

# New South Wales Crime Commission Act 1985 No 117

[1985-117]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Previously named**  
State Drug Crime Commission Act 1985
- **Does not include amendments by**  
[Miscellaneous Acts \(Local Court\) Amendment Act 2007 No 94](#) (not commenced)

### Authorisation

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# New South Wales Crime Commission Act 1985 No 117



New South Wales

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# New South Wales Crime Commission Act 1985 No 117



New South Wales

An Act to constitute a Commission into illegal drug trafficking and organised and other crime.

## Part 1 Preliminary

### 1 Name of Act

This Act may be cited as the *New South Wales Crime Commission Act 1985*.

### 2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

### 3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

**Assistant Commissioner** means an Assistant Commissioner for the Commission.

**business** includes:

- (a) any profession, trade, employment or vocational calling,
- (b) any transaction or transactions, whether lawful or unlawful, in the nature of trade or commerce (including the making of a loan), and
- (c) any activity, whether lawful or unlawful, carried on for the purposes of gain, whether or not the gain is of a pecuniary nature and whether the gain is direct or indirect.

**Commission** means the New South Wales Crime Commission constituted by this Act.

**Commissioner** means the Commissioner for the New South Wales Crime Commission.

**document** includes any book, register or other record of information, however compiled, recorded or stored.

**illegal drug trafficking** includes crime related to illegal drug trafficking.

**indictable offence** means an offence which may be prosecuted on indictment.

**investigation** means an investigation by the Commission of a matter referred to it under section 25 (1) (a) or (a1) by the Management Committee.

**Judge** means a Judge of a court of the State.

**law enforcement agency** means:

- (a) the Police Force,
- (b) a Police Force of another State or a Territory of the Commonwealth,
- (c) the Australian Federal Police, or
- (d) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of the State, another State or a Territory of the Commonwealth.

**legal practitioner** means a barrister or a solicitor of the Supreme Court.

**Management Committee** or **Committee** means the New South Wales Crime Commission Management Committee constituted by this Act.

**member** means a member of the Commission, and includes the Commissioner.

**member of staff of the Commission**—see section 32.

**police inquiry** means an inquiry carried out under the authority of the Commissioner of Police.

**police task force** means a task force under the authority of the Commissioner of Police.

**regulation** means a regulation made under this Act.

**relevant criminal activity** means any circumstances implying, or any allegations, that a relevant offence may have been, or may be being, or may be about to be, committed.

**relevant offence** means:

- (a) a serious drug offence, or
- (a1) an offence that involves fraud and that the Management Committee is satisfied is sufficiently serious to warrant its investigation by the Commission, or

**Note—**

Section 3 (2A) sets out the matters that the Management Committee is to take into account in deciding whether an offence involving fraud is sufficiently serious to warrant investigation.

- (b) 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.

**serious drug offence** means:

- (a) an offence referred to (before the commencement of the *Drug Misuse and Trafficking Act 1985*) in section 45A of the *Poisons Act 1966*:
  - (i) of supplying any drug of addiction or prohibited drug within the meaning of that Act,
  - (ii) of cultivating, supplying or possessing any prohibited plant within the meaning of that Act, or
  - (iii) of permitting any premises, as owner, occupier or lessee of the premises, to be used for the purpose of the cultivation or supply of any prohibited plant within the meaning of that Act or of being concerned in the management of any such premises,
- (a1) an offence under Division 2 of Part 2 of the *Drug Misuse and Trafficking Act 1985*, other than an offence which is prescribed for the purposes of this paragraph,
- (b) a prescribed offence involving drugs or an offence of a prescribed kind involving drugs,
- (c) an offence, which involves theft, fraud, obtaining financial benefit by vice engaged in by others, extortion, violence, bribery, corruption or harbouring criminals, perpetrated in connection with an offence referred to in paragraph (a), (a1) or (b), or
- (d) an offence of attempting to commit, or of conspiracy or incitement to commit, an

offence referred to in paragraph (a), (a1), (b) or (c).

- (2) Where the Commission suspects that an offence that is not a relevant offence as defined in subsection (1) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a relevant offence as so defined, whether or not the Commission has identified the nature of that relevant offence, the first-mentioned offence shall, for so long as the Commission so suspects, be deemed, for the purposes of this Act, to be a relevant offence.
- (2A) Without limiting the matters that the Management Committee may take into account in deciding for the purposes of the definition of **relevant offence** whether an offence that involves fraud is sufficiently serious to warrant its investigation by the Commission, the Management Committee is to take into account:
- (a) the number of persons that may be involved in the offence, and
  - (b) the degree of planning and organisation likely to be involved in the offence, and
  - (c) the person or persons likely to be responsible for planning and organising the offence, and
  - (d) the likely involvement of those persons in similar offences, and
  - (e) the financial or other benefits likely to be derived by those or other persons from the offence.
- (3) In this Act:
- (a) a reference to a function includes a reference to a power, authority and duty, and
  - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (4) In this Act, a reference to a person who has special legal qualifications is a reference to a person who:
- (a) is or has been a Judge, or
  - (b) is a legal practitioner of at least 7 years' standing.
  - (c), (d) (Repealed)
- (5) Notes in the text of this Act do not form part of this Act.

### **3A Objects**

- (1) The principal object of this Act is to reduce the incidence of illegal drug trafficking.
- (2) The secondary object of this Act is to reduce the incidence of organised and other crime.



#### **4 Act binds Crown**

This Act binds the Crown in right of the State.

## **Part 2 New South Wales Crime Commission**

### **Division 1 Constitution and functions**

#### **5 The Commission**

- (1) There is constituted by this Act a corporation under the corporate name of the “New South Wales Crime Commission”.
- (2) The Commission shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (3) The Commission is to consist of one or more members, being:
  - (a) the Commissioner, and
  - (b) if any Assistant Commissioners are appointed, the Assistant Commissioners.
- (4)-(7) (Repealed)
- (8) Schedule 2 has effect with respect to the procedure of the Commission.

#### **5A Commissioner**

- (1) The Governor may appoint a Commissioner for the New South Wales Crime Commission.
- (2) The Commissioner has and may exercise the functions conferred or imposed on the Commissioner by or under this or any other Act.

#### **5B Assistant Commissioners**

- (1) The Governor may, with the concurrence of the Commissioner, appoint one or more Assistant Commissioners for the New South Wales Crime Commission.
- (2) An Assistant Commissioner has and may exercise the functions conferred or imposed on an Assistant Commissioner by or under this or any other Act.
- (3) The Assistant Commissioner is to assist the Commissioner, as the Commissioner requires.

#### **5C Provisions relating to Commissioner and Assistant Commissioner**

Schedule 1 has effect.

## 6 Principal functions of the Commission

(1) The principal functions of the Commission are:

- (a) to investigate matters relating to a relevant criminal activity referred to the Commission by the Management Committee for investigation,
- (b) to assemble evidence that would be admissible in the prosecution of a person for a relevant offence arising out of any such matters and to furnish any such evidence to the Director of Public Prosecutions,
- (b1) to review a police inquiry into matters relating to any criminal activity (being an inquiry referred for review to the Commission by the Management Committee) and to furnish its findings to the Committee together with any recommendation as to action the Commission considers should be taken in relation to those findings,
- (c) to furnish in accordance with this Act reports relating to illegal drug trafficking and organised and other crime, which include, where appropriate, recommendations for changes in the laws of the State, and
- (d) to disseminate investigatory, technological and analytical expertise to such persons or bodies as the Commission thinks fit.

(1A) The Commission may exercise a function conferred or imposed on it by the *Criminal Assets Recovery Act 1990*, may carry out investigations in aid of the exercise of those functions and may, for the purposes of that Act, make such use as it thinks fit of any information obtained by it in the execution of this Act.

