

**STATE DRUG CRIME COMMISSION (AMENDMENT) BILL
1990**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The objects of this Bill are to amend the State Drug Crime Commission Act 1985 so as:

- (a) to rename that Act as the New South Wales Crime Commission Act 1985; and
- (b) to rename the State Drug Crime Commission as the New South Wales Crime Commission and the State Drug Crime Commission Management Committee as the New South Wales Crime Commission Management Committee; and
- (c) to simplify and generalise the expression "relevant offence" used in that Act; and
- (d) to ensure that the Commission's powers of inquiry are not limited to the Commission's powers to investigate matters referred to it by the Management Committee; and
- (e) to enable the Commission to refer evidence of a New South Wales offence directly to the Director of Public Prosecutions rather than, as is currently the case, to the Attorney General; and
- (f) to enable the Commission to refer information concerning the official conduct of the personnel of certain State agencies to the principal officer of the agency concerned or (if the officer concerned is the principal officer of an agency) to the relevant Minister for the agency; and
- (g) to ensure that the Commission is able to liaise with persons and bodies other than, as is currently the case, merely other law enforcement agencies; and
- (h) to enable the Commission to make use of the services of members of the Police Force of the Commonwealth, or of a Territory or of another State,

State Drug Crime Commission (Amendment) 1990

rather than, as is currently the case, members of the New South Wales Police Force only, and

- (i) to increase certain penalties and to provide for the conversion of all monetary penalties to penalty units; and
- (j) to override a provision that currently restricts the power of a Local Court to impose concurrent sentences on persons convicted of offences against the Principal Act; and
- (k) to make other amendments of a minor, consequential and ancillary nature, and to amend the Defamation Act 1974 so as to allow the Commission the protection of certain provisions of that Act relating to the publication of information to and by, and concerning the proceedings of, the Commission.

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 proclaimed.

Clause 3 is a formal provision that gives effect to the Schedules of amendments to the State Drug Crime Commission Act 1985.

Clause 4 is a formal provision that gives effect to the Schedule of amendments to the Defamation Act 1974.

SCHEDULE 1 - AMENDMENT OF STATE DRUG CRIME COMMISSION ACT 1985

Schedule 1 (L) amends section 1 (Short title) so as to rename the Principal Act as the New South Wales Crime Commission Act 1985.

Schedule 1 (2) (a) and (c), (3) and (10) amend sections 3 (Definitions), 5 (The Commission) and 24 (The Management Committee) so as to rename the State Drug Crime Commission as the New South Wales Crime Commission and the State Drug Crime Commission Management Committee as the New South Wales Crime Commission Management Committee.

Schedule 1 (2) (b) replaces the definition of "investigation" in section 3 with a new definition that makes it clear that an investigation refers only to the investigation by the Commission of a matter that has been referred to it by the Management Committee.

Schedule 1 (2) (d) and (e) amend the definition of "member of the staff of the Commission" in section 3 as a consequence of the amendments to section 32 to be effected by Schedule 1 (L).

Schedule 1 (2) (f) amends the definition of "relevant offence" in section 3 so as to generalise and simplify that definition.

Schedule 1 (2) (g) omits section 3 (1A) as a consequence of the amendment to the definition of "relevant offence" in section 3 to be effected by Schedule 1 (2) (1).

State Drug Crime Commission (Amendment) 1990

Schedule 1 (4) (a) amends section 6 (Principal functions of the Commission) so as to ensure that the Commission's general powers of inquiry are not limited by the powers of investigation expressly conferred on it by the Principal Act.

Schedule 1 (4) (b) further amends section 6 so as to ensure that the Commission may pass on to the appropriate authorities information or evidence that it obtains otherwise than in the course of its investigations.

Schedule 1 (4) (c) further amends section 6 so as to enable the Commission to refer evidence of a New South Wales offence directly to the Director of Public Prosecutions rather than, as is currently the case, to the Attorney General. Evidence of other offences will continue to be referred to the Attorney General.

Schedule 1 (4) (d) further amends section 6 so as to enable the Commission to refer information concerning the official conduct of the personnel of certain State agencies to the principal officer of the agency concerned or (if the officer concerned is the principal officer of an agency) to the relevant Minister for the agency.

Schedule 1 (4) (e) further amends section 6 so as to abolish the existing requirement that the Commission provide the Management Committee with full details of evidence furnished to the Attorney General or to the Director of Public Prosecutions under that section.

Schedule 1 (5) amends section 7 (Liaison with other bodies) so as to put beyond doubt that the Commission can liaise with persons and bodies other than law enforcement agencies.

Schedule 1 (6) amends section 9 (Delegation by Commission) so as to provide that the only power that the Commission is not empowered to delegate is the power of delegation conferred by that section.

Schedule 1 (7) amends section 14 (Reimbursement of expenses of witnesses) so as to remove the reference in that section to a prescribed scale of costs. No scale of costs is currently prescribed or proposed to be prescribed.

