

[Act 1996 No 28]



New South Wales

Police Integrity Commission Bill 1996

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*
The *Police Legislation Amendment Bill 1996* is cognate with this Bill.

Overview of Bill

The objects of this Bill are:

- (a) to establish a Police Integrity Commission, whose principal function will be to detect, investigate and prevent police corruption and other serious police misconduct, and
- (b) to provide special mechanisms for the detection, investigation and prevention of serious police misconduct and other police misconduct, and
- (c) to protect the public interest by preventing and dealing with police misconduct.

A number of clauses contain bracketed notes in headings, drawing attention (“cf”) to equivalent or comparable (though not necessarily identical) provisions in other Acts. The information does not purport to be complete. Abbreviations used in the notes include the following:

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

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ICAC Act: *Independent Commission Against Corruption Act 1988*

NSW CC Act: *New South Wales Crime Commission Act 1985*

Omb Act: *Ombudsman Act 1974*

RC Act: *Royal Commissions Act 1923*

RC (PS) Act: *Royal Commission (Police Service) Act 1994*

Outline of provisions

Part 1 Preliminary

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 sets out the principal objects of the proposed Act.

Clause 4 defines certain words and expressions used in the proposed Act.

Clause 5 defines police misconduct for the purposes of the proposed Act.

Part 2 Constitution of Commission

Clause 6 constitutes the Police Integrity Commission.

Clause 7 provides for the appointment of the Commissioner for the Police Integrity Commission. Schedule 1 contains provisions relating to the Commissioner.

Clauses 8 and 9 provide for the appointment and functions of one or more Assistant Commissioners for the Police Integrity Commission.

Clause 10 provides for the appointment or engagement of staff of the Commission. Restrictions are imposed on the engagement and use of NSW police.

Clause 11 provides for the delegation of functions, subject to a number of restrictions specified in the clause.

Clause 12 provides for appointment of counsel assisting the Commission.

Part 3 Functions of Commission

Division 1 Functions

Clause 13 sets out the principal functions of the Commission, which include the prevention, detection and investigation of serious and other police misconduct. The Commission is, as far as practicable, required to turn its attention principally to serious police misconduct. It is also given power to manage and oversee other agencies in carrying out these functions.

Clause 14 specifies other functions of the Commission, including auditing, monitoring, educative and advisory functions.

Clause 15 deals with the assembling by the Commission of evidence for the purpose of prosecuting criminal offences or disciplinary offences.

Clause 16 empowers the Commission to make assessments, opinions and recommendations in the exercise of its functions, but restricts its ability to make findings of guilt and the like.

Clause 17 allows the Commission to establish or participate in task forces.

Clause 18 provides for the Commission to work in co-operation with other agencies.

Clause 19 applies the *Drug Trafficking (Criminal Proceedings) Act 1990* to the Commission.

Clause 20 provides that the Commission is not bound by the rules or practice of evidence.

Clause 21 empowers the Commission to carry out investigations despite any pending court proceedings.

Clause 22 ensures that the Commission has appropriate incidental powers.

Division 2 Investigations

Clause 23 confers general powers on the Commission to conduct investigations, on its own initiative or on a complaint being made.

Clause 24 allows the Commission to make preliminary inquiries for the purpose of deciding whether to undertake an investigation.

Division 3 Obtaining information, documents and other things

Clauses 25–31 contain provisions relating to information gathering by the Commission.

Division 4 Hearings

Clauses 32–38 empower the Commission to hold public or private hearings for the purposes of an investigation.

Division 5 Attendance before Commission

Clauses 39–44 deal with the attendance of witnesses before the Commission.

Division 6 Search warrants

Clauses 45–49 deal with the issue of search warrants for the purposes of an investigation being conducted by the Commission. Provision is made for the Commissioner to issue a search warrant in special circumstances.

Division 7 Listening device warrants

Clause 50 provides that the Commissioner or an officer of the Commission may seek a warrant under the *Listening Devices Act 1984*.

Division 8 Protection of witnesses and evidence

Clauses 51–55 contain provisions for the protection of witnesses and evidence. Part 9 also contains provisions relating to witnesses and evidence.

Division 9 Secrecy, disclosure, admissibility

Clause 56 imposes obligations of secrecy on officers of the Commission and other persons in the exercise of their functions under the proposed Act.

Clause 57 authorises the Ombudsman to furnish information to the Commission.

Clause 58 authorises the Police Royal Commissioner to furnish information to the Commission.

Clause 59 authorises the Commission to furnish information to the Police Royal Commission.

Clause 60 authorises the Commission to furnish information to the Ombudsman.

Clause 61 overrides secrecy provisions in certain other Acts for the purpose of the requirements made under the proposed Act.

Clause 62 provides that a document brought into existence for the purposes of the *Police Service Act 1990* is admissible before the Commission.

Clause 63 provides that a document brought into existence for the purposes of the Police Royal Commission is admissible in evidence before the Commission.

Clauses 64–66 override the provisions of certain specific Acts in relation to the disclosure of information.