(1B) Nothing in this section precludes the Commission from inquiring into matters connected with, or arising out of, the exercise of its functions under this or any other Act or law, whether or not those matters are the subject of a reference to the Commission by the Management Committee.

(2) If the Commission obtains any evidence, being evidence that would be admissible in the prosecution of a person for an indictable offence (other than evidence of a relevant offence which is furnished to the Director of Public Prosecutions) against a law of New South Wales, of the Commonwealth, of a Territory or of another State, the Commission shall furnish that evidence:

- (a) in the case of an offence against a law of the Commonwealth, of a Territory or of another State—to the Attorney General, or
- (b) in the case of an offence against a law of New South Wales—to the Director of Public Prosecutions,

together with any recommendation as to action the Commission considers should be taken in relation to that evidence.

(3) If the Commission obtains any information relating to the exercise of the functions of a Government Department, Administrative Office or local or public authority, the Commission may, if it considers it desirable to do so:

- (a) furnish that information or a report on that information to the relevant Minister, and
- (b) make to that Minister such recommendations (if any) relating to the exercise of the functions of the Department, Office or authority, as the Commission considers appropriate.

(3A) If the Commission obtains any information relating to the conduct of an officer of a Government Department, Administrative Office or local or public authority, in his or her capacity as such, the Commission may, if it considers it desirable to do so:

- (a) furnish that information or a report on that information to the principal officer of the Department, Office or authority or (if the officer is the principal officer of the Department, Office or authority) to the relevant Minister, and
- (b) make to the principal officer or Minister such recommendations (if any) relating to the conduct of the officer as the Commission considers appropriate.

(3B) In subsection (3A):

**officer** includes:

- (a) in relation to a Government Department, Administrative Office or local or public authority:
  - (i) an employee or agent of the Department, Office or authority, or
  - (ii) a person between whom and the Department, Office or authority there is, or has been, an agreement or arrangement under which the person is providing, or has provided, services to the Department, Office or authority, and
- (b) in relation to a local or public authority—a member of the authority.

**principal officer**, in relation to a Government Department, Administrative Office or local or public authority, has the same meaning as it has in section 10.

(4) (Repealed)

(5) In exercising its principal functions, the Commission shall give high priority to matters relating to illegal drug trafficking, as far as practicable.

## **7 Liaison with other bodies**

The Commission may, with the approval of the Management Committee:

- (a) disseminate intelligence and information to such persons or bodies as the Commission

thinks appropriate, and

- (b) co-operate and consult with such persons or bodies as the Management Committee thinks appropriate.

## **8 Incidental powers of Commission**

- (1) The Commission has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions, and any specific powers conferred on the Commission by this Act shall not be taken to limit by implication the generality of this section.
- (2) However, the Commission cannot employ any staff.

### **Note—**

Staff to enable the Commission to exercise its functions may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service. However, the Commission may still, under section 32, arrange for the use of services of staff or facilities of other agencies and for police officers to perform services for the Commission, as well as engage consultants.

## **9 Delegation by Commission**

- (1) The Commission may delegate to the Commissioner or an Assistant Commissioner or a member of the staff of the Commission any of its functions.
- (2) The Commissioner may delegate to an Assistant Commissioner or a member of the staff of the Commission any of his or her functions.
- (3) An Assistant Commissioner or member of staff of the Commission may delegate to a member of staff of the Commission any of the functions delegated to the Assistant Commissioner or member, subject to any conditions to which the delegation is subject.
- (4) The following functions may not be delegated:
  - (a) a power of delegation conferred by this section,
  - (b) a function of making a report under this Act,
  - (c) the power of a member to require the principal officer of an agency to furnish information under section 10,
  - (d) the power of a member to require a person to appear before the Commission and produce documents or things under section 16,
  - (e) the power of a member to require a person to attend and produce a document or thing under section 17,
  - (f) the power of the Commissioner to issue a warrant for the arrest of a person under section 18AA.

## 10 Commission may require information from certain State agencies

- (1) A member may, by notice in writing served on the principal officer of an agency, or on a person who is a member, officer or employee of an agency, require that principal officer, or that person, as the case may be, to furnish to the Commission, by writing signed by that principal officer, or by that person, within the time and in the manner specified in the notice, information so specified, being information that:
  - (a) was acquired by the first-mentioned agency in the ordinary course of exercising its functions, or was acquired by that person in that person's capacity as such a member, officer or employee, and
  - (b) is relevant to an investigation being conducted by the Commission.
- (2) A member may, by notice in writing served on the principal officer of an agency, require that principal officer:
  - (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Commission or a member of the staff of the Commission, and
  - (b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that relates to the exercise by the agency of its functions and is relevant to such an investigation.
- (3) If a person who is required, by a notice served on the person under this section, to furnish information, or produce a document or thing, to a person specified in the notice (in this subsection referred to as the **specified person**) claims to the specified person to be entitled to refuse to furnish the information or produce the document or thing, the specified person shall:
  - (a) if satisfied that the claim is justified—inform the claimant that the requirement will not be insisted upon, or
  - (b) in any other case—inform the claimant that the specified person is not so satisfied and, if the document or thing is not produced forthwith, refer the claim to the Commission for decision under section 19.
- (4) Subject to the provisions of any enactment prescribed for the purposes of this subsection, but notwithstanding any other provision of a law of the State that prohibits the divulging or communicating of information or the production of a document or thing, a person shall not:
  - (a) without reasonable excuse, fail to comply with a notice served on the person under subsection (1) or (2), or
  - (b) in purported compliance with a notice served on the person under subsection (1), knowingly furnish information that is false or misleading.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

(5) Subsection (4) does not apply in such circumstances as may be prescribed.

(6) In this section:

**agency** means:

- (a) a Government Department or Administrative Office,
- (b) any person appointed to an office by the Governor,
- (c) any statutory body representing the Crown,
- (d) any officer or temporary employee of the Public Service,
- (e) any person in the service of the Crown or of any statutory body representing the Crown,
- (f) any person in relation to whom or to whose functions an account is kept of administration or working expenses, where the account:
  - (i) is part of the accounts prepared pursuant to the [Public Finance and Audit Act 1983](#),
  - (ii) is required by or under any Act to be audited by the Auditor-General,
  - (iii) is an account with respect to which the Auditor-General has powers under any law, or
  - (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts where requested to do so by a Minister of the Crown,
- (g) any person entitled to be reimbursed expenses, from a fund of which an account mentioned in paragraph (f) is kept, of attending meetings or carrying out the business of any body constituted by an Act,
- (h) any holder of an office declared by the regulations to be an office of a public authority for the purposes of this Act,
- (i) any local government authority or any member or employee of a local government authority,
- (j) the Police Force, or
- (k) any person otherwise acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs.

**principal officer** means:

- (a) in relation to an agency that is a Government Department or Administrative Office—the person holding office or acting as Department Head in relation to the Department or Office,
- (b) in relation to any other agency:
  - (i) if the regulations declare an office to be the principal office in respect of the agency—the person holding or performing the duties of that office, or
  - (ii) in any other case—the person who constitutes the agency or, if the agency is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the agency at which the person is present.

## 11 Search warrants

- (1) In this section:

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

**thing** includes a document.

- (2) A member of the Commission may apply to an authorised officer for the issue of a search warrant if:
- (a) the Commission has reasonable grounds for suspecting that, on a particular day (in this section referred to as the **relevant day**), being the day on which, or a particular day within one month after the day on which, the application is made, there may be in or on any premises a thing or things of a particular kind connected with a matter relating to a relevant criminal activity, being a matter into which the Commission is conducting an investigation (in this section referred to as **things of the relevant kind**), and
  - (b) the Commission believes on reasonable grounds that, if a summons were issued for the production of the thing or things, the thing or things might be concealed, lost, mutilated or destroyed.
- (3) An authorised officer to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the Police Force, or any other person, named in the warrant:
- (a) to enter the premises,
  - (b) to search the premises for things of the relevant kind, and
  - (c) to seize any things of the relevant kind found in or on the premises and deliver things so seized to the Commission.