Schedule 1 (8) amends section 18 (Failure of witnesses to attend and answer questions etc.) so as to remove a provision that allows a person to refuse to produce a document or thing that relates to proceedings for an offence in respect of which a charge has been laid.

Schedule 1 (9) extends section 22 (Contempt of Commission) so as to apply the section to persons who hinder or obstruct the Commission's staff in the exercise of the Commission's functions.

Schedule 1 (11) amends section 25 (Functions of the Management Committee) so as to ensure that the Committee may refer matters to the Commission only if they are of a kind in respect of which ordinary police methods of investigation are unlikely to be effective.

Schedule 1 (12) (a) and (14) (g) amend section 32 (Staff of Commission) and Schedule 1 so as to replace references to the repealed Public Service Act 1979 with references to the Public Sector Management Act 1988.

State Drug Crime Commission (Amendment) 1990

Schedule 1 (12) (h) and (d) amend section 32 as a consequence of the enactment of the Public Sector Management Act 1988.

Schedule 1 (12) (c) further amends section 32 so as to enable the Commission to make use of the services of members of the Police Force of the Commonwealth, or of a Territory or of another State, rather than, as is currently the case, members of the New South Wales Police Force only.

Schedule 1 (13) amends section 36 (Proceedings for offences) so as to ensure that sentences of imprisonment imposed in respect of offences arising under the Principal Act may be made to run consecutively, rather than concurrently, with other sentences of imprisonment to which convicted persons may be subject. The proposed subsection will apply notwithstanding any other Act or law to the contrary in particular, it will apply notwithstanding section 444 of the Crimes Act 1900 which currently restricts the power of a Local Court to impose concurrent sentences.

Schedule 1 (14) (a)–(f) amend Schedule 1 (Provisions relating to the Members of the Commission) so as:

- (a) to abolish the existing age restrictions that apply to members of the Commission; and
- (b) to provide that, in the absence of the Chairperson of the Commission and in the event that an acting chairperson is not appointed, the senior available member (determined by length of service or, where length of service is equal by such other criterion as the Minister may direct) is to act as chairperson; and
- (G) to provide that a member of the Commission who is acting as chairperson is not to be taken to be absent from his or her office as a member while so acting; and
- (d) to provide that, in the event of a vacancy in the office of a member of the Commission, the vacancy does not have to be filled unless the Commission has ceased to be duly constituted.

Schedule 1 (15) amends Schedule 2 (Provisions relating to the Procedure of the Commission) so as:

- (a) to provide that a quorum of the Commission is to consist of the Chairperson (or acting chairperson) of the Commission together with any one other member; and
- (b) to make an amendment consequential on the amendment to be effected by Schedule 1 (14) (b).

SCHEDULE 2 - FURTHER AMENDMENT OF STATE DRUG CRIME COMMISSION ACT 1985 IN RELATION TO PENALTIES

Schedule 2 (2) increases the maximum monetary penalty that may be imposed for an offence under section 13 (Hearings) from \$2,000 to \$10,000 and the maximum term of imprisonment that may be imposed for such an offence from 1 year to 2 years.

Schedule 2 (4) increases the maximum monetary penalty that may be imposed for an offence under section 18 (Failure of witnesses to attend and answer questions etc.)

State Drug Crime Commission (Amendment) 1990

from \$1,000 to \$10,000 and the maximum term of imprisonment that may be imposed for such an offence from 6 months to 2 years.

Schedule 2 (5) (a) increases the maximum monetary penalty that may be imposed for an offence under subsection (2) of section 20 (False or misleading evidence) from \$20,000 to \$50,000.

Schedule 2 (5) (b) and (c) increase the maximum monetary penalty that may be imposed for an offence under subsection (4) of section 20 from \$2,000 to \$10,000 and the maximum term of imprisonment that may be imposed for such an offence from 1 year to 2 years.

Schedule 2 (6) increases the maximum monetary penalty that may be imposed for an offence under section 22 (Contempt of Commission) from \$2,000 to \$10,000 and the maximum term of imprisonment that may be imposed for such an offence from 1 year to 2 years.

The Schedule also changes, from dollar amounts to penalty units, the manner in which monetary penalties are specified in the Principal Act.

By virtue of section 56 of the Interpretation Act 1987, one penalty unit is equivalent to \$100.

SCHEDULE 3 - AMENDMENT OF DEFAMATION ACT 1974

Schedule 3 (1) inserts a new section 17M. The proposed section confers absolute privilege on publications made to or by the New South Wales Crime Commission in relation to the exercise of the Commission's functions. The proposed section has effect in relation to past, as well as future, publications.

Schedule 3 (2) amends Schedule 2 (Proceedings of Public Concern and Official and Public Documents and Records) so as to extend the protection of section 24 of the Principal Act to reports of proceedings at public hearings of the Commission.
