

Royal Commission (Police Service) Act 1994 No 60

[1994-60]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2006](#)

Authorisation

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New South Wales

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Royal Commission (Police Service) Act 1994 No 60



New South Wales

An Act to confer additional powers on the Royal Commission of inquiry into the operations of the New South Wales Police Service and to assist the conduct of that inquiry; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Royal Commission (Police Service) Act 1994*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Act applies only to Police Royal Commission

(1) This Act applies only to:

- (a) the Royal Commission of inquiry issued by the Governor by letters patent under the Public Seal on 13 May 1994, 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, and
- (b) any further Royal Commission by which a commissioner is appointed as sole commissioner to exercise functions at the request of, or otherwise to assist, the Royal Commissioner under the Royal Commission referred to in paragraph (a), but only if the terms of that further Royal Commission provide that this Act is to apply to the Commission.

(2) If a Royal Commission to which this Act applies is altered, extended or continued by another Royal Commission, or is replaced by another Royal Commission on the same or similar terms as that Royal Commission, this Act extends to apply to the Royal Commission as so altered, extended, continued or replaced.

4 Definitions

(1) In this Act:

exercise a function includes perform a duty.

function includes a power, authority or duty.

ICAC Act means the *Independent Commission Against Corruption Act 1988*.

legal practitioner has the same meaning as in the *Legal Profession Act 1987*.

1923 Act means the *Royal Commissions Act 1923*.

officer of the Commission means any legal practitioner appointed by the Crown to assist the Commission or any other person employed, seconded or otherwise engaged to assist the Commission.

premises includes any structure, building, aircraft, vehicle, vessel and place (whether built or not), and any part thereof.

public authority and **public official** have the same meanings as in the ICAC Act.

search warrant means a search warrant issued under this Act.

(2) Notes included in this Act are explanatory notes and do not form part of this Act.

5 Relationship with 1923 Act

- (1) This Act is to be read as if it formed part of the 1923 Act (but only for the purposes of the operation of this Act in relation to a Royal Commission to which this Act applies). A reference in any other Act to the 1923 Act does not include a reference to this Act, except as expressly provided by this Act.
- (2) The provisions of this Act are in addition to and not in derogation of any provisions of the 1923 Act, except as specifically provided by this Act. In particular, Part 2 of this Act does not limit or otherwise affect the provisions of the 1923 Act with respect to a person summoned to attend or appearing as a witness before the Commission.
- (3) Nothing in the 1923 Act operates to constrain or restrict the exercise of a function conferred or imposed by or under this Act.

Part 2 Obtaining information, documents and other things

6 Power to obtain information (ss 21, 82 ICAC Act)

- (1) For the purposes of the Commission's inquiry, the Commissioner may, by notice in writing served on a public authority or public official, require the authority or official to produce a statement of information.

- (2) A notice under this section must specify or describe the information concerned, must fix a time and date for compliance and must specify the person (being the Commissioner or an officer of the Commission) to whom the production is to be made.
- (3) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the public authority or public official and may, but need not, specify the person or class of persons who may so act.
- (4) A person must not:
 - (a) without reasonable excuse, fail to comply with a notice served on the person under this section, or
 - (b) in purported compliance with a notice served on the person or some other person under this section, furnish information knowing it to be false or misleading in a material particular.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

7 Power to obtain documents etc (ss 22, 83 ICAC Act)

- (1) For the purposes of the Commission's inquiry, the Commissioner may, by notice in writing served on a person (whether or not a public authority or public official), require the person:
 - (a) to attend, at a time and place specified in the notice, before a person (being the Commissioner or an officer of the Commission) specified in the notice, and
 - (b) to produce at that time and place to the person so specified a document or other thing specified in the notice.
- (2) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the person on whom it was imposed and may, but need not, specify the person or class of persons who may so act.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units or imprisonment for 6 months, or both.

8 Privilege as regards information, documents etc (s 24 ICAC Act)

- (1) This section applies where, under section 6 or 7, the Commissioner requires any person:
 - (a) to produce any statement of information, or
 - (b) to produce any document or other thing.
- (2) The Commissioner must set aside the requirement if it appears to the Commissioner

that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commissioner that the person consents to compliance with the requirement.