- (4) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (5) A search warrant issued under this section shall:
  - (a) include a statement of the purpose for which the warrant is issued, which shall include a reference to the matter relating to a relevant criminal activity into which the Commission is conducting an investigation and with which the things of the relevant kind are connected, and
  - (b) include a description of the kind of things authorised to be seized.

**Note—**

Covert search warrants may be obtained under Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002*.

**12 Seizure pursuant to search warrant—special provisions**

- (1) Where, in the course of searching, in accordance with the terms of a search warrant issued under section 11, for things of the relevant kind (within the meaning of that section), the person executing the warrant finds a thing that the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for a relevant offence, or for an indictable offence against the law of the Commonwealth, of a State or of a Territory, and the first-mentioned person believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence, that person may seize the thing and, if the thing is so seized, it shall be deemed, for the purposes of this Act, to have been seized pursuant to the warrant.
- (2) Where a thing is seized pursuant to a search warrant issued under section 11:
  - (a) the Commission may retain the thing if, and for so long as, retention of the thing by the Commission is reasonably necessary for the purposes of an investigation to which the thing is relevant, and
  - (b) if the retention of the thing by the Commission is not, or ceases to be, reasonably necessary for such purposes, the Commission shall cause the thing to be delivered to:
    - (i) if the thing may be used in evidence in proceedings of a kind referred to in subsection (5)—the authority or person responsible for taking the proceedings, or
    - (ii) if subparagraph (i) does not apply—the person who appears to the Commission to be entitled to the possession of the thing,unless the Commission has furnished the thing to the Attorney General in accordance with section 6 (2).



- (3) The Commission may, instead of delivering a thing in accordance with subsection (2) (b) (ii), deliver the thing to the Attorney General or the Director of Public Prosecutions for the purpose of assisting in the investigation of criminal offences, where the Commission is satisfied that the thing is likely to be useful for that purpose.
- (3A) If it appears to the Commission:
- (a) that there is no person who is entitled to possession of any thing referred to in subsection (2), or
  - (b) that there is such a person, but the person does not wish to have possession of any such thing,
- the Commission may apply to a Local Court for directions as to its disposal and dispose of it in accordance with the directions given by the Local Court in response to the application.
- (4) In this section, **thing** includes a document.
- (5) Without limiting the generality of section 11 (2) (a), a reference in section 11 to a thing connected with a matter relating to a relevant criminal activity, being a matter into which the Commission is conducting an investigation, includes a reference to a thing that may be used in evidence in proceedings for the taking, by or on behalf of the Crown in right of the State, of civil remedies in respect of a matter connected with, or arising out of, an offence to which the relevant criminal activity relates.

## Division 2 Hearings

### 13 Hearings

- (1) For the purposes of an investigation the Commission may hold hearings.
- (2) A hearing shall be conducted by one or more members of the Commission, as determined by the Commission.
- (3) At a hearing conducted by 2 or more members of the Commission:
- (a) the member presiding is to be the Commissioner or (if the Commissioner is not conducting the hearing) an Assistant Commissioner determined by the Commissioner, and
  - (b) Schedule 2 is to apply, so far as it is capable of application, as if the hearing were a meeting of the Commission.
- (3A) (Repealed)
- (4) At a hearing before the Commission:
- (a) a person giving evidence may be represented by a legal practitioner, and

- (b) if, by reason of the existence of special circumstances, the Commission consents to a person who is not giving evidence being represented by a legal practitioner—the person may be so represented.
- (5) A hearing before the Commission shall be held in private and the Commission may give directions as to the persons who may be present during the hearing or a part of the hearing.
- (6) Nothing in a direction given by the Commission under subsection (5) prevents the presence, when evidence is being taken at a hearing before the Commission, of:
  - (a) a person representing the person giving evidence, or
  - (b) a person representing, pursuant to subsection (4), a person who, by reason of a direction given by the Commission under subsection (5), is entitled to be present.
- (7) Where a hearing before the Commission is being held, a person (other than a member, counsel assisting the Commission in relation to the matter that is the subject of the hearing or a member of the staff of the Commission approved by the Commission) shall not be present at the hearing unless the person is entitled to be present by reason of a direction given by the Commission under subsection (5) or by reason of subsection (6).
- (8) At a hearing before the Commission for the purposes of an investigation:
  - (a) counsel assisting the Commission generally or in relation to the matter to which the investigation relates,
  - (b) any person authorised by the Commission to appear before it at the hearing, or
  - (c) any legal practitioner representing a person at the hearing pursuant to subsection (4),may, so far as the Commission thinks appropriate, examine or cross-examine any witness on any matter that the Commission considers relevant to the investigation.
- (9) The Commission may direct that:
  - (a) any evidence given before it,
  - (b) the contents of any document, or a description of any thing, produced to the Commission or seized pursuant to a search warrant issued under section 11,
  - (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 at a hearing, shall not be published, or shall not be published except in such manner, and to such

persons, as the Commission specifies, and the Commission shall give such a direction if the failure to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

(10) Where:

(a) a person has been charged with an offence before a court of the State, and

(b) the court considers that it may be desirable in the interests of justice that particular evidence given before the Commission, being evidence in relation to which the Commission has given a direction under subsection (9), be made available to the person or to a legal practitioner representing the person,

the court may give to the Commission a certificate to that effect and, if the court does so, the Commission shall make the evidence available to the court.

(11) Where:

(a) the Commission makes evidence available to a court in accordance with subsection (10), and

(b) the court, after examining the evidence, is satisfied that the interests of justice so require,

the court may make the evidence available to the person charged with the offence concerned or to a legal practitioner representing the person.

(12) A person who:

(a) is present at a hearing in contravention of subsection (7), or

(b) makes a publication in contravention of a direction given under subsection (9),

is guilty of an offence punishable, upon conviction, by a fine not exceeding 100 penalty units or imprisonment for a period not exceeding 2 years, or both.

### **13A Evidence**

The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.

### **13B Legal representation of witnesses**

Section 13 (4) does not prevent the Commission from refusing to permit a particular legal practitioner to represent a particular witness in an investigation if it believes on reasonable grounds and in good faith that to allow representation by the particular legal practitioner will, or is likely to, prejudice its investigation.

#### **14 Reimbursement of expenses of witnesses**

A witness appearing before the Commission shall be paid out of money provided by Parliament in respect of the expenses of the witness's attendance such amount as the Commission determines.

#### **15 Legal and financial assistance**

(1) A witness who is appearing or is about to appear before the Commission may make an application to the Attorney General for the provision of assistance under this section in respect of the witness's appearance.

(2) A person who proposes to make, or has made, an application to the Supreme Court:

(a) under section 19 (2) for an order of review in respect of a decision of the Commission, or

(b) (Repealed)

may make an application to the Attorney General for the provision of assistance under this section in respect of the application to the Supreme Court.

(3) Where an application is made by a person under subsection (1) or (2), the Attorney General may, if satisfied that:

(a) it would involve substantial hardship to the person to refuse the application, or

(b) the circumstances of the case are of such a special nature that the application should be granted,

authorise, out of money provided by Parliament, the provision to that person, either unconditionally or subject to such conditions as the Attorney General determines, of such legal or financial assistance in respect of the appearance of that person before the Commission, or the application by that person to the Supreme Court, as the case may be, as the Attorney General determines.

