

[Act 1997 No 60]



# Investigative Bodies Legislation Amendment Bill 1997

## 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*, the *Royal Commission (Police Service) Act 1994*, the *New South Wales Crime Commission Act 1985* and the *Independent Commission Against Corruption Act 1988*. The amendments will:

- (a) enable the conditional release of witnesses who have been detained to ensure their appearance, and
  - (b) enable the conditional release of persons in custody awaiting the hearing of contempt charges against them under the *Police Integrity Commission Act 1996* and the *Independent Commission Against Corruption Act 1988*, and
  - (c) enable those witnesses and persons to appeal against their detention or against the terms of their release, and
  - (d) enable a wider range of orders to be made for the protection of witnesses, and
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- (e) ensure the continued protection of persons assisting the Police Royal Commissioner even after the Commissioner has discharged his or her functions (in the case of the amendments to the *Police Integrity Commission Act 1996* only), and
- (f) enable the Attorney General to delegate his or her functions concerning legal and financial assistance for witnesses under the *Police Integrity Commission Act 1996* and the *Independent Commission Against Corruption Act 1988* to the Director-General of the Attorney General's Department.

## 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.

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

**Clause 4** is a formal provision giving effect to the amendments to the *Royal Commission (Police Service) Act 1994* set out in Schedule 2.

**Clause 5** is a formal provision giving effect to the amendments to the *New South Wales Crime Commission Act 1985* set out in Schedule 3.

**Clause 6** is a formal provision giving effect to the amendments to the *Independent Commission Against Corruption Act 1988* set out in Schedule 4.

## Schedules 1–4

### Clarification of the term “custody” where witness arrested

#### Conditional release of detained witness

#### Appeal against conditions of release or continued detention

Presently, a person may be summoned as a witness before any of the four Commissions, but may in addition or instead be arrested, held in custody, and brought before the relevant Commission, in cases where it is feared that the person will not answer a summons.

**Schedule 1 [2]** makes it clear that the term “custody” in section 39 (6) of the *Police Integrity Commission Act 1996* means “in a prison or elsewhere”, as it does in section 120 (5) of that Act.

**Schedule 1 [4]** inserts proposed sections 39A and 39B in the *Police Integrity Commission Act 1996*. Proposed section 39A will enable the conditional release of a witness who has been detained. The conditions relate to ensuring the reappearance of the witness and may include the provision of sureties, the surrender of a passport and regular reporting. In cases where a detained witness is not released before giving evidence or is conditionally released, the witness will, under proposed section 39B, have a right of appeal to the Supreme Court.

Similar changes are made to the *Royal Commission (Police Service) Act 1994* by **Schedule 2 [ 1 ]** and **[2]**, the *New South Wales Crime Commission Act 1985* by **Schedule 3 [3]** and **[4]** and the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [1]** and **[2]**.

#### **Wider scope for protection orders**

Presently, the Commissions have certain powers to make arrangements for the protection of persons assisting them.

**Schedule 1 [6]** replaces section 51 (5) of the *Police Integrity Commission Act 1996* to enable protection orders to be made by the Commission that are wider in scope than at present.

Similar changes are made to the *Royal Commission (Police Service) Act 1994* by **Schedule 2 [3]** and the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [3]**. The *New South Wales Crime Commission Act 1985* is not amended (except for the sake of law revision: **Schedule 3 [5]**) because it has a different protection provision.

#### **Restrictions on publication of names and addresses**

Presently, the Commissions may restrict the publication of information that may reveal the identity of a person who has already given evidence before them.

**Schedule 1 [7]** amends section 52 of the *Police Integrity Commission Act 1996* to enable that Commission to restrict the publication also of information that may reveal the whereabouts of such persons and also to restrict the publication of information that may reveal the identities and whereabouts of persons who are about to give evidence.

Similar changes are made to the *Royal Commission (Police Service) Act 1994* by **Schedule 2 [4]**, the *New South Wales Crime Commission Act 1985* by **Schedule 3 [1]** and the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [12]**.

