

Act 1994 No. 60

ROYAL COMMISSION (POLICE SERVICE) BILL 1994*

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

On 13 May 1994, the Governor issued a Royal Commission of inquiry by letters patent under the Public Seal of the State, appointing the Honourable James Roland Tomson Wood sole commissioner to make inquiry into, and report on, the operations of the New South Wales Police Service. This Bill applies to and in respect of that Royal Commission (“the Police Royal Commission”).

The objects of this Bill are:

- (a) to confer additional powers on the Police Royal Commission paralleling powers conferred on the Independent Commission Against Corruption by the Independent Commission Against Corruption Act 1988 (“the ICAC Act”); and
- (b) to facilitate the co-operation of public authorities and officials (such as the Ombudsman) with the Commission’s inquiry; and
- (c) to assist generally the conduct of the Commission’s inquiry.

The functions conferred and imposed on the Police Royal Commission by this Bill are in addition to those conferred and imposed on Royal Commissions generally by the Royal Commissions Act 1923.

PART 1—PRELIMINARY

Clause 1 specifies 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.

* Amended in committee—see table at end of volume.

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Clause 3 provides that the Act applies to the Police Royal Commission, including any Royal Commission by which the Police Royal Commission is altered, extended, continued or replaced (on the same or similar terms as the Police Royal Commission). The Act also applies to any other Royal Commission by which a Commissioner is appointed to report to or otherwise assist the Police Royal Commission.

Clause 4 contains definitions of terms used in the proposed Act and interpretation provisions. The clause also provides that notes in the text of the proposed Act are explanatory notes and do not form part of the proposed Act.

Clause 5 explains the relationship between the proposed Act and the Royal Commissions Act. The functions conferred or imposed on the Police Royal Commission by the proposed Act are in addition to those conferred or imposed on Royal Commissions generally by the Royal Commissions Act and nothing in that Act constrains the exercise of a function conferred or imposed by the proposed Act.

PART 2—OBTAINING INFORMATION, DOCUMENTS AND OTHER THINGS

Clause 6 gives the Commissioner power to require public authorities and officials to provide information. (This provision parallels section 21 of the ICAC Act.)

Clause 7 gives the Commissioner power to require any person to attend before the Commissioner or an officer of the Commission and produce a specified document or other thing. (This provision parallels section 22 of the ICAC Act.)

Clause 8 allows claims of privilege to be made in respect of certain information, documents or other things produced to the Commission under clause 6 or 7. (This provision parallels section 24 of the ICAC Act.)

Clause 9 protects persons from prosecution in respect of certain self-incriminating statements, documents or other things produced to the Commission. (This provision parallels section 26 of the ICAC Act.)

Clause 10 gives the Commissioner or an authorised officer of the Commission power to enter the premises of a public authority or official and inspect and copy documents for the purpose of investigating conduct which may involve a criminal offence. A claim of privilege may be made in respect of such documents. (This provision parallels sections 23 and 25 of the ICAC Act.)

PART 3—ATTENDANCE BEFORE THE COMMISSION

Clause 11 authorises the Commissioner to issue a warrant for the arrest of a person who fails to attend in answer to a summons to appear before the Commission. This power is broadly similar to powers conferred on a commissioner under the Royal Commissions Act. The clause goes on however to confer power on the Commissioner, for the purposes of investigating conduct which may involve a criminal offence, to issue a warrant for the arrest of a person whose evidence is required in connection with that investigation if the Commissioner is satisfied the person is unlikely to attend in answer to a summons. (This provision parallels section 36 of the ICAC Act.)

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Clause 12 empowers the making of a declaration that answers, documents or other things are given or produced subject to a general objection by the witness concerned, so as to avoid repeated objections. (This provision parallels section 38 of the ICAC Act.)

Clause 13 provides for the payment of the expenses of a witness attending or appearing before the Commission. (This provision parallels section 51 of the ICAC Act.)

Clause 14 provides for the attendance of prisoners before the Commission. (This provision parallels section 39 of the ICAC Act.)

PART 4—SEARCH AND LISTENING DEVICE WARRANTS

Clause 15 authorises the issue of search warrants by an authorised justice or the Commissioner in connection with the investigation by the Commission of conduct which may involve a criminal offence. (This provision parallels section 40 of the ICAC Act.)

Clause 16 sets out the powers conferred by a search warrant. (This provision parallels section 41 of the ICAC Act.)

Clause 17 provides for the production of search warrants to the occupier of the premises being searched. (This provision parallels section 42 of the ICAC Act.)

Clause 18 allow the use of reasonably necessary force to execute a search warrant. (This provision parallels section 43 of the ICAC Act.)

Clause 19 allows the use of assistants to execute a search warrant. (This provision parallels section 44 of the ICAC Act.)