#### **16 Power to summon witnesses and take evidence**

(1) A member may summon a person to appear before the Commission at a hearing to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

(1A) A summons under subsection (1) may require the immediate attendance of a person before the Commission if the member who issues the summons believes on reasonable grounds that delay in attendance might result in:

(a) the commission of an offence, or

(b) the escape of an offender, or

- (c) the loss or destruction of evidence, or
  - (d) serious prejudice to the conduct of an investigation.
- (2) A summons under subsection (1) requiring a person to appear before the Commission at a hearing shall be accompanied by a copy of the notice, or of each of the notices, by which the matter or matters to which the hearing relates was or were referred to the Commission by the Management Committee.
- (3) A summons under subsection (1) requiring a person to appear before the Commission at a hearing shall, unless the Commission is satisfied that, in the particular circumstances of an investigation to which the hearing relates, it would prejudice the effectiveness of the investigation for the summons to do so, set out, so far as is reasonably practicable, the general nature of the matters in relation to which the Commission intends to question the person, but nothing in this subsection prevents the Commission from questioning the person in relation to any matter that relates to an investigation.
- (4) The member presiding at a hearing before the Commission may require a person appearing at the hearing to produce a document or other thing.
- (5) The Commission may, at a hearing, take evidence on oath or affirmation and for that purpose:
- (a) a member may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member presiding at the hearing, and
  - (b) a member, or a person who is an authorised person in relation to the Commission, may administer an oath or affirmation to a person so appearing at the hearing.
- (6) In this section, a reference to a person who is an authorised person in relation to the Commission is a reference to a person authorised in writing, or a person included in a class of persons authorised in writing, for the purposes of this section by the Commissioner.

#### **16A Appearance of inmate before Commission**

- (1) If the Commission requires an inmate to appear before it at a hearing, the Commission may, by order in writing served on the governor of the correctional centre in whose custody the inmate is, direct the governor to produce the inmate, or have the inmate produced, at the time and place stated in the order.
- (2) Such an order is sufficient authority to the governor of the correctional centre for producing the inmate or having the inmate produced, and the inmate must be produced accordingly.

- (3) An inmate is, when produced under this section in the actual custody of the governor of the correctional centre, a correctional officer or a police officer, taken to be in lawful custody.
- (4) The governor, correctional officer or police officer must in due course return the inmate to the correctional centre.
- (5) In this section, **correctional centre**, **governor of a correctional centre** and **inmate** have the same meanings as **correctional centre**, **governor** and **inmate** have in the *Crimes (Administration of Sentences) Act 1999*.

## **17 Power to obtain documents and things**

- (1) A member may, by notice in writing served on a person, require the person:
  - (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Commission or a member of the staff of the Commission, and
  - (b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that is relevant to an investigation.
- (2) A notice may be issued under this section in relation to an investigation whether or not a hearing before the Commission is being held for the purposes of the investigation.
- (2A) A notice under this section may provide that the requirement 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.
- (2B) A notice under this section may require the immediate production of a document or thing if the member who issues the notice believes on reasonable grounds that delay in the production of the document may result in:
  - (a) its destruction, removal or concealment, or
  - (b) serious prejudice to the conduct of an investigation.
- (3) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

- (4), (5) (Repealed)

## **17A Refusal or failure of person to produce document or thing**

- (1) This section applies if a person is required to produce a document or thing to a

member of the Commission or member of the staff of the Commission in accordance with a notice under section 17.

- (2) A person may not claim that he or she is entitled to refuse or fail to produce the document or thing unless the claim is made personally to the member of the Commission or member of staff of the Commission to whom the person is required to produce the document or thing by the notice under section 17.
- (3) If the person makes such a claim the member of the Commission or member of staff of the Commission is to inform the person that, if the document or thing is not produced:
  - (a) he or she will be served with a summons requiring the person to appear as a witness at a hearing before the Commission and to produce the document or thing, and
  - (b) the document or thing will be required to be deposited with the Commission so that it may be sealed and kept in safe custody pending the hearing.
- (4) If the document or thing is not produced after the person is so informed:
  - (a) a member of the Commission is to summon the person (in accordance with section 16) to appear as a witness at a hearing before the Commission and to produce the document or thing, and
  - (b) the person must deposit the document or thing with the Commission.
- (5) The Commission is to cause the document or thing to be sealed immediately after it is deposited with the Commission and is to retain it in safe custody pending the hearing.

#### **17B Hearing following refusal or failure to produce document or thing**

- (1) At a hearing referred to in section 17A, the Commission:
  - (a) may withdraw the requirement to produce the document or thing, or
  - (b) may insist that the document or thing be produced.
- (2) If the Commission withdraws the requirement to produce the document or thing, the document or thing must be delivered to the person who deposited it.

#### **Note—**

See section 18B for the effect of the witness refusing or failing to produce a document or thing that the Commission insists be produced.

#### **18 Failure of witnesses to attend and answer questions etc**

- (1) A person served with a summons to appear as a witness at a hearing before the Commission shall not, without reasonable excuse:

- (a) fail to attend as required by the summons, or
  - (b) fail to attend from day to day unless excused, or released from further attendance, by a member.
- (2) A person appearing as a witness at a hearing before the Commission shall not, without reasonable excuse or except as provided by section 18A or 18B:
- (a) when required pursuant to section 16 either to take an oath or make an affirmation—refuse or fail to comply with the requirement,
  - (b) refuse or fail to answer a question that the person is required to answer by the member presiding at the hearing, or
  - (c) refuse or fail to produce a document or thing that the person was required to produce by a summons under this Act served as prescribed.
- (3) A witness who without reasonable excuse fails to comply with a condition to which the release of the witness under section 18AA (5) is subject, is guilty of an offence.
- Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.
- (4)–(15) (Repealed)

### **18A Religious confessions**

- (1) A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy.
- (2) Subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose.
- (3) In this section:

***religious confession*** means a confession made by a person to a member of the clergy in the member's professional capacity according to the ritual of the church or religious denomination concerned.

### **18AA Arrest of witness**

- (1) If a person served with a summons to appear as a witness at a hearing before the Commission fails to attend as required by 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) If the Commissioner is satisfied:
  - (a) by evidence on oath or affirmation that a person who has been served with a



summons to appear as a witness at a hearing before the Commission has made a representation that the person intends not to appear at the hearing as required by the summons, and

(b) that it is in the public interest that the person be compelled to do so to avoid serious prejudice to the conduct of an investigation,

the Commissioner may issue a warrant for the arrest of the person.

- (3) The Commissioner may require a person to take an oath or affirmation for the purposes of this section.
- (4) A warrant may be issued under subsection (2) even though the time named in the summons for the person to attend has not yet passed.
- (5) A warrant issued 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.
- (6) A warrant issued under this section may be executed by any police officer or by any person to whom it is addressed.
- (7) A person executing a warrant issued under this section may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.
- (8) The issue of a warrant or arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with the summons.
- (9) In this section:

**representation** includes:

- (a) an express or implied representation (whether oral or in writing), or
- (b) a representation to be inferred from conduct, or
- (c) a representation not intended by its maker to be communicated to or seen by another person, or
- (d) a representation that for any reason is not communicated.

#### **18AB Conditional release of witness**

- (1) The release of a witness by order of the Commissioner under section 18AA (5) 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 a member, 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.

### **18AC Review by Supreme Court**

(1) A witness who has not been released by the Commissioner under section 18AA (5) 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.

### **18B Privilege concerning answers and documents**

(1) A witness summoned to attend or appearing before the Commission at a hearing is not (except as provided by section 18A) excused from answering any question or producing any document or thing on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground.

(2) An answer made, or document or thing produced, by a witness at a hearing before the Commission is not (except as otherwise provided in this section) admissible in evidence against the person in any civil or criminal proceedings or in any disciplinary proceedings.

