



New South Wales

# Police Integrity Commission Amendment Bill 2012

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Police Integrity Commission Act 1996*:

- (a) to give equal prominence to the functions of the Police Integrity Commission (*the PIC*) of preventing corrupt conduct of administrative officers of the NSW Police Force and misconduct of NSW Crime Commission officers as is given to the function of preventing police misconduct, and
- (b) to give guidance to the PIC in relation to the factors that are to be taken into account when it determines whether to conduct a hearing into a matter in private or in public, and
- (c) to ensure that certain senior officers are under a duty to report all of the types of conduct referred to in paragraph (a) to the PIC, and
- (d) to clarify the way in which the Inspector of the PIC is to carry out certain functions, and
- (e) to ensure that a person about whom an adverse comment is to be made in a report prepared by the PIC or the Inspector of the PIC is given the grounds on which the comment is made and an opportunity to make submissions before the comment is included in the report.

## 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 the date of assent to the proposed Act.

## **Schedule 1      Amendment of Police Integrity Commission Act 1996 No 28**

### **Investigative functions of the PIC**

**Schedule 1 [1]** amends section 3 of the Act to ensure that the objects of the Act give equal prominence to the functions of the PIC of preventing corrupt conduct of administrative officers of the NSW Police Force and misconduct of NSW Crime Commission officers as is given to the function of preventing police misconduct.

**Schedule 1 [2]** amends section 4 of the Act to define the term *officer misconduct* as meaning police misconduct, corrupt conduct of an administrative officer of the NSW Police Force or misconduct of a NSW Crime Commission officer.

**Schedule 1 [5]** substitutes section 13 of the Act and repeals sections 13A and 13B of the Act to combine the current provisions relating to preventing police misconduct (current section 13), preventing corrupt conduct of administrative officers of the NSW Police Force (current section 13A) and preventing misconduct of NSW Crime Commission officers (current section 13B) into one section dealing with officer misconduct.

Section 13C of the Act which enables the allocation of the PIC's functions in relation to NSW Crime Commission officers by the Commissioner of the PIC to other staff of the PIC is also repealed. Those functions will be the subject of delegations made in accordance with section 11 of the Act in line with the PIC's functions in relation to police officers and administrative officers of the NSW Police Force.

**Schedule 1 [3] and [4]** make consequential amendments.

### **Duty of senior officers to report misconduct**

Currently, sections 75B and 75D of the Act contain requirements for specified senior officers (such as the Commissioner of Police and principal officers of public authorities) to notify the PIC of corrupt conduct of administrative officers of the NSW Police Force and misconduct of NSW Crime Commission officers. No such duty is imposed in relation to the notification of police misconduct.

**Schedule 1 [7]–[9]** repeal sections 75B and 75D and insert proposed Part 4C into the Act. The new Part will impose a duty on specified senior officers to notify all officer misconduct to the PIC.

### **Functions of Inspector of the PIC**

**Schedule 1 [10]** amends section 89 of the Act to include as a function of the Inspector of the PIC dealing with conduct amounting to maladministration by the PIC or officers of the PIC, including (without limitation) delay in the conduct of investigations and unreasonable invasions of privacy.

**Schedule 1 [11] and [13]** amend sections 89 and 101, respectively, to clarify the powers of the Inspector of the PIC to make recommendations and reports so that those powers are in line with powers conferred on the Inspector of the Independent Commission Against Corruption under the *Independent Commission Against Corruption Act 1988*.

**Schedule 1 [12]** makes a consequential amendment.

### **Other amendments**

**Schedule 1 [6]** amends section 33 to specify certain criteria that the PIC is to consider when determining whether to conduct a hearing wholly or partly in public.

**Schedule 1 [14]** inserts section 137A into the Act to require the PIC and the Inspector of the PIC, before including an adverse comment about a person in a report, to give the person an opportunity to make submissions.

**Schedule 1 [15] and [16]** amend section 146 of the Act to require a review of the Act to be undertaken within 5 years after the date of assent to the proposed Act.