- (3) The person must however comply with the requirement despite:
- (a) any rule which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest, or
 - (b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law, or
 - (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

9 Self-incrimination (s 26 ICAC Act)

- (1) This section applies where, under section 6 or 7, the Commissioner requires any person:
- (a) to produce any statement of information, or
 - (b) to produce any document or other thing.
- (2) If the statement, document or other thing tends to incriminate the person and the person objects to production at the time, neither the fact of the requirement nor the statement, document or thing itself (if produced) may be used in any proceedings against the person (except proceedings for an offence against this Act or the 1923 Act).
- (3) They may however be used for the purposes of the Commission's inquiry, despite any such objection.

10 Power to enter public premises (ss 23, 25 ICAC Act)

- (1) For the purposes of the Commission's inquiry, the Commissioner or an officer of the Commission authorised in writing by the Commissioner may, at any time:
- (a) enter and inspect any premises occupied or used by a public authority or public official in that capacity, and
 - (b) inspect any document or other thing in or on the premises, and
 - (c) take copies of any document in or on the premises.
- (2) The powers conferred by this section must not be exercised other than for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve a criminal offence.

- (3) The public authority or public official must make available to the Commissioner or authorised officer such facilities as are necessary to enable the powers conferred by this section to be exercised.
- (4) The powers conferred by this section must not be exercised if it appears to the Commissioner or authorised officer that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist inspection of the premises or production of the document or other thing and it does not appear to the Commissioner or authorised officer that the person consents to the inspection or production.
- (5) The powers may however be exercised despite:
 - (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or other thing on grounds of public interest, or
 - (b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law, or
 - (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

Part 3 Attendance before the Commission

11 Arrest of witness (s 36 ICAC Act)

- (1) If a person served with a summons to attend the Commission as a witness fails to attend in answer to the summons, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness.
- (2) The Commissioner may issue a warrant for the arrest of a person whose evidence is desired and is necessary and relevant to the Commission's inquiry if the Commissioner is satisfied by evidence on oath or affirmation that it is probable that the person:
 - (a) will not attend before the Commission to give evidence without being compelled to do so, or
 - (b) is about to or is making preparations to leave the State and the person's evidence will not be obtained by the Commission if the person departs.
- (3) The powers conferred by subsection (2) must not be exercised unless the Commissioner is satisfied that the evidence of the person concerned is required for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve a criminal offence.
- (4) The Commissioner is authorised to administer an oath or affirmation for the purposes

of subsection (2).

- (5) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.
- (6) A warrant may be issued under subsection (2) after the issue of a summons to the person whose evidence is desired, even though the time named in the summons for the person to attend has not yet passed.
- (7) A warrant under this section authorises the arrest of the witness and his or her being promptly brought before the Commission and detained in a prison or elsewhere for that purpose until released by order of the Commissioner.
- (8) A warrant issued under this section may be executed by any police officer, or by any person to whom it is addressed, and the person executing it may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.
- (9) The issue of a warrant or the arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with a summons.
- (10) This section operates in place of section 16 (Warrant) of the 1923 Act.

11A Conditional release of witness

- (1) The release of a witness by order of the Commissioner under section 11 (7) may (but need not) be made subject to one or more of the following conditions (or to any other conditions):
 - (a) that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the Commissioner or other officer of the Commission, and
 - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.
- (3) A witness who without reasonable excuse fails to comply with a condition to which the release of the witness under section 11 (7) is subject, is guilty of an offence.

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

11B Review by Supreme Court

- (1) A witness who has not been released by the Commissioner under section 11 (7) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness.
- (3) Such an order is taken to be an order of the Commissioner.

12 Declaration as to objection by witness (s 38 ICAC Act)

The Commissioner may declare that all or any classes of answers given by a witness or that all or any classes of documents or other things produced by a witness will be regarded as having been given or produced on objection by the witness, and there is accordingly no need for the witness to make an objection in respect of each such answer, document or other thing.

13 Reimbursement of expenses of witnesses (s 51 ICAC Act)

- (1) A witness attending or appearing before the Commission is to be paid, out of money provided by Parliament, in respect of the expenses of the witness's attendance an amount ascertained in accordance with the scale prescribed for the purposes of section 51 of the *Independent Commission Against Corruption Act 1988* or, if there is no such prescribed scale, such amount as the Royal Commissioner determines.
- (2) Section 13 of the 1923 Act (Allowance to witnesses) does not apply in respect of witnesses attending or appearing before a Royal Commission to which this Act applies.