Part 4 Police complaints

This Part contains provisions that are similar to those in Part 6A of the *Royal Commission (Police Service) Act 1994*, and allows the Police Integrity Commission to deal directly with police complaints.

Clause 67 defines a Category 1 complaint as being a complaint made against a police officer that is of a class or kind that the Commissioner and the Ombudsman have agreed should be referred to the Commission, or that the Commission has requested should be referred to the Commission, or that is of a class or kind prescribed by regulation.

Clause 68 provides that the Part applies only to complaints made after the commencement of Part 6A of the *Royal Commission (Police Service) Act 1994* and that the Part has effect despite any provisions of the *Police Service Act 1990*.

Clauses 69–75 contain machinery provisions for dealing with Category 1 complaints.

Part 5 Referral of matters by Commission

Clauses 76–87 empower the Commission to refer matters to the police or other authorities for investigation or action.

Part 6 Inspector of the Police Integrity Commission

Clauses 88–93 provide for the appointment of an Inspector of the Police Integrity Commission. Schedule 2 contains provisions relating to the Inspector.

Clause 89 provides that the principal functions of the Inspector are:

- (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State and with ministerial directions or guidelines, and
- (b) to deal with complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
- (c) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

Part 7 Parliamentary Joint Committee

Clause 94 defines the Joint Committee as the joint committee constituted under the *Ombudsman Act 1974*. The name of that committee is proposed to be altered by amendments made to that Act by the *Police Legislation Amendment Bill 1996*. Its new name will be the “Committee on the Office of Ombudsman and the Police Integrity Commission”.

Clause 95 confers functions on the Joint Committee including the function of monitoring and reviewing the exercise by the Commission and the Inspector of their functions.

Part 8 Reports to Parliament

Division 1 Reports by Commission

Clauses 96–94 provide for reports to Parliament on matters that the Commission has investigated or is investigating.

Clause 98 allows the Commission to make a special report to Parliament at any time.

Clause 99 requires the Commission to prepare an annual report for submission to Parliament.

Clause 100 enables the Commission to make reports to Parliament that relate to specific public authorities.

Division 2 Reports by Inspector

Clause 101 provides that the Inspector may make a special report to Parliament at any time about matters affecting the Commission.

Clause 102 requires the Inspector to prepare an annual report for submission to Parliament.

Division 3 General

Clause 103 contains machinery provisions relating to reports under the Part.

Part 9 Certain offences

Clauses 104–116 create various offences for the purposes of the proposed Act.

Part 10 Contempt of Commission

Clauses 117–121 provide a mechanism to deal with contempt committed against the Commission.

Part 11 Special powers and weapons

This Part contains provisions that correspond to those in Part 6B of the *Royal Commission (Police Service) Act 1994*.

Clause 122 contains definitions of *Commission investigator* and *Commission surveillance officer*.

Clause 123 provides that a Commission investigator who is a police officer seconded from outside the State will have the powers of a NSW police officer.

Clause 124 allows Commission investigators and Commission surveillance officers, who are seconded police officers, to have access to semi-automatic pistols, handcuffs and body armour vests.

Part 12 Relationship of Commission with other agencies

Clauses 125–134 make provisions regarding the relationship of the Commission with the Ombudsman, the Independent Commission Against Corruption, the Auditor-General and the Police Royal Commission. In particular, the Independent Commission Against Corruption will have a limited role in regard to the conduct of police officers.

Clause 135 provides for complaints to be made by public officials to the Commission (about the conduct of a police officer) or the PIC Inspector (about the conduct of the Commission, an officer of the Commission or an officer of the Inspector). This clause is linked with the amendments to the *Protected Disclosures Act 1994* by the cognate *Police Legislation Amendment Bill 1996*, and will enable certain kinds of information disclosed to be protected by that Act.

Part 13 Miscellaneous

Clause 136 provides that the proposed Act binds the Crown.

Clause 137 provides protection from liability for matters or things done or omitted in good faith for the purposes of the proposed Act or other Acts.

Clause 138 enables regulations to be made by the Governor for the disclosure of pecuniary interests and other matters by officers of the Commission.

Clause 139 deals with the service of documents for the purposes of the proposed Act.

Clause 140 provides that the maximum penalty for an offence against the proposed Act committed by a corporation is to be double the pecuniary penalty applying to a natural person.

Clause 141 provides for the manner in which offences are to be dealt with under the proposed Act and regulations under the proposed Act. Offences are to be dealt with summarily, except where the offence **is** an indictable offence. Indictable offences may, nevertheless, be determined summarily if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

Clause 142 restricts the exercise of functions by police in connection with the proposed Act.

Clause 143 contains a regulation-making power.

Clause 144 is a formal provision giving effect to the Schedule of savings, transitional and other provisions.

Clause 145 provides that nothing in the proposed Act affects certain rights and privileges of Parliament.

Clause 146 requires the proposed Act to be reviewed as soon as practicable after 5 years from its enactment.

Schedule 1 contains provisions relating to the Commissioner.

Schedule 2 contains provisions relating to the Inspector.

Schedule 3 contains savings, transitional and other provisions.