**Schedule 1 [17] and [18]** contain savings and transitional provisions.



First print



New South Wales

# Police Integrity Commission Amendment Bill 2012

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New South Wales

# Police Integrity Commission Amendment Bill 2012

No. , 2012

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## A Bill for

An Act to amend the *Police Integrity Commission Act 1996* to implement recommendations arising from the statutory review of the Act under section 146; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Police Integrity Commission Amendment Act 2012</i> .	3
<b>2 Commencement</b>	4
This Act commences on the date of assent to this Act.	5



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<b>Schedule 1</b>	<b>Amendment of Police Integrity Commission Act 1996 No 28</b>	1
		2
<b>[1] Section 3</b>		3
	Omit the section. Insert instead:	4
	<b>3 Principal objects of Act</b>	5
	The principal objects of this Act are:	6
	(a) to establish an independent, accountable body whose principal function is to detect, investigate and prevent police corruption and other serious officer misconduct, and	7 8 9 10
	(b) to provide special mechanisms for the detection, investigation and prevention of serious officer misconduct and other officer misconduct, and	11 12 13
	(c) to protect the public interest by preventing and dealing with officer misconduct, and	14 15
	(d) to provide for the auditing and monitoring of particular aspects of the operations and procedures of the NSW Police Force and the New South Wales Crime Commission.	16 17 18 19
<b>[2] Section 4 Definitions</b>		20
	Insert in alphabetical order:	21
	<i>officer misconduct</i> means police misconduct, corrupt conduct of an administrative officer or misconduct of a Crime Commission officer.	22 23 24
<b>[3] Section 4 (1A)</b>		25
	Insert after section 4 (1):	26
	(1A) <b>Serious and other misconduct</b>	27
	References in provisions of this Act to “serious” officer misconduct and “other” officer misconduct are intended for general guidance and are not intended to indicate a precise distinction between the two concepts.	28 29 30 31
<b>[4] Section 5 Police misconduct</b>		32
	Omit section 5 (4).	33

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<b>[5] Sections 13–13C</b>	1
Omit the sections. Insert instead:	2
<b>13 Principal functions</b>	3
(1) The principal functions of the Commission are as follows:	4
(a) to prevent officer misconduct,	5
(b) to detect or investigate, or manage or oversee other agencies in the detection or investigation of, officer misconduct,	6 7 8
(c) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.	9 10 11 12 13 14 15
(2) The Commission is, as far as practicable, required to turn its attention principally to serious officer misconduct.	16 17
(3) The reference in this section to <i>managing</i> other agencies in the detection or investigation of officer misconduct is a reference to the provision by the Commission of detailed guidance in the planning and execution of such detection or investigation.	18 19 20 21
(4) The reference in this section to <i>overseeing</i> other agencies in the detection or investigation of officer misconduct is a reference to the provision by the Commission of a lower level of such guidance, relying rather on a system of guidelines prepared by it and progress reports and final reports furnished to it.	22 23 24 25 26
(5) In managing or overseeing other agencies for the purposes of this section, the Commission does not have a power of control or direction, and any such management or oversight is to be achieved by agreement. However, it is the duty of members of the NSW Police Force and Crime Commission officers to co-operate with the Commission in the exercise of its management and oversight functions and any other functions of the Commission.	27 28 29 30 31 32 33
(6) However, nothing in subsection (2), (3), (4) or (5):	34
(a) affects the capacity of the Commission to exercise any of the functions referred to in subsection (1), or	35 36
(b) provides a ground for any appeal or other legal or administrative challenge to the exercise by the Commission of any of those functions.	37 38 39