14 Attendance of prisoner before Commission (s 39 ICAC Act)

- (1) If the Commissioner requires the attendance before the Commission of a prisoner, the Commissioner may, by order in writing served on the governor of the prison in whose custody the prisoner is, direct the governor to produce the prisoner, or have the prisoner produced, at the time and place stated in the order.
- (2) Such an order is sufficient authority to the governor of the prison for producing the prisoner or having the prisoner produced, and the prisoner must be produced accordingly.
- (3) A prisoner is, when produced under this section in the actual custody of the governor of the prison, a prison officer or a police officer, taken to be in lawful custody.

- (4) The governor, prison officer or police officer must in due course return the prisoner to the prison.
- (5) In this section, **governor of a prison**, **prison** and **prisoner** have the same meanings as **governor**, **correctional centre** and **inmate** have in the [Crimes \(Administration of Sentences\) Act 1999](#).

Part 4 Search and listening device warrants

15 Issue of search warrant (s 40 ICAC Act)

- (1) An authorised officer to whom an application is made under subsection (4) may issue a search warrant if satisfied that there are reasonable grounds for doing so.
- (2) The Commissioner, on application made to the Commissioner under subsection (4), may issue a search warrant if the Commissioner thinks fit in the circumstances and if satisfied that there are reasonable grounds for doing so.
- (3) Search warrants should, as far as practicable, be issued by authorised officers, but nothing in this subsection affects the discretion of the Commissioner to issue them.
- (4) An authorised person may apply to an authorised officer or the Commissioner for a search warrant if the person has reasonable grounds for believing that:
 - (a) there is in or on any premises a document or other thing connected with any matter that is the subject of the Commission's inquiry or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises, and
 - (b) the matter involves any conduct of a person that constitutes or involves or may constitute or involve a criminal offence.
- (5) In this section:

authorised officer has the same meaning as it has in the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

authorised person means an officer of the Commission and, in relation to an application to an authorised officer for a search warrant, includes the Commissioner.

16 Authority conferred by warrant (s 41 ICAC Act)

- (1) A search warrant authorises any police officer, or any other person, named in the warrant:
 - (a) to enter the premises, and
 - (b) to search the premises for documents or other things connected with any matter that is the subject of the Commission's inquiry, and

(c) to seize any such documents or other things found in or on the premises and deliver them to the Commission.

- (2) A police officer executing a search warrant may search a person found in or on the premises whom the police officer reasonably suspects of having a document or other thing mentioned in the warrant.
- (3) If the person executing a search warrant is a police officer under the law of another State or of a Territory or the Commonwealth, he or she may exercise the functions of a police officer under subsection (2).
- (4) Section 12 (Inspection and copies of documents) of the 1923 Act extends to apply to a document or other thing seized pursuant to a search warrant.

17 Duty to show warrant (s 42 ICAC Act)

A person executing a search warrant must produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

18 Use of force (s 43 ICAC Act)

- (1) A person authorised to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.
- (2) A person authorised to enter premises under a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of the search.

19 Use of assistants to execute warrant (s 44 ICAC Act)

A person may execute a search warrant with the aid of such assistants as the person considers necessary.

20 Execution of warrant by day or night (s 45 ICAC Act)

- (1) A search warrant may be executed by day, but must not be executed by night unless the person issuing the warrant, by the warrant, authorises its execution by night.
- (2) The person issuing a search warrant is not to authorise the execution of the warrant by night unless satisfied that there are reasonable grounds for doing so. Those grounds include (but are not limited to) the following:
 - (a) the execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing which is likely to be on the premises only at night or other relevant circumstances will only exist at night,
 - (b) there is likely to be less risk to the safety of any person if it is executed at night,
 - (c) an occupier is likely to be on the premises only at night to allow entry without the

use of force.

(3) In this section:

by day means during the period between 6 am and 9 pm on any day.

by night means during the period between 9 pm on any day and 6 am on the following day.

21 Expiry of warrant (s 46 ICAC Act)

A search warrant ceases to have effect:

- (a) one month after its issue, or
- (b) if it is withdrawn by the person who issued the warrant, or
- (c) when it is executed,

whichever first occurs.

22 Seizure of other documents and things (s 47 (1) ICAC Act)

If, in the course of searching, in accordance with the terms of a search warrant, for documents or other things:

- (a) the person executing the warrant finds a document or other thing that the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an indictable offence against the law of the Commonwealth, a State or a Territory, and
- (b) the first-mentioned person believes on reasonable grounds that it is necessary to seize the document or other thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence,

that person may seize the document or other thing and, if it is so seized, it is taken, for the purposes of this Act, to have been seized pursuant to the warrant.