Clause 20 provides that a warrant is not to authorise execution by night except in certain special circumstances. (This provision parallels section 45 of the ICAC Act and section 19 of the Search Warrants Act 1985.)

Clause 21 specifies when a search warrant expires. (This provision parallels section 46 of the ICAC Act.)

Clause 22 provides for the seizure of certain documents or other things found in the course of executing a search warrant. (This provision parallels section 47 (1) of the ICAC Act.)

Clause 23 applies certain provisions of the Search Warrants Act 1985 to search warrants issued under the proposed Act. (This provision parallels section 48 of the ICAC Act.)

Clause 24 makes it an offence to obstruct or hinder a person executing a search warrant. (This provision parallels section 84 of the ICAC Act.)

Clause 25 provides that the Commissioner or an officer of the Commission may apply for the issue of a warrant authorising the use of a listening device under the Listening Devices Act 1984. (This provision parallels section 19 (2) of the ICAC Act.)

PART 5—PROTECTION OF WITNESSES AND EVIDENCE

Clause 26 allows the Commissioner to make arrangements for the protection of witnesses or other persons whose safety may be prejudiced because they have assisted or are assisting the Commission. (This provision parallels section 50 of the ICAC Act.)

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Clause 27 allows the Commissioner to give directions prohibiting the publication of certain information or evidence given to the Commission. (This section parallels section 112 of the ICAC Act.)

Clause 28 makes it an offence for a person who receives a summons or a notice to produce information or documents to the Commission to disclose information about the notice or summons that is likely to prejudice the Commission's inquiry or any aspect of that inquiry. (This provision parallels section 114 of the ICAC Act.)

Clause 29 provides that the Attorney General may, on the recommendation of the Commissioner, grant an indemnity from prosecution to a person or give an undertaking not to use statements made to the Commission as evidence in other proceedings. (This provision parallels section 49 of the ICAC Act.)

PART 6—SECRECY, DISCLOSURE, ADMISSIBILITY

Clause 30 imposes a duty of secrecy on certain persons who obtain information in connection with the Commission's inquiry. (This provision parallels section 111 of the ICAC Act.)

Clause 31 provides that the Ombudsman may furnish certain information obtained by the Ombudsman to the Commission and may give evidence before the Commission and produce documents to the Commission. However, the Ombudsman (and his or her officers) cannot be compelled to give evidence or produce a document.

Clause 32 provides that certain secrecy provisions in other Acts do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under the proposed Act or the Royal Commissions Act.

Clause 33 provides that certain documents relating to complaints about police conduct are admissible in evidence before the Commission.

Clause 34 creates an exception to secrecy provisions contained in the Telecommunications (Interception) (New South Wales) Act 1987 for proceedings for an offence under the proposed Act. (This provision parallels an existing exception for proceedings for an offence under the Royal Commissions Act.)

Clause 35 relates to the competence and compellability of certain witnesses. At present, the Legal Profession Act 1987 provides that certain persons involved in the administration of that Act are neither competent nor compellable to give evidence in any proceedings in respect of any matter in which they were involved in the course of that administration. This clause creates an exception for proceedings for an offence under the proposed Act. (This parallels an existing exception for proceedings for an offence under the Royal Commissions Act.)

Clause 36 creates an exception to secrecy provisions contained in the Privacy Committee Act 1975 for proceedings for an offence under the proposed Act. In addition, that Act also provides that certain persons involved in the execution or administration of that Act are neither competent nor compellable to give evidence in any proceedings in respect of any information obtained in that execution or administration. This clause creates an exception for proceedings for an offence under the proposed Act. (These exceptions parallel existing exceptions for proceedings for an offence under the Royal Commissions Act.)

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Clause 37 applies a provision in the Evidence Act 1898 (which gives members of the clergy the right to refuse to give evidence of a religious confession) to any hearing or proceedings to which the proposed Act applies. The provision currently applies to hearings or proceedings to which the Royal Commissions Act applies.

PART 7—MISCELLANEOUS

Clause 38 authorises the Commissioner to carry out the Commission's inquiry even though court proceedings are in progress, subject to certain requirements that, as far as practicable, the inquiry be held in private. (This provision parallels section 18 of the ICAC Act.)

Clause 39 allows the Commissioner to delegate certain powers to Senior Counsel Assisting the Commission, to be exercisable only during the illness of the Commissioner or the absence of the Commissioner from Sydney or the State. (This provision parallels section 107 of the ICAC Act.)

Clause 40 provides protection from liability to the Commissioner, any person acting under the direction of the Commission or the Commissioner and other persons involved in the Commission's inquiry. (This provision parallels section 109 of the ICAC Act.)

Clause 41 provides that proceedings for an offence under the proposed Act are to be dealt with summarily before a Local Court.

Clause 42 contains a regulation making power.