(3) Nothing in this section makes inadmissible:

(a) any answer, document or thing in proceedings for an offence against this Act or in proceedings for contempt under this Act, or

(b) any answer, document or thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or

producing the document or other thing irrespective of the provisions of subsection (1), or

- (c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or thing, or
- (d) any answer made, or document or thing produced, by a corporation at a hearing before the Commission, or
- (e) any answer, document or thing in a proceeding for the falsity of evidence given by the witness.

(4) If:

- (a) a legal practitioner or other person is required to answer a question or produce a document or thing at a hearing before the Commission, and
- (b) the answer to the question would disclose, or the document or thing contains, a privileged communication passing between a legal practitioner (in his or her capacity as a legal practitioner) and a person,

the legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so. However, the legal practitioner must, if so required by the member presiding at the hearing, furnish to the Commission the name and address of the person to whom or by whom the communication was made.

- (5) The member presiding at the hearing 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.

## **19 Applications to Supreme Court**

(1) Where:

- (a) a person claims to be entitled to refuse to furnish information or produce a document that the person is required to furnish or produce pursuant to a notice under section 10,
- (b) (Repealed)
- (c) a person claims to be entitled to refuse to answer a question put to the person, or to produce a document that the person was required to produce, at a hearing before the Commission,

the Commission shall decide as soon as practicable whether in its opinion the claim is

justified and notify the person of its decision.

- (2) If the person is dissatisfied with the decision, the person may apply to the Supreme Court for an order of review in respect of the decision.
- (3) Where the Commission decides that a claim by a person that the person is entitled to refuse to produce a document is not justified, the person is not entitled to make an application to the Supreme Court under subsection (2) in respect of the decision unless the person has produced the document to the Commission or placed the document in the custody of the appropriate officer of that Court, and, where the person has so produced the document and makes such an application, the Commission shall cause the document to be placed in the custody of the appropriate officer of that Court.
- (4) On an application for an order of review in respect of a decision of the Commission under subsection (1), the Supreme Court may, in its discretion, make an order:
  - (a) affirming the decision, or
  - (b) setting aside the decision.
- (5) If the Supreme Court makes an order under subsection (4) setting aside a decision by the Commission that a claim by a person that the person was entitled to refuse to produce a document is not justified, the Supreme Court must make a further order directing that the document be delivered to the person.
- (6) A prosecution for an offence under section 17 or 18 shall not be commenced in respect of a refusal or failure by a person to produce a document or answer a question:
  - (a) if the person has claimed to be entitled to refuse to produce the document or answer the question, as the case may be, and the Commission decides that, in its opinion, the claim is not justified—until the expiration of the period of 5 days (excluding days on which the appropriate Registry of the Supreme Court is closed) immediately after the Commission has notified the person of the decision, or
  - (b) if the person has made an application to the Supreme Court under subsection (2) for an order of review in respect of a decision by the Commission that, in its opinion, a claim by the person to be entitled to refuse to produce the document or answer the question is not justified—until the application and any appeal from an order made by the Supreme Court on the application have been determined or otherwise disposed of.
- (7) An order of the Supreme Court under subsection (4) is, subject to any appeal from that order, conclusive for the purposes of any other proceedings.
- (8)-(12) (Repealed)

- (13) An application by a person under subsection (2) must:
- (a) be made in such manner as is prescribed by rules of court, and
  - (b) set out the grounds of the application, and
  - (c) be lodged with the appropriate Registry of the Supreme Court within the period of 5 days (excluding days on which the Registry is closed) immediately after the date on which the Commission notified the person of the decision to which the application relates.
- (14) The Supreme Court has jurisdiction with respect to matters arising under this section.
- (15) In this section, unless the contrary intention appears:
- appropriate officer** means the officer of the Supreme Court prescribed by rules of court as the appropriate officer for the purposes of this section.
- appropriate Registry** means the Registry of the Supreme Court prescribed by rules of court as the appropriate Registry for the purposes of this section.
- document** includes any thing.
- (16) Where a decision of the Commission under subsection (1) relates to 2 or more questions, or to 2 or more documents, the decision shall, to the extent to which it relates to a particular question or document, be deemed, for the purposes of this Act, to constitute a separate decision relating to that question or document only.
- (17) (Repealed)

## **20 False or misleading evidence**

- (1) A person shall not, at a hearing before the Commission, give evidence that is, to the knowledge of the person, false or misleading in a material particular.
- (2) A contravention of subsection (1) is an indictable offence and, subject to this section, is punishable, upon conviction, by a fine not exceeding 500 penalty units or by imprisonment for a period not exceeding 5 years, or both.
- (3) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (4) Where, in accordance with subsection (3), a court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine not exceeding 100 penalty units or imprisonment for a period not exceeding 2 years, or both.

- (5) Sections 331 and 332 of the *Crimes Act 1900* apply to proceedings for an offence under this section in the same way as they apply to proceedings for an offence under section 330 of that Act.

## **21 Protection of witnesses**

- (1) Where it appears to the Commissioner that, by reason of the fact that a person:
- (a) is to appear, is appearing or has appeared at a hearing before the Commission to give evidence or to produce a document or thing, or
  - (b) proposes to produce or has produced a document or thing to the Commission pursuant to this Act otherwise than at a hearing before the Commission,
- the safety of the person may be prejudiced or the person may be subject to intimidation or harassment, the Commissioner may make such arrangements (including arrangements with the Minister or with members of the Police Force) as are necessary to avoid prejudice to the safety of the person, or to protect the person from intimidation or harassment.
- (2) Nothing in this section affects the *Witness Protection Act 1995*.

### **21A Indemnities and undertakings**

- (1) The Commission 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 Commission 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 a hearing before the Commission or any other investigative activity involving the Commission or a member of staff of the Commission.

## **22 Contempt of Commission**

A person shall not:

- (a) obstruct or hinder the Commission, a member of the Commission or a member of the

staff of the Commission in the exercise of the functions of the Commission, or

(b) disrupt a hearing before the Commission.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

### **23 Protection of members and others**

- (1) A member has, in the exercise of functions as a member in relation to a hearing before the Commission, the same protection and immunity as a Judge of the Supreme Court.
- (2) A legal practitioner assisting the Commission or representing a person at a hearing before the Commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness has the same protection as a witness in proceedings in the Supreme Court.
- (4) No criminal or civil liability (apart from this Act) attaches to a person for compliance, or purported compliance in good faith, with any requirement made under this Act.
- (5) In particular, if a person produces any document or other thing under section 17, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

## **Part 3 New South Wales Crime Commission Management Committee**

### **24 The Management Committee**

- (1) There is constituted by this Act a New South Wales Crime Commission Management Committee consisting of 4 members of whom:
  - (a) one shall be the Minister for Police, and
  - (b) one shall be the Commissioner of Police, and
  - (c) one shall be the Chair of the Board of the Australian Crime Commission, and
  - (d) one shall be the Commissioner,
  - (e) (Repealed)or any person acting in any such office.
- (2) The Management Committee shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.
- (3) A member of the Management Committee or, if the member fails to do so, the

Minister may appoint a person to attend, in the place of the member, a meeting of the Committee at which the member is not present and a person so appointed shall, when attending a meeting of the Committee in the place of a member, be deemed to be the member.

- (4) If for any reason there is a vacancy in the office of a member of the Management Committee, the Governor may appoint a person to act in that office.
- (5) While a person is acting as a member of the Management Committee the person has and may exercise all the functions of the member.
- (6) A member of the Commission who is not otherwise entitled to be present at a meeting of the Management Committee may, with the consent of the members of the Committee present at the meeting, be present at the meeting and participate in the discussion of matters arising at the meeting.
- (7) Schedule 3 has effect with respect to the procedure of the Management Committee.