23 Application of provisions of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) (s 48 ICAC Act)

- (1) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) (other than sections 69–73) applies to a search warrant issued under this Act.
- (2) Division 4 of Part 5 of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#) so applies as if references in that Division to an authorised justice to whom an application for a search warrant is made or by whom a search warrant is issued included (where relevant) references to the Commissioner, where such an application is made to the Commissioner or a search warrant is issued by the Commissioner.

24 Obstruction of person executing search warrant (s 84 ICAC Act)

A person must not, without reasonable excuse, obstruct or hinder a person executing a search warrant.

Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

25 Listening devices (s 19 (2) ICAC Act)

The Commissioner or an officer of the Commission may seek the issue of a warrant under the [Listening Devices Act 1984](#).

Part 5 Protection of witnesses and evidence

26 Protection of witnesses and persons assisting Commission (s 50 ICAC Act)

- (1) If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary:
 - (a) to protect the safety of any such person, or
 - (b) to protect any such person from intimidation or harassment.
- (2) In this section, a reference to a person who is assisting the Commission is a reference to a person who:
 - (a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing, or
 - (b) has produced or proposes to produce a document or other thing to the Commission under this Act or the 1923 Act, otherwise than by attending before the Commission, or
 - (c) has assisted, is assisting or is to assist the Commission in some other manner.
- (3) Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public official:
 - (a) to provide any protection referred to in subsection (1), or
 - (b) to provide personnel or facilities or both to assist in providing that protection, or
 - (c) to otherwise assist in the provision of that protection.
- (4) The Commissioner of Police, or such a public authority or public official, is under a duty to comply with any such direction as far as reasonably possible.
- (5) Any such arrangements may (but need not) involve the Commissioner making orders

applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3).

- (6) A person who contravenes an order applying to the person under subsection (5) without reasonable excuse is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (7) Nothing in this section affects the *Witness Protection Act 1995*.

27 Restriction on publication of evidence (s 112 ICAC Act)

- (1) The Commissioner may direct that:

- (a) any evidence given before the Commission, or
- (b) the contents of any document, or a description of any thing, produced to the Commission, or seized under a search warrant issued under this Act, or
- (c) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or
- (d) the fact that any person has given or may be about to give evidence before the Commission,

must not be published or must not be published except in such manner, and to such persons, as the Commissioner specifies.

- (2) The Commissioner is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.
- (3) A person must not make a publication in contravention of a direction given under this section.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

28 Disclosures prejudicing inquiry (s 114 ICAC Act)

- (1) A person who is required by a notice under section 6 or 7 to produce a statement of information or to attend and produce a document or other thing, or by a summons to attend the Commission and give evidence or produce a document or other thing, must not disclose any information about the notice or summons that is likely to prejudice the Commission's inquiry or any part or aspect of the Commission's inquiry to which it relates.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

- (2) Subsection (1) does not apply to a notice or summons unless it specifies that

information about the notice or summons must not be disclosed.

- (3) A person does not contravene this section if:
- (a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter, or
 - (b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons, or
 - (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.
- (4) A reference in this section to the disclosure of any information about a notice or summons includes a reference to:
- (a) a disclosure about the existence or nature of the notice or summons or of the part or aspect of the Commission's inquiry to which it relates, and
 - (b) a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the notice or summons or of the part or aspect of the Commission's inquiry to which it relates.

29 Indemnities and undertakings (s 49 ICAC Act)

- (1) The Commissioner may recommend to the Attorney General that a person be granted (under section 32 of the *Criminal Procedure Act 1986*) an indemnity from prosecution.
- (2) The Commissioner may recommend to the Attorney General that a person be given (under section 33 of the *Criminal Procedure Act 1986*) an undertaking that:
 - (a) an answer, statement or disclosure in proceedings before the Commission, or
 - (b) the fact of a disclosure or production of a document in proceedings before the Commission,will not be used in evidence against the person.
- (3) Section 33 of the *Criminal Procedure Act 1986* applies in relation to proceedings before the Commission in the same way as it applies in relation to proceedings for an offence.
- (4) A reference in this section to proceedings before the Commission includes a reference to any activity in connection with the Commission's inquiry involving the Commission, the Commissioner or an officer of the Commission.

