

[Act 1996 No 104]



New South Wales

New South Wales Crime Commission Amendment Bill 1996

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *New South Wales Crime Commission Act 1985*.

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

Outline of provisions

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

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 gives effect to the schedule of amendments to the *New South Wales Crime Commission Act 1985*.

Clause 4 gives effect to the schedule of amendments to other Acts.

Membership of Commission and appointment of Commissioner and Assistant Commissioners

Schedule 1 [9] provides for the Commission to consist of one or more (instead of two or more) members. The members of the Commission are to be the Commissioner for the New South Wales Crime Commission (currently known as the Chairperson of the Commission) and, if any Assistant Commissioners are appointed, the Assistant Commissioners.

Schedule 1 [10] and [43] insert proposed sections 5A–5C and Schedule 1 into the Act to provide for the appointment of the Commissioner and Assistant Commissioners and make provision generally concerning those offices. Clause 1 of Schedule 1 makes it clear that only a person with special legal qualifications (see section 3 (4) of the Act) may be appointed as Commissioner or Assistant Commissioner. Schedule 1 also provides for the appointment of an acting Commissioner or Assistant Commissioner in the absence or illness of the Commissioner.

Schedule 1 [11] replaces section 9 of the Act (which relates to delegation of the functions of the Commission) with a new provision that enables functions to be delegated by the Commissioner, Assistant Commissioners and members of staff of the Commission. The power to delegate functions to members of staff excludes delegation of certain powers such as a power to issue a warrant for arrest of a person or to require a person to appear before the Commission and produce documents and things (proposed section 9 (4)).

Schedule 1 [1], [2], [4], [12], [16], [30], [35], [44] and [45] make consequential amendments to the Act, including alterations of references in the Act to the “Chairperson” to “Commissioner” and provisions relating to hearings of the Commission.

Schedule 2 makes consequential amendments to other Acts to alter references to the “Chairperson” to the “Commissioner”.

Schedule 1 [48] provides for the existing Chairperson of the Commission to be the Commissioner for the remainder of his or her term of office as Chairperson and includes provision to ensure that the alteration in the name of the office is reflected in references elsewhere in the law. It also makes it clear that the change in the number of members of the Commission does not affect any of its functions.

Review of police inquiries

Schedule 1 [3] amends the definition of *investigation* in section 3 to make it clear that the Commission's powers of investigation extend to the review of police inquiries into matters relating to criminal activities.

Criminal activities that may be investigated

Schedule 1 [5] and [6] redefine *relevant offence* to include within its ambit certain offences that involve fraud and that the Management Committee is satisfied are sufficiently serious to warrant investigation by the Commission or that should be investigated in the public interest.

Schedule 1 [7] sets out some of the matters that the Management Committee is to take into account in determining whether an offence that involves fraud is sufficiently serious to warrant its investigation by the Commission.

The proposed amendments do not alter the existing provisions of the definition that exclude from the ambit of the definition offences such as those for which the maximum penalty of imprisonment is a period of less than 3 years (see paragraphs (c)–(e) of the definition).

Under the Act, the Management Committee has the function of referring matters relating to relevant criminal activities to the Commission for investigation. Relevant criminal activities are circumstances implying, or any allegations, that a relevant offence may have been, or may be being, or may be about to be, committed. The Committee cannot refer such a matter to the Commission for investigation unless it is satisfied that ordinary police methods of investigation into the matter are unlikely to be effective.

The proposed amendments alter the definition as follows (matter to be omitted is shown struck through, and matter to be inserted is shown in square brackets):

relevant offence means:

- (a) a serious drug offence ~~that involves substantial planning and organisation,~~ or
- (b) ~~any other offence that involves substantial planning and organisation and that involves,~~ or is of a kind that ordinarily involves, ~~the use of sophisticated methods and techniques,~~

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- [(a1) an offence that involves fraud and that the Management Committee is satisfied is sufficiently serious to warrant its investigation by the Commission, or any other offence for which the Management Committee is satisfied that:
- (i) the investigation of the offence by the Commission is in the public interest, and
 - (ii) the use of the Commission's functions may be necessary to fully investigate the offence,]
- but:
- (c) does not include an offence the time for the commencement of a prosecution for which has expired, and
 - (d) does not include an offence for which there is no penalty of imprisonment, and
 - (e) does not include an offence for which the maximum penalty of imprisonment is a period of less than 3 years.

Notes

Schedule 1 [8] inserts a machinery provision to make it clear that notes included in the Act are explanatory and do not form part of the Act.

