or corrupt conduct of an administrative officer” after “or other	37
misconduct” in section 16 (1) (a).	38

[6] Section 16 (3)	1
Insert “or corrupt conduct of an administrative officer” after “police misconduct” wherever occurring.	2 3
[7] Section 23 Investigations generally	4
Omit section 23 (1). Insert instead:	5
(1) The Commission may conduct an investigation:	6
(a) on its own initiative, or	7
(b) on a police complaint made or referred to it or on a police complaint of which it becomes aware, or	8 9
(c) on an administrative officer complaint made to it, or	10
(d) on a report made to it.	11
[8] Section 23 (2)	12
Insert “, administrative officer” after “police officer”.	13
[9] Section 23 (2)	14
Insert “or corrupt conduct of an administrative officer” after “police misconduct”.	15 16
[10] Section 23 (3) (c)	17
Insert “or administrative officer complaint” after “police complaint”.	18
[11] Section 30 Injunctions	19
Insert at the end of section 30 (2) (b):	20
, or	21
(c) it is necessary to restrain the conduct in order to prevent irreparable harm being done because of serious corrupt conduct, or suspected serious corrupt conduct, by an administrative officer.	22 23 24 25

[12] Part 4A	1
Insert after Part 4:	2
Part 4A Complaints against administrative officers	3
75A Complaints about possible corrupt conduct of administrative officers (cf ICAC Act s 10)	4
(1) Any person may make a complaint to the Commission about a matter that concerns or may concern corrupt conduct of an administrative officer.	5 6 7
(2) The Commission may investigate any such complaint or decide that the complaint need not be investigated.	8 9
(3) The Commission may discontinue an investigation of any such complaint.	10 11
75B Duty to notify Commission of possible corrupt conduct of administrative officers (cf ICAC Act s 11)	12
(1) This section applies to the following officers:	13
(a) the Ombudsman,	14
(b) the Commissioner of Police,	15
(c) the principal officer of a public authority,	16
(d) an officer who constitutes a public authority.	17
(2) An officer to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct of an administrative officer.	18 19 20 21
(3) The Commission may issue guidelines as to what matters need or need not be reported.	22 23
(4) This section has effect despite any duty of secrecy or other restriction on disclosure.	24 25
(5) The regulations may prescribe who is the principal officer of a public authority, but in the absence of regulations applying in relation to a particular public authority, the principal officer is the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.	26 27 28 29 30
(6) In this section, <i>public authority</i> has the same meaning as it has in the <i>Independent Commission Against Corruption Act 1988</i> .	31 32

[13] Section 93A	1
Insert after section 93:	2
93A Former officers of the Commission	3
(1) For the avoidance of doubt, conduct may be dealt with, or continue to be dealt with, under this Act even though any officer of the Commission involved has ceased to be an officer of the Commission.	4 5 6 7
(2) Accordingly, references in this Act to an officer of the Commission extend, where appropriate, to include a former officer of the Commission.	8 9 10
(3) Without limiting subsection (2), appropriate references to which that subsection applies include references in provisions of this Act that concern:	11 12 13
(a) complaints about, or investigating or otherwise dealing with, the conduct of an officer of the Commission, or	14 15
(b) obtaining information, documents or other things from, or requiring answers or evidence to be given or produced by, an officer of the Commission (whether in connection with the officer's own conduct or the conduct of another officer of the Commission).	16 17 18 19 20
[14] Section 129 Functions of ICAC where police officers or administrative officers involved	21 22
Insert "or administrative officers" after "police officers" wherever occurring.	23
[15] Section 130 Functions of PIC where other public officials involved	24
Insert "or administrative officers" after "police officers" wherever occurring.	25
[16] Section 131 Arrangements between PIC and ICAC	26
Insert "or corrupt conduct of an administrative officer" after "police misconduct" in section 131 (1) (a).	27 28
[17] Section 131 (1) (b)	29
Insert "(other than by a police officer or administrative officer)" after " <i>Independent Commission Against Corruption Act 1988</i> ".	30 31
[18] Section 131 (1) (c)	32
Insert "or both administrative officers and other public officials" after "public officials".	33 34

[19] Section 131 (1) (d)	1
Insert “or both administrative officers and other public officials” after “public officials”.	2 3
[20] Section 132 Other roles of ICAC not affected	4
Omit “13 (1) (d)–(k)”. Insert instead “13 (1) (e), (i), (j) and (k)”.	5
[21] Section 135 Complaints by public officials	6
Insert “or administrative officer” after “police officer” in section 135 (1).	7
[22] Section 141 Proceedings for offences	8
Omit section 141 (4). Insert instead:	9
(4) Proceedings for an alleged offence under any of the following provisions of this Act may be commenced within 3 years after the commission of the alleged offence:	10 11 12
(a) section 25,	13
(b) sections 52, 53, 54 and 56,	14
(c) section 104 (c),	15
(d) section 106.	16
[23] Schedule 3 Savings, transitional and other provisions	17
Insert at the end of clause 1 (1):	18
<i>Police Integrity Commission Amendment Act 2006</i>	19
[24] Schedule 3	20
Insert at the end of the Schedule (with appropriate Part and clause numbering):	21
Part Provisions consequent on enactment of Police Integrity Commission Amendment Act 2006	22 23 24
Definition	25
In this Part:	26
<i>amending Act</i> means the <i>Police Integrity Commission Amendment Act 2006</i> .	27 28

Application of amendments to previous conduct of administrative officers	1 2
(1) Except as provided by subclause (2), the amendments made to this Act by the amending Act concerning the detection and investigation of corrupt conduct of administrative officers or former administrative officers extend to conduct that occurred (or is alleged to have occurred) before the relevant commencement day.	3 4 5 6 7 8
(2) This Act (as in force immediately before the relevant commencement day) continues to apply to the investigation of a complaint about the conduct of an administrative officer that was made before that day.	9 10 11 12
(3) In this clause, <i>relevant commencement day</i> means the day on which Schedule 1 [3] to the amending Act commences.	13 14
Application of amendment to section 141	15
(1) The amendment made to section 141 (4) by Schedule 1 [22] to the amending Act applies to offences committed (or alleged to have been committed) on or after the commencement of that amendment.	16 17 18 19
(2) Section 141 (4), as in force immediately before the commencement of Schedule 1 [22] to the amending Act, continues to apply to offences committed (or alleged to have been committed) before that commencement.	20 21 22 23

Schedule 2	Amendment of Independent Commission Against Corruption Act 1988	1
		2
		3
	(Section 4)	4
[1]	Section 11 Duty to notify Commission of possible corrupt conduct	5
	Insert after section 11 (2):	6
	(2A) Despite subsection (2), the Commissioner of Police is not under a duty to report to the Commission any matter that concerns or may concern corrupt conduct of a police officer or administrative officer (within the meaning of the <i>Police Integrity Commission Act 1996</i>) unless the Commissioner of Police suspects on reasonable grounds that the matter also concerns or may concern corrupt conduct of another public official.	7
		8
		9
		10
		11
		12
		13
[2]	Section 13 Principal functions	14
	Insert after section 13 (1):	15
	(1A) Subsection (1) (d) and (f)–(h) do not extend to the conduct of police officers or administrative officers within the meaning of the <i>Police Integrity Commission Act 1996</i> .	16
		17
		18