Part 6 Secrecy, disclosure, admissibility

30 Secrecy (s 111 ICAC Act)

(1) This section applies to:

- (a) a person who is or was the Commissioner or an officer of the Commission, and
- (b) a person who is or was a person who assists, or performs services for or on behalf of, a legal practitioner appointed by the Crown to assist the Commission in the exercise of the legal practitioner's functions as counsel to the Commission.

(2) A person to whom this section applies must not, directly or indirectly, except for the purposes of this Act or the 1923 Act or the person's Royal Commission functions or otherwise in connection with the exercise of the person's Royal Commission functions:

- (a) make a record of any information, or
- (b) divulge or communicate to any person any information,

being information acquired by the person by reason of, or in the course of, the exercise of the person's Royal Commission functions.

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

(3) A person to whom this section applies cannot be required:

- (a) to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's Royal Commission functions, or
- (b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's Royal Commission functions,

except for the purposes of a prosecution or disciplinary proceedings instituted as a result of the Commission's inquiry.

(4) Despite this section, a person to whom this section applies may divulge any such information:

- (a) for the purposes of the Commission's inquiry and report or otherwise for the purposes of and in accordance with this Act or the 1923 Act, or
- (b) for the purposes of a prosecution or disciplinary proceedings instituted as a result of the Commission's inquiry, or
- (c) in accordance with a direction of the Commissioner, if the Commissioner certifies that it is necessary to do so in the public interest, or
- (d) to any prescribed authority or person.

(5) An authority or person to whom information is divulged under subsection (4), and any person or employee under the control of that authority or person, is subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) in respect of that information, as if he or she were a person to whom this section applies and had acquired the information in the exercise of the person's Royal Commission functions.

(6) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

produce includes permit access to.

Royal Commission functions means functions arising under or in connection with this Act or the 1923 Act or any commission establishing or conferring functions on the Commission or conferring functions on the Commission or the Commissioner.

30A Notification to ICAC of possible corrupt conduct

- (1) Section 11 of the ICAC Act (Duty to notify Commission of possible corrupt conduct) does not apply to the Commissioner, except as provided by this section.
- (2) The Commissioner and the Commissioner for the Independent Commission Against Corruption may enter into an agreement relating to the matters that the Commissioner is required to report to the Independent Commission Against Corruption under that section.

31 Disclosure of information and giving of evidence by Ombudsman

- (1) The Ombudsman, and any officer of the Ombudsman acting with the approval of the Ombudsman, may:
 - (a) furnish to the Commission information obtained by the Ombudsman or officer in exercising functions under the *Ombudsman Act 1974*, Part 8A (Complaints about conduct of police officers) of the *Police Service Act 1990* or any other Act, or
 - (b) give evidence before the Commission and produce any document to the Commission, in respect of any such information.
- (2) Neither the Ombudsman nor any officer of the Ombudsman can be compelled to give any evidence before the Commission or produce any document before the Commission in respect of information obtained by the Ombudsman or officer in exercising functions as referred to in subsection (1).
- (3) This section applies despite sections 34 (Disclosure by Ombudsman or officer) and 35 (Ombudsman or officer as witness) of the *Ombudsman Act 1974* and sections 166 (Certain information to be confidential) and 169 (Ombudsman or officer as witness) of

the *Police Service Act 1990*, and any other law.

- (4) Section 35 of the *Ombudsman Act 1974* and section 169 of the *Police Service Act 1990* do not apply in respect of any proceedings for an offence under this Act.
- (5) In this section, a reference to an officer of the Ombudsman includes a reference to an acting Ombudsman, a Deputy Ombudsman, an Assistant Ombudsman and a special officer of the Ombudsman.

32 Secrecy provisions in other Acts

- (1) The following provisions 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 this Act or the 1923 Act:
 - (a) section 15 (Secrecy) of the *Companies (Administration) Act 1981*,
 - (b) section 155A (Secrecy) of the *Liquor Act 1982*,
 - (c) (Repealed)
 - (d) section 72C (Secrecy) of the *Registered Clubs Act 1976*.
- (2) For the purposes of section 13 (Unlawful disclosure of information concerning spent convictions) of the *Criminal Records Act 1991*, the Commission is taken to be a law enforcement agency.