## **25 Functions of the Management Committee**

- (1) The principal functions of the Management Committee are:
  - (a) to refer (by a written notice) matters relating to relevant criminal activities to the Commission for investigation, and
    - (a1) to refer (by a written notice) to the Commission, for review, police inquiries into matters relating to any criminal activities, and
    - (a2) to arrange (in accordance with section 27A) for police task forces to assist the Commission to carry out investigations into matters relating to relevant criminal activities, and
  - (b) to review and monitor generally the work of the Commission, and
  - (c) to give approvals for the purposes of section 7.
- (2) The Management Committee is not to refer 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.
- (3) The Management Committee may, by the terms of a reference, impose limitations:
  - (a) on the carrying out of an investigation by the Commission into any matter relating to a relevant criminal activity referred to the Commission for investigation, and
  - (b) on the carrying out of a review of a police inquiry referred to the Commission for review.
- (4) The notice referring a matter relating to a relevant criminal activity to the Commission



for investigation:

- (a) may describe the matter (wholly or partly) by reference to information given at a meeting of the Management Committee or other extrinsic material, whether or not the information or material is included in or annexed to the notice, and
  - (b) must describe the general nature of the circumstances or allegations constituting the relevant criminal activity, and
  - (c) must set out the general purpose of the investigation.
- (5) If information or other extrinsic material referred to in a notice is not included in or annexed to the notice, it does not form part of the notice for the purposes of section 16 (2) (relating to the matter to accompany a summons to a witness).
- (6) In exercising its principal functions, the Management Committee shall give high priority to matters relating to illegal drug trafficking, as far as practicable.

## **26 Commission may request reference**

- (1) The Commission may, if it considers it appropriate to do so, request the Management Committee to refer to the Commission:
- (a) for investigation, a matter relating to relevant criminal activity, and
  - (b) for review, a police inquiry into a matter relating to any criminal activity.
- (2) A request by the Commission under subsection (1) shall be in writing and may be accompanied by such written submissions as the Commission thinks fit.

## **27 Directions and guidelines to Commission**

- (1) The Management Committee may give directions and furnish guidelines to the Commission with respect to the exercise of its functions and the Commission shall comply with any such directions or guidelines.
- (2) The Management Committee may give directions and furnish guidelines to the Commission with respect to the internal management of the Commission and the Commission shall comply with any such directions or guidelines.

## **27A Police task forces to assist Commission**

- (1) The Management Committee may make arrangements with the Commissioner of Police for a police task force to assist the Commission to carry out an investigation into matters relating to a relevant criminal activity.
- (2) In assisting the Commission to carry out such an investigation, the police task force is (subject to subsection (3)) under the control and direction of the Commissioner of Police.

- (3) The Management Committee may give directions and furnish guidelines to the Commission and the Commissioner of Police for the purpose of co-ordinating such an investigation, and the Commission and the Commissioner shall comply with any such directions and guidelines.

## **Part 4 Miscellaneous**

### **28 Public sittings and bulletins**

- (1) The Commission may hold sittings in public for the purpose of informing the public of, or receiving submissions in relation to, the general conduct of its operations.
- (2) At a sitting held under subsection (1), the Commission may be constituted by one or more members.
- (3) Subject to subsection (2), Schedule 2 applies, so far as it is capable of application, in relation to a sitting held under subsection (1) as if the sitting were a meeting of the Commission.
- (4) The Commission may publish bulletins for the purpose of informing the public of the general conduct of its operations.
- (5) The Commission shall not:
  - (a) divulge in the course of a sitting held under subsection (1), or
  - (b) include in a bulletin published under subsection (4),any matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

### **29 Secrecy**

- (1) This section applies to:
  - (a) a member of the Commission, and
  - (b) a member of the staff of the Commission, and
  - (c) a member of a police task force assisting the Commission in accordance with an arrangement under section 27A, and
  - (d) a person to whom information is given either by the Commission or by a person referred to in paragraph (a), (b) or (c) on the understanding that the information is confidential.
- (2) A person to whom this section applies who, either directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's

functions under this Act, and either while the person is or after the person ceases to be a person to whom this section applies:

- (a) makes a record of any information, or
- (b) divulges or communicates to any person any information,

being information acquired by the person by reason of, or in the course of, the exercise of functions under this Act, is guilty of an offence punishable, on conviction, by a fine not exceeding 50 penalty units or imprisonment for a period not exceeding one year, or both.

- (3) A person to whom this section applies shall not be required to produce in any court any document that has come into the person's custody or control in the course of, or by reason of, the exercise of functions under this Act, or to divulge or communicate to a court a matter or thing that has come to the person's notice in the exercise of functions under this Act, except where the Commission, or a member in the member's official capacity, is a party to the relevant proceedings or it is necessary to do so:
  - (a) for the purpose of carrying into effect the provisions of this Act, or
  - (b) for the purposes of a prosecution instituted as a result of an investigation conducted by the Commission in the exercise of its functions.

- (4) 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.

## **29A Disclosures prejudicing investigations**

- (1) A person who is required:
  - (a) by a notice under section 10 or 17 to furnish information or to attend and produce a document or other thing, or
  - (b) by a summons under section 16 to give evidence or to produce a document or other thing,

shall not disclose any information about the notice or summons that is likely to prejudice the investigation 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 (or a notice accompanying 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 investigation 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 investigation to which it relates.

### **30 Furnishing of reports and information**

- (1) The Commission shall keep the Management Committee informed of the general conduct of its operations in the exercise of its functions and, if the Committee requests the Commission to provide to it information concerning a specific matter relating to the Commission's operations in the exercise of its functions, the Commission shall comply with the request.
- (1A) In particular, the Commission must report to each meeting of the Management Committee the particulars of any warrants issued by the Commissioner under section 18AA that have not previously been reported to the Management Committee.
- (2) A report made by the Commission under this Act that sets out any finding that an offence has been committed, or makes any recommendation for the institution of a prosecution in respect of an offence, shall not be released to the public by the Commission unless the Management Committee, in the special circumstances of the case, approves.

### **31 Annual report**

- (1) The Commission shall, within the period of 4 months after each 30 June, prepare a report of its operations during the year that ended on that 30 June and furnish the report to the Management Committee for transmission, together with such comments on the report as the Committee thinks fit, to the Minister.
- (2) A report by the Commission under this section in relation to a year shall include the

following:

- (a) a description of the matters that were referred during that year to the Commission for investigation,
- (b) a description, which may include statistics, of any patterns or trends, and the nature and scope, of drug trafficking and organised and other crime that have come to the attention of the Commission during that year in the course of its investigations,
- (c) any recommendations for changes in the laws of the State, or for administrative action, that, as a result of the exercise of its functions, the Commission considers should be made,
- (d) the general nature and the extent of any information furnished by the Commission during that year to a law enforcement agency,
- (e) the extent to which its investigations have resulted in the prosecution in that year of persons for offences,
- (e1) particulars of warrants issued by the Commissioner under section 18AA, including whether a warrant was issued for a failure to appear as a witness at a hearing before the Commission or because the Commissioner was satisfied that a person intended not to appear at such a hearing,
- (f) particulars of the number and results of:
  - (i) applications made to the Supreme Court under section 19 (2) for orders of review in respect of decisions of the Commission, and
  - (ii) other court proceedings involving the Commission,being applications and proceedings that were determined, or otherwise disposed of, during that year.

(3) A report by the Commission under this section shall not:

- (a) identify persons as being suspected of having committed offences, or
- (b) identify persons as having committed offences unless those persons have been convicted of those offences.

(4) In any report by the Commission under this section the Commission shall take reasonable care to ensure that the identity of a person is not revealed if to reveal it might, having regard to any material appearing in the report, prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

(4A) A report by the Commission under this section that contains particulars of a warrant

issued by the Commissioner under section 18AA must not reveal the identity of the person against whom the warrant was issued.