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<b>[6] Section 33 Public and private hearings</b>	1
Insert after section 33 (3):	2
(3A) Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a hearing wholly or partly in public, the Commission is to consider the following:	3
(a) the benefit of exposing to the public, and making it aware of, officer misconduct,	4
(b) the seriousness of the allegation or complaint being investigated,	5
(c) any risk of undue prejudice to a person's reputation (including by not holding the hearing in public),	6
(d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.	7
<b>[7] Section 75B Duty to notify Commission of possible corrupt conduct of administrative officers</b>	8
Omit the section.	9
<b>[8] Section 75D Duty to notify PIC of possible misconduct of Crime Commission officers</b>	10
Omit the section.	11
<b>[9] Part 4C</b>	12
Insert after Part 4B:	13
<b>Part 4C Reporting misconduct</b>	14
<b>75D Duty to notify Commission of possible officer misconduct (cf ICAC Act s 11)</b>	15
(1) This section applies to the following officers:	16
(a) the Ombudsman,	17
(b) the Crime Commissioner,	18
(c) the Commissioner of Police,	19
(d) the principal officer of a public authority,	20
(e) an officer who constitutes a public authority.	21

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(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 officer misconduct.	1 2 3
(3)	The Commission may issue guidelines as to what matters need or need not be reported.	4 5
(4)	This section has effect despite any duty of secrecy or other restriction on disclosure.	6 7
(5)	For the purposes of this section, 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.	8 9 10 11 12 13
<b>[10]</b>	<b>Section 89 Principal functions of Inspector</b>	14
	Insert after section 89 (1) (b):	15
	(b1) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and	16 17 18 19 20
<b>[11]</b>	<b>Section 89 (1A)</b>	21
	Insert after section 89 (1):	22
	(1A) Without affecting the power of the Inspector to make a report under Part 8, the Inspector may, at any time:	23 24
	(a) make a recommendation or report concerning any matter relating to the functions of the Inspector under this section that the Inspector considers may effectively be dealt with by recommendation or report under this section, and	25 26 27 28
	(b) provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any other affected person.	29 30 31
<b>[12]</b>	<b>Section 101 Special reports</b>	32
	Insert “any of the following” after “on”.	33

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<b>[13] Section 101 (c)</b>	1
Insert after section 101 (b):	2
(c) any other matter relating to the exercise of a function to audit, deal with or assess any matter under section 89 that the Inspector considers warrants the making, in the public interest, of a special report.	3 4 5 6
<b>[14] Section 137A</b>	7
Insert after section 137:	8
<b>137A Persons to be heard</b>	9
(1) Before including in a report any comment about a person that the Commission or the Inspector considers is adverse, the Commission or Inspector must, so far as practicable:	10 11 12
(a) inform that person of the substance of the grounds of the adverse comment, and	13 14
(b) give the person an opportunity to make submissions.	15
(2) The Commission is taken to have complied with this section if it has held a hearing under section 32 at which the person who is the subject of the adverse comment concerned was informed of the substance of the grounds of the adverse comment and given an opportunity to make submissions.	16 17 18 19 20
(3) This section applies only to the following reports:	21
(a) a report by the Commission in relation to any matter that has been or is the subject of an investigation by the Commission,	22 23 24
(b) a report by the Inspector in relation to any complaint.	25
<b>[15] Section 146 Review of Act</b>	26
Omit “A further such review is” from section 146 (2A).	27
Insert instead “Further such reviews are”.	28
<b>[16] Section 146 (2A)</b>	29
Insert “and after the period of 5 years from the date of assent to the <i>Police     Integrity Commission Amendment Act 2012</i> ” after “2005”.	30 31

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<b>[17] Schedule 3 Savings, transitional and other provisions</b>	1
Omit clause 1. Insert instead:	2
<b>1 Savings and transitional regulations</b>	3
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.	4 5 6
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	7 8
(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:	9 10 11
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	12 13 14
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	15 16 17
<b>[18] Schedule 3, Part 11</b>	18
Insert after Part 10:	19
<b>Part 11 Provision consequent on enactment of Police Integrity Commission Amendment Act 2012</b>	20 21 22
<b>22 Reports</b>	23
Section 137A (as inserted by the <i>Police Integrity Commission Amendment Act 2012</i> ) does not apply to reports prepared before the commencement of that section.	24 25 26