33 Admissibility of documents relating to complaints about police

- (1) A document brought into existence for the purposes of Part 8A (Complaints about conduct of police officers) of the *Police Service Act 1990* is admissible in evidence before the Commission.
- (2) This section applies despite section 172A (Certain documents privileged) of the *Police Service Act 1990*.

34 Telecommunications (Interception) (New South Wales) Act 1987

Section 21 (Disclosure by persons under the Minister's administration) of the *Telecommunications (Interception) (New South Wales) Act 1987* does not apply to prevent the disclosure of any information or record for the purposes of any proceedings for an offence under this Act.

35 Legal Profession Act 1987

Section 171R (Commissioner, Council etc as witness) of the *Legal Profession Act 1987* does not apply to proceedings for an offence under this Act.

Note—

The section of the *Legal Profession Act 1987* referred to here makes members of the Council and Tribunal under

that Act (and certain other persons) not competent and not compellable to give evidence in legal proceedings. There is an exception for proceedings for an offence under the 1923 Act. Section 35 extends this exception to include proceedings for an offence under this Act.

36 Privacy and Personal Information Protection Act 1998

Section 67 of the *Privacy and Personal Information Protection Act 1998* does not apply to the disclosure of information for the purposes of any proceedings for an offence under this Act.

37 Religious confessions

Section 127 (Religious confessions) of the *Evidence Act 1995* applies to any hearing or proceeding to which this Act applies.

Note—

Section 127 of the *Evidence Act 1995* protects religious confessions from disclosure in proceedings. Section 37 makes it clear that the protection extends to a hearing or proceeding under this Act.

Part 6A Investigation of police complaints by Commission

37A Definition of “relevant police complaint”

In this Part:

relevant police complaint means a complaint within the meaning of Part 8A of the *Police Service Act 1990*, being a complaint received by the Ombudsman (whether it was received directly or was forwarded by the Commissioner of Police or any other person) that is of a class or kind that the Commissioner and the Ombudsman have agreed should be referred to the Commission.

Note—

A complaint within the meaning of Part 8A of the *Police Service Act 1990* is a complaint made in writing under Division 2 of that Part about the conduct of a police officer.

37B Application of Part

- (1) This Part applies only to relevant police complaints made after the commencement of this Part.
- (2) The functions conferred on the Commission or Commissioner by this Part may be exercised only for the purposes of the Commission’s inquiry.
- (3) This Part has effect despite Part 8A, or any other provision, of the *Police Service Act 1990*.

37C Ombudsman to forward copies of relevant police complaints to Commission

- (1) The Ombudsman must, as soon as practicable, forward copies of all relevant police complaints to the Commission.

- (2) The Commissioner of Police and the Ombudsman retain their statutory functions with respect to a relevant police complaint sent to the Commission, except as otherwise provided by this Part.

37D Decision of Commission on referred police complaints

- (1) The Commission must, as soon as practicable after receiving a relevant police complaint under this Part, notify the Ombudsman of its decision under this section with respect to the complaint.
- (2) The Commission may decide:
 - (a) to take over the investigation of the complaint from the Commissioner of Police, or
 - (b) not to take over the investigation of the complaint from the Commissioner of Police and to refer the complaint back to be dealt with in accordance with Part 8A of the *Police Service Act 1990*, or
 - (c) to take over the investigation of part of the complaint from the Commissioner of Police and to refer the remainder of the complaint back to be dealt with in accordance with Part 8A of the *Police Service Act 1990*.
- (3) The Commission may review any decision made by it under this section and notify the Ombudsman of a revised decision. The Ombudsman is to give effect to the revised decision in accordance with this Part.
- (4) The Commission may investigate any matter relating to a relevant police complaint forwarded to the Commission under this Part even though it refers the complaint back to be dealt with in accordance with Part 8A of the *Police Service Act 1990*.
- (5) The Commission may make a decision under this section before the commencement of an investigation by the Commissioner of Police under Part 8A of the *Police Service Act 1990*, during the progress of any such investigation or after any such investigation.

37E Decision of Commission to investigate complaint

- (1) This section applies to a decision of the Commission under section 37D (2) (a) to take over the investigation of a relevant police complaint from the Commissioner of Police.
- (2) On being notified by the Commission of any such decision, the Ombudsman is required to notify the Commissioner of Police immediately of the Commission's decision and direct the Commissioner of Police not to investigate the complaint concerned.
- (3) Section 141 (6) of the *Police Service Act 1990* does not apply to any such direction.
- (4) The Ombudsman is not required to give a direction under this section to the

Commissioner of Police if the complaint concerned was not forwarded to the Ombudsman by the Commissioner of Police and the Ombudsman has not informed the Commissioner of Police of the existence of the complaint.