- (5) For the purpose of enabling the final report of the Commission to be prepared and dealt with in accordance with this section, the Minister may give directions as to the manner and time of preparation, but not the contents, of that report.
- (6) The Minister shall cause a copy of:
  - (a) a report of the Commission under this section that is received by the Minister, and
  - (b) any comments made on the report by the Management Committee, being comments that accompanied the report,to be laid before each House of Parliament within 15 sitting days of that House after the report is received by the Minister.
- (7) For the purposes of subsection (6), sitting days shall be counted whether or not they occur in the same session.

## **32 Staff**

- (1) The staff of the Commission comprises:
  - (a) the staff who are employed under Chapter 1A of the *Public Sector Employment and Management Act 2002* in the Government Service to enable the Commission to exercise its functions, and
  - (b) the persons referred to in subsections (3), (4) and (5).
- (2) (Repealed)
- (3) The Commission may engage persons as consultants to the Commission or to perform services for it.
- (4) The Commission may arrange for the use of the services of any staff or facilities of a government department, an administrative office or a local or public authority.
- (5) The Commission may arrange for one or more police officers or for one or more members of the Police Force of the Commonwealth, or of a Territory or another State, to be made available (by way of secondment or otherwise) to perform services for the Commission.
- (6) While performing services for the Commission, a police officer retains rank, seniority and remuneration as a police officer and may continue to act as a constable. However, this subsection does not prevent the payment of additional remuneration to police officers in accordance with arrangements under subsection (5).
- (7) The regulations may make provision for or with respect to the appointment, conditions

of employment, discipline, code of conduct and termination of employment of staff of the Commission (except in so far as, in the case of the staff who are employed under Chapter 1A of the *Public Sector Employment and Management Act 2002*, provision is made for those matters by or under that Act).

### **33 (Repealed)**

### **34 Counsel assisting Commission**

The Commission may appoint a legal practitioner to assist the Commission as counsel, either generally or in relation to a particular matter or matters.

### **35 Service of documents**

- (1) For the purposes of this Act, service of a document on a person may be effected:
  - (a) on a natural person:
    - (i) by delivering it to the person personally, or
    - (ii) by leaving it at, or by sending it by pre-paid post to, the residential or business address of the person last known to the person serving the document, or
  - (b) on a body corporate—by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate,or in any other way in which service could have been effected had this section not been enacted.
- (2) In addition to the means of service provided for under subsection (1), service of a document on a person (whether a natural person or a body corporate) may be effected by facsimile transmission or other electronic means notified by the person as being an available means of communication.
- (3) Service of a facsimile copy of a document in accordance with subsection (1) is taken to be service of the document for the purposes of that subsection.

### **36 Proceedings for offences**

- (1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act shall be dealt with summarily before a Local Court.
- (2) Notwithstanding any Act or law to the contrary (including, in particular, Division 2 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*), the court by which a person is sentenced to imprisonment under this Act may direct the sentence to be cumulative on any previous sentence which has been imposed on the person by the court or to which the person is otherwise subject.

### **37 Regulations**

- (1) 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.
- (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.
- (3) A provision of a regulation may:
  - (a) apply generally or be limited in its application by reference to specified exceptions or factors,
  - (b) apply differently according to different factors of a specified kind, or
  - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,or may do any combination of those things.

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

Schedule 4 has effect.

## **Schedule 1 Provisions relating to Commissioner and Assistant Commissioners**

(Section 5C)

### **1 Eligibility for appointment**

A person is not eligible to be appointed as Commissioner or Assistant Commissioner or to act in either of those offices unless the person has special legal qualifications.

### **2 Acting Commissioner or Assistant Commissioner**

- (1) **Long illness or absence** The Governor may, from time to time, appoint a person to act in the office of Commissioner or Assistant Commissioner during the illness or absence of the Commissioner or Assistant Commissioner.
- (2) **Short illness or absence** The Minister may appoint a person to act in the office of Commissioner or Assistant Commissioner during the illness or absence of the Commissioner or Assistant Commissioner if the Minister has reason to believe that the duration of the illness or absence will not exceed 4 weeks. The Minister is not to make an appointment if there is a subsisting appointment under subclause (1).
- (3) The person, while so acting, has all the functions of the Commissioner or Assistant Commissioner and is to be taken to be the Commissioner or Assistant Commissioner.



- (4) The Governor or Minister may, at any time, remove a person from the office to which the person was appointed by the Governor or Minister under this clause.
- (5) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor or Minister may from time to time determine.
- (6) For the purposes of this clause:
  - (a) a vacancy in the office of Commissioner or Assistant Commissioner is to be taken to be an absence from office of the Commissioner or Assistant Commissioner, and
  - (b) an Assistant Commissioner is to be taken to be absent from office as an Assistant Commissioner during any period when the Assistant Commissioner acts in the office of the Commissioner pursuant to an appointment under this clause.

### **3 Basis of offices**

- (1) The office of Commissioner is a full-time office.
- (2) The office of Assistant Commissioner may be a full-time office or a part-time office, according to the terms of appointment.
- (3) The holder of a full-time office referred to in subclause (1) or (2) is required to hold it on that basis, except to the extent permitted by the Governor.

### **4 Terms of office**

Subject to this Schedule, the Commissioner or an Assistant Commissioner holds office for such term as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **5 Remuneration**

- (1) The Commissioner or a full-time Assistant Commissioner is entitled to be paid:
  - (a) remuneration in accordance with the [Statutory and Other Offices Remuneration Act 1975](#), and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine.
- (2) The Commissioner or a full-time Assistant Commissioner who is a Judge is not, while receiving remuneration as such a Judge, entitled to remuneration under this Act.
- (3) A part-time Assistant Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Assistant Commissioner.

## **6 Provisions where Judge is holding office as Commissioner or Assistant Commissioner**

- (1) The appointment of a person who is the holder of a judicial office as Commissioner or Assistant Commissioner or service by a person who is the holder of a judicial office as Commissioner or Assistant Commissioner does not affect:
  - (a) the person's tenure of that judicial office, or
  - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as Commissioner or Assistant Commissioner is, for all purposes, taken to be service as the holder of that judicial office.
- (3) In this clause:

**judicial office** means an office of Judge of a court of New South Wales.

## **7 Vacancy in office**

- (1) The office of Commissioner or Assistant Commissioner becomes vacant if the holder:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) being full-time—is absent from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence results from illness or other unavoidable cause, or
  - (e) being full-time—engages in any paid employment outside the duties of his or her office, except with the consent of the Minister, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or
  - (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (i) is removed from office under subclause (2) or (3).
- (2) The Governor may remove the Commissioner or an Assistant Commissioner from office for incapacity, incompetence or misbehaviour.

- (3) Without limiting subsection (2), the Governor may remove the Commissioner or Assistant Commissioner from office if he or she contravenes clause 8.

## **8 Disclosure of pecuniary interests**

(1) If:

- (a) the Commissioner has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, and
- (b) the interest appears to raise a conflict with the proper performance of the Commissioner's duties in relation to the consideration of the matter,

the Commissioner must, as soon as possible after the relevant facts have come to the Commissioner's knowledge, disclose the nature of the interest at a meeting of the Management Committee.

(2) If:

- (a) an Assistant Commissioner has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, and
- (b) the interest appears to raise a conflict with the proper performance of the Assistant Commissioner's duties in relation to the consideration of the matter,

the Assistant Commissioner must, as soon as possible after the relevant facts have come to the Assistant Commissioner's knowledge, disclose the nature of the interest to the Commissioner.

(3) A disclosure by the Commissioner or Assistant Commissioner that he or she:

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1) or (2).