Procedure at hearings

Schedule 1 [13] inserts proposed sections 13A and 13B into the Act. Proposed section 13A states that the Commission is not bound by the rules or practice of evidence. Proposed section 13B gives the Commission a limited power to refuse to allow a particular legal practitioner to represent a particular witness at a hearing conducted by the Commission for the purposes of an investigation.

Production of documents and attendance of witnesses

Schedule 1 [15] and **[18]** make amendments (proposed sections 16 (1A) and 17 (2B)) that will enable the Commission to require the immediate attendance of witnesses in certain circumstances and the immediate production of documents and things.

Schedule 1 [18] also inserts proposed section 17 (2A) into the Act to enable a notice requiring the production of documents to specify persons who may be required to comply with the requirement.

Schedule 1 [19] removes the existing provisions relating to the grounds on which a person may resist a requirement to produce a document or thing.

Schedule 1 [20] inserts proposed sections 17A and 17B. The proposed sections replace the existing procedure applying when a person claims an entitlement to refuse or fail to produce a document or thing with a new simplified procedure. Under the proposed sections, when such a claim is made the document or thing concerned must be deposited with the Commission so that it may immediately be sealed and retained in safe custody pending a hearing of the Commission and the person summoned to appear at the hearing. At the hearing, the Commission has the opportunity to withdraw the requirement to produce. If it insists and the person still refuses to produce the document or thing, the provisions of proposed section 18B (**Schedule 1 [24]**) and the existing provisions of section 19 relating to applications to the Supreme Court for review of decisions of the Commission concerning refusal to produce documents at a hearing will apply.

Schedule 1 [14] and **[25]–[29]** make consequential amendments.

Attendance of inmates before Commission

Schedule 1 [17] inserts proposed section 16A into the Act. Proposed section 16A simplifies the procedure for securing the attendance of inmates before the Commission by enabling the Commission to serve an order on the governor of a correctional centre directing the governor to produce the inmate. At present, the attendance of an inmate requires both the issue of a summons and the making of a separate order by the Commissioner of Corrective Services under section 29 of the *Correctional Centres Act 1952*.

An inmate was known as a prisoner until the commencement of Schedule 5 to the *Prisons Amendment Act 1996*, which also renamed the *Prisons Act 1952* as the *Correctional Centres Act 1952*.

Issue of arrest warrants

Schedule 1 [23] enables the Commissioner to issue a warrant for the arrest of a person who has failed to attend the Commission in answer to a summons or who has indicated by word or action an intention not to comply with such a summons.

Schedule 1 [38] requires the Commission to report the issue of warrants to the Management Committee and **Schedule 1 [39]** and **[40]** require particulars of the issue of warrants to be included in the Commission's annual report, but not particulars that would identify the persons against whom the warrants were issued.

Privilege

Schedule 1 [20] inserts proposed section 18B which recasts the provisions relating to the way in which a claim of privilege on the ground of self-incrimination is to be dealt with so as to bring them into substantial conformity with section 37 of the *Independent Commission Against Corruption Act 1988*. **Schedule 1 [21]** and **[22]** make consequential amendments.

Cabinet documents and proceedings

Schedule 1 [24] inserts proposed section 18C, which is a provision (based on section 22 of the *Ombudsman Act 1974*) that makes it clear that the Commission cannot require any person to produce a Cabinet document or answer any question relating to confidential proceedings of Cabinet.

Indemnities and undertakings

Schedule 1 [31] inserts proposed section 21A into the Act which enables the Commission to recommend to the Attorney General that a person be granted an indemnity from prosecution or that an undertaking be given that information in answers or documents will not be used in evidence against a person. The proposed section is in the same terms as section 49 of the *Independent Commission Against Corruption Act 1988*.

Membership of Management Committee

Schedule 1 [33] and **[36]** reduce the membership of the Management Committee from 5 to 4 by removing the Chairman of the Police Board of New South Wales from membership.

Schedule 1 [34] and **[35]** make consequential amendments.

Protection from liability

Schedule 1 [32] inserts proposed section 23 (4) and (5) into the Act to expand the protection from liability given to persons summoned to appear before the Commission or to produce documents or things to the Commission.

Secrecy

Schedule 1 [37] extends the secrecy provisions of the Act to apply them to persons outside the Commission who are lawfully given access to information by it on a confidential basis.

Appointment of counsel

Schedule 1 [41] transfers from the Attorney General to the Commission the power to appoint counsel to assist the Commission in its investigations.

Service of documents

Schedule 1 [42] enables the Commission to serve documents by facsimile transmission.

Savings and transitional provisions

Schedule 1 [46]–[48] amends Schedule 4 to the Act. The amendments contain provisions of a savings and transitional nature that are consequential on the amendments made by the proposed Act, and include provision for the making of regulations of a savings or transitional nature.