37F Decision of Commission not to investigate complaint

- (1) This section applies to a decision of the Commission under section 37D (2) (b) not to take over the investigation of a relevant police complaint from the Commissioner of Police.
- (2) On being notified by the Commission of any such decision, the Ombudsman is required to deal with the complaint in accordance with Part 8A of the *Police Service Act 1990*.

37G Decision of Commission to investigate part of complaint

- (1) This section applies to a decision of the Commission under section 37D (2) (c) to take over the investigation of part of a relevant police complaint from the Commissioner of Police.
- (2) If the Commission makes such a decision, the Commission is to revise the complaint by removing the reference to that part of the conduct concerned that it has decided to investigate itself. The Commission is to notify the Ombudsman of the decision and furnish the Ombudsman with the revised complaint.
- (3) On being so notified by the Commission, the Ombudsman is required to notify the Commissioner of Police immediately of the Commission's decision and direct the Commissioner of Police not to investigate conduct that was part of the original complaint but not part of the revised complaint.
- (4) The Ombudsman is required to deal with the revised complaint in accordance with Part 8A of the *Police Service Act 1990*.
- (5) The Commission is not the complainant for a revised complaint and the original complainant continues to be the complainant for the purposes of the revised complaint.
- (6) The Ombudsman is not required to give a direction under this section to the Commissioner of Police if the original complaint concerned was not forwarded to the Ombudsman by the Commissioner of Police and the Ombudsman has not informed the Commissioner of Police of the existence of the original complaint.

37H Termination of police investigations

- (1) If the Commissioner of Police is directed under this Part not to investigate a relevant police complaint (or any part of a relevant police complaint):
 - (a) the Commissioner of Police must not commence any such investigation or, if such

an investigation has already commenced, must discontinue the investigation, and

- (b) the Commissioner of Police must take all reasonable steps to ensure that any such investigation is not conducted by a police officer, and
- (c) the direction not to investigate absolves the Commissioner of Police and other police officers from any duty with respect to crime and the preservation of the peace so far as it relates to that investigation or to the bringing of an offender concerned before the courts to be dealt with according to law.

- (2) Subsection (1) applies to any investigation by the Commissioner of Police or a police officer, whether or not under Part 8A of the *Police Service Act 1990*. However, subsection (1) does not prevent an investigation relating to an alleged offence that is conducted in accordance with arrangements made between the Commission and the Commissioner of Police.
- (3) Despite anything to the contrary in this Part, an investigation by the Commissioner of Police may be commenced or resumed if the Commission notifies the Ombudsman that it has completed its investigation into the complaint or that it has decided to discontinue the investigation. Any such investigation may also be commenced or resumed after the end of the Royal Commission.

37I This Part does not require matters to be disclosed by Commission

Nothing in this Part is to be construed as requiring the Commission to disclose any matter to the Commissioner of Police or the Ombudsman.

Part 6B Police powers and weapons

37J Definitions

In this Part:

Commission investigator means an officer of the Commission who is designated by the Commissioner as an investigator and who is issued with means of identification as such an investigator.

Commission surveillance officer means an officer of the Commission who is designated by the Commissioner as a surveillance officer and who is issued with means of identification as such a surveillance officer.

seconded police officer means:

- (a) a member of the Australian Federal Police, or
- (b) a member of the Police Force of another State or a Territory, or
- (c) a member of the Police Force of any country prescribed by the regulations for the

purposes of this Part,

who is seconded or otherwise engaged to assist the Commission.

37K Commission investigator who is seconded police officer to have all powers of NSW police officer

- (1) A Commission investigator who is a seconded police officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Service Act 1990* has or may exercise by or under any law (including the common law) of the State.
- (2) Those functions extend to functions conferred after the commencement of this Part.
- (3) A Commission investigator has and may exercise those functions by virtue of this section only when acting in the person's capacity as an officer of the Commission.
- (4) This section does not operate to subject a Commission investigator to the control and direction of the Commissioner of Police or any other police officer when acting in the person's capacity as an officer of the Commission.
- (5) A complaint about the conduct of a Commission investigator when exercising the functions of a police officer may not be made under Part 8A of the *Police Service Act 1990*.