(4) Particulars of any disclosure made under this section must be recorded by the Commission in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Commission.

(5) After a person has disclosed the nature of an interest in any matter under this clause, the person must not, unless the Minister otherwise determines:

- (a) be present during any deliberation of the Commission with respect to the matter, or
- (b) take part in any decision of the Commission with respect to the matter, or
- (c) exercise any functions under this Act with respect to that matter.

(6) A contravention of this clause does not invalidate any decision of the Commission.

## **9 Filling of vacancy**

- (1) If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.
- (2) If the office of Assistant Commissioner becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

## **10 Effect of certain other Acts**

- (1) The *Public Sector Employment and Management Act 2002* does not apply to the appointment of the Commissioner or an Assistant Commissioner, and the holder of either office is not, as holder, subject to that Act.
- (2) A provision made by or under any Act:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

does not operate to disqualify the person from holding that office and also the office of a part-time Assistant Commissioner or from accepting and retaining any remuneration payable to the person under this Act as a part-time Assistant Commissioner.

- (3) The office of a part-time Assistant Commissioner is not, for the purposes of any Act, an office or place of profit under the Crown.

## **11 Personal liability**

No matter or thing done or omitted by the Commission, the Commissioner or an Assistant Commissioner or any person acting under the direction of the Commission, the Commissioner or an Assistant Commissioner subjects the Commissioner or Assistant Commissioner personally to any liability if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act.

## **Schedule 2 Provisions relating to the procedure of the Commission**

(Sections 5 (8), 13 (3), 28 (3))

### **1 Meetings of Commission**

- (1) The Commissioner may, at any time, convene a meeting of the Commission.
- (2) The Commissioner shall convene such meetings of the Commission as, in the Commissioner's opinion, are necessary for the efficient exercise of its functions.
- (3) The procedure for the calling of meetings of the Commission and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Commission.

### **2 Quorum**

The quorum for a meeting of the Commission is the Commissioner (or member acting in that position) and any one other member.

### **3 Presiding member**

- (1) The Commissioner shall preside at a meeting of the Commission.
- (2) The person presiding at any meeting of the Commission has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **4 Voting**

A decision supported by a majority of the votes cast at a meeting of the Commission at which a quorum is present shall be the decision of the Commission.

### **5 Minutes**

The Commission shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Commission.

### **6 First meeting of Commission**

The Commissioner shall call the first meeting of the Commission in such manner as the Commissioner thinks fit.

### **7 Transaction of business outside meetings or by telephone etc**

- (1) The Commission may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by the Commissioner (or a member acting in that position) and at least 1 other member is taken to be a decision of the Commission.
- (2) The Commission may, if it thinks fit, transact any of its business at a meeting at which

members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.

(3) For the purposes of:

- (a) the approval of a decision under subclause (1), or
- (b) a meeting held in accordance with subclause (2),

the Commissioner and each other member have the same voting rights they have at an ordinary meeting of the Commission.

(4) A decision approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Commission.

(5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

### **Schedule 3 Provisions relating to the procedure of the Management Committee**

(Section 24 (7))

#### **1 Meetings of Committee**

- (1) Meetings of the Management Committee shall be held at such times and places as are from time to time agreed upon by the members of the Committee.
- (2) The procedure for the calling of meetings of the Management Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.

#### **2 Quorum**

The quorum for a meeting of the Management Committee is 3 members.

#### **3 Presiding member**

- (1) The Minister for Police or, in the absence of that Minister, another member of the Management Committee elected as the presiding member for the meeting by the members present shall preside at a meeting of the Committee.
- (2) The person presiding at any meeting of the Management Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

#### **4 Voting**

A decision supported by a majority of the votes cast at a meeting of the Management

Committee at which a quorum is present shall be the decision of the Committee.

## **5 Minutes**

The Management Committee shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

## **6 (Repealed)**

## **7 Transaction of business outside meetings or by telephone etc**

- (1) The Management Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Committee for the time being, and a resolution in writing approved in writing by at least 3 of those members is taken to be a decision of the Management Committee.
- (2) The Management Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a decision under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson of the Management Committee and each other member have the same voting rights they have at an ordinary meeting of the Management Committee.
- (4) A decision approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Management Committee.
- (5) Papers may be circulated among members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **Schedule 4 Savings, transitional and other provisions**

(Section 38)

### **Part 1 Regulations**

#### **1 Savings and transitional regulations**

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

*New South Wales Crime Commission Amendment Act 1996*

*Investigative Bodies Legislation Amendment Act 1997*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of 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 the person existing before the date of 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 publication.
- (4) A provision referred to in subclause (1) may, if the regulations so provide, have effect despite any other clause of this Schedule.

## **Part 2 Provisions relating to enactment of [State Drug Crime Commission \(Further Amendment\) Act 1988](#)**

### **1A References to relevant drug activities**

- (1) On and from the commencement of this clause, a reference in any document to a relevant drug activity is to be read as a reference to a relevant criminal activity.
- (2) This clause is taken to have commenced on 1 January 1989 (the date of commencement of Schedule 1 to the [State Drug Crime Commission \(Further Amendment\) Act 1988](#)).
- (3) Subclauses (1) and (2) re-enact (with minor modification) clause 2 of Schedule 2 to the [State Drug Crime Commission \(Further Amendment\) Act 1988](#). Subclauses (1) and (2) are transferred provisions to which section 30A of the [Interpretation Act 1987](#) applies.

## **Part 3 Provisions relating to enactment of [New South Wales Crime Commission Amendment Act 1996](#)**

### **2 Definitions**

In this clause:

**amending Act** means the [New South Wales Crime Commission Amendment Act 1996](#).

**Chairperson** means Chairperson within the meaning of this Act as in force immediately before the amendment to section 5 made by the amending Act.



### **3 Meaning of relevant offence**

The amendment made by the amending Act to the definition of **relevant offence** in section 3 extends to offences that may have been committed before the commencement of the amendment.

### **4 Existing Chairperson**

- (1) A person who, immediately before the commencement of the amendment to section 5 made by the amending Act, held office as Chairperson:
  - (a) ceases to hold office as Chairperson on that commencement, and
  - (b) holds office, subject to this Act, as Commissioner for the remainder of the person's office as if appointed as Commissioner under section 5A.
- (2) A reference in any other Act, in an instrument made under an Act or in any document, to the Chairperson (to the extent that it relates to acts, matters or things occurring after the commencement of the amendment to section 5 made by the amending Act) is to be read as a reference to the Commissioner.

### **5 Existing members other than Chairperson**

A person who, immediately before the commencement of the amendment to section 5 made by the amending Act, held office as a member of the Commission other than the Chairperson:

- (a) ceases to hold office as such on that commencement, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

### **6 Identity and status of Commission and certain acts not affected**

- (1) The amendment to section 5 made by the amending Act relating to the membership of the corporation constituted by this Act does not affect the identity or continuing status of that corporation.
- (2) Sections 17A and 17B extend to a person:
  - (a) who was required to do any act by a notice under section 17 as in force immediately before the commencement of the amendments made to section 17 by the amending Act, and
  - (b) who had not, before that commencement, claimed to be entitled to refuse to produce a document or thing that the person was required to produce by that notice.
- (3) Except to the extent provided by this Part, a provision of this Act, as in force immediately before its amendment by the amending Act, continues to apply to and in

respect of anything to which it then applied.

## **Part 4 Provisions relating to enactment of Schedule 3 to *Investigative Bodies Legislation Amendment Act 1997***

### **7 Definition**

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

### **8 Secrecy of identity and location of witness**

A reference in section 13, 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.

### **9 Conditional release**

- (1) Section 18AB only applies to any release ordered on or after the commencement of that section.
- (2) Section 18AC only applies to any decision, failure or order made or occurring on or after the commencement of that section.