### **Consequential changes**

**Schedule 1 [10]** expands the offences in the *Police Integrity Commission Act 1996* relating to the non-attendance of witnesses to include a breach by a person of the conditions (imposed by virtue of proposed section 39A) on which the person has been released pending a hearing. Those conditions may include a requirement to appear at the hearing and, in the meantime, to report regularly to the Commission. The offence will carry a penalty of 20 penalty units or 2 years' imprisonment or both. **Schedule 1 [9]** amends the penalty relating to other offences by witnesses so that it will be the same.

Similar changes are made to the *New South Wales Crime Commission Act 1985* by **Schedule 3 [2]** and the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [5]** and **[6]**. In the case of the *Royal Commission (Police Service) Act 1994*, a similar offence is incorporated in proposed section 11A as inserted by **Schedule 2 [2]**.

**Schedule 1 [11]** extends section 112 of the *Police Integrity Commission Act 1996*, which creates an offence of obstructing or intimidating persons summoned as witnesses, to cover similar acts against persons who have been detained as witnesses (but not summoned) whether conditionally released or not.

A similar change is made to the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [7]**. The *Royal Commission (Police Service) Act 1994* and the *New South Wales Crime Commission Act 1985* have no parallel provisions.

**Schedule 1 [12]** and **[13]** consequentially expand the categories of contempt expressly set out in the *Police Integrity Commission Act 1996* to include the failure of a witness who is on conditional release to report to the Commission in accordance with those conditions.

A similar change is made to the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [8]** and **[9]**, but no such change is made to the *Royal Commission (Police Service) Act 1994* and the *New South Wales Crime Commission Act 1985*, which do not contain parallel enumerations of the categories of contempt.

### **Conditional release of persons in custody awaiting hearing of contempt charges**

**Schedule 1 [15]** inserts proposed sections 120A and 120B in the *Police Integrity Commission Act 1996*, provisions that are parallel to those relating to arrested witnesses. They provide for the conditional release of persons detained and awaiting proceedings concerning contempt of the Police Integrity Commission, as well as providing for appeals against refusals to release them.

**Schedule 1 [14]** makes it clear that the term “custody” in section 120 (3) (a) of the *Police Integrity Commission Act 1996* means “in a prison or elsewhere”, as it does in section 120 (5) of that Act.

Similar changes are made to the *Independent Commission Against Corruption Act 1988* by Schedule 4 [10] and [11].

#### **Delegation of approval of witness assistance**

**Schedule 1 [5]** amends section 43 of the *Police Integrity Commission Act 1996* to enable the Attorney General to delegate his or her functions concerning legal and financial assistance for witnesses to the Director-General of the Attorney General’s Department. Schedule 4 [4] similarly amends section 52 of the *Independent Commission Against Corruption Act 1988*.

#### **Law revision**

**Schedule 1 [1], [3], [8] and [16]** make amendments to the *Police Integrity Commission Act 1996* for the sake of law revision.

#### **Savings and transitional provisions**

**Schedule 1 [17]–[20]** insert savings and transitional provisions in the *Police Integrity Commission Act 1996*:

- (a) to ensure the continued operation of orders, arrangements and directions made under the *Royal Commission (Police Service) Act 1994* for the protection of persons assisting the Police Royal Commissioner that Act after the discharge of his or her functions, and
- (b) to enable the PIC Commissioner to make such orders, arrangements and directions, and to vary and revoke them, both before and after the discharge of the Police Royal Commissioner’s functions, and
- (c) as a consequence of the enactment of the proposed Act.

Savings and transitional provisions consequent on the enactment of the proposed Act are inserted in the *Royal Commission (Police Service) Act 1994* by **Schedule 2 [5]**, the *New South Wales Crime Commission Act 1985* by **Schedule 3 [6] and [7]** and the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [13]–[16]**.