37L Firearms and other police equipment

- (1) Commission investigators, and Commission surveillance officers, who are seconded police officers are exempt from the requirement made by the *Firearms Act 1996* to be authorised by a licence or permit to possess or use semi-automatic pistols (or to possess ammunition for any such pistol), but only when acting in their capacity as officers of the Commission.
- (2) For the purposes of section 6 of the *Prohibited Weapons Act 1989*, Commission investigators and Commission surveillance officers are authorised to possess handcuffs and body armour vests, but only when acting in their capacity as officers of the Commission.

Part 7 Miscellaneous

38 Effect of pending proceedings (s 18 ICAC Act)

- (1) The Commissioner may do any or all of the following, despite any proceedings that may be in or before any court, tribunal, warden, coroner, Magistrate or other person:
 - (a) commence, continue, discontinue or complete the Commission's inquiry and any part or aspect of that inquiry,

- (b) furnish any report in connection with that inquiry or any part or aspect of that inquiry,
 - (c) all such acts and things as are necessary or expedient for those purposes.
- (2) If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commissioner may, to the extent to which the Commissioner thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced:
- (a) order any hearing or other matters relating to the inquiry are conducted in private during the currency of the proceedings, and
 - (b) give directions under section 27 (Publication of evidence etc), having effect during the currency of the proceedings.
- (3) Subsection (2) does not apply:
- (a) (in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings, and
 - (b) (in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.
- (4) This section has effect whether or not the proceedings commenced before or after the Commission's inquiry commenced and has effect whether or not the Commission, the Commissioner or an officer of the Commission is a party to the proceedings.

39 Delegation (s 107 ICAC Act)

The Commissioner may delegate any of the following functions of the Commissioner to the person appointed as 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:

- (a) functions under section 6 (Power to obtain information) of this Act,
- (b) functions under section 7 (Power to obtain documents) of this Act,
- (c) functions under section 10 (Power to enter public premises) of this Act,
- (d) functions under section 14 (Attendance of prisoner before Commission) of this Act,
- (e) functions under section 8 (Witnesses) of the 1923 Act.

40 Protection from liability (s 109 ICAC Act)

- (1) A matter or thing done by the Commission, the Commissioner or any person acting

under the direction of the Commission or Commissioner which was done in good faith for the purposes of the Commission's inquiry or for the purpose of executing this or any other Act does not subject the Commissioner or the person so acting personally to any action, liability, claim or demand.

- (2) Subsection (1) does not limit any protection or immunity afforded the Commissioner by section 6 (Protection of Commissioners) of the 1923 Act.
- (3) A legal practitioner assisting the Commission or representing a person before the Commission has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.
- (4) Subject to this Act and the 1923 Act, a person summoned to attend or appearing before the Commission as a witness, or producing a document or other thing to the Commission, has the same protection as a witness in proceedings in the Supreme Court.
- (5) No criminal or civil liability attaches to any person for compliance, or purported compliance in good faith, with any requirement made under this Act or the 1923 Act.
- (6) In particular, if a person gives any statement of information or produces any document or other thing under section 6 or 7, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.
- (7) The reference to the 1923 Act in item 10 of Schedule 1 (Excluded conduct of public authorities) of the *Ombudsman Act 1974* is taken to include a reference to this Act.

Note—

Item 10 of Schedule 1 to the *Ombudsman Act 1974* operates to exclude the conduct of a Royal Commissioner under the 1923 Act from investigation by the Ombudsman. Subsection (7) extends this to include conduct of the Royal Commissioner under this Act.

41 Proceedings for offences

- (1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act are to be dealt with summarily before a Local Court.
- (2) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.
- (3) If, in accordance with subsection (2), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is 50 penalty units or imprisonment for 2 years, or both.

42 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to

any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

43 Savings and transitional provisions

Schedule 1 has effect.

Schedule 1 Savings and transitional provisions

(Section 43)

Part 1 Preliminary

1 Regulations

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

Investigative Bodies Legislation Amendment Act 1997

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of Schedule 2 to *Investigative Bodies Legislation Amendment Act 1997*

2 Definition

In this Part, **amending Act** means the *Investigative Bodies Legislation Amendment Act 1997*.

3 Conditional release

(1) Section 11A only applies to any release ordered on or after the commencement of that section.

(2) Section 11B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

4 Secrecy of identity and location of witness

A reference in section 27, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment.