

Independent Commission Against Corruption Act 1988 No 35

[1988-35]



New South Wales

Status Information

Currency of version

Historical version for 4 January 2013 to 2 April 2013 (accessed 16 February 2025 at 17:32)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

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

Notes—

- **See also**

[Independent Commission Against Corruption Amendment \(Disciplinary Proceedings\) Bill 2013](#)

[Independent Commission Against Corruption and Other Legislation Amendment Bill 2013](#)

Authorisation

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File last modified 14 March 2013

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New South Wales

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Independent Commission Against Corruption Act 1988 No 35



New South Wales

An Act to constitute the Independent Commission Against Corruption and to define its functions.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Independent Commission Against Corruption Act 1988*.

2 Commencement

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

2A Principal objects of Act

The principal objects of this Act are:

- (a) to promote the integrity and accountability of public administration by constituting an Independent Commission Against Corruption as an independent and accountable body:
 - (i) to investigate, expose and prevent corruption involving or affecting public authorities and public officials, and
 - (ii) to educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community, and
- (b) to confer on the Commission special powers to inquire into allegations of corruption.

3 Definitions

(1) In this Act:

Assistant Commissioner means an Assistant Commissioner for the Independent Commission Against Corruption.

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

Commission means the Independent Commission Against Corruption constituted by this Act.

Commissioner means the Commissioner for the Independent Commission Against Corruption.

compulsory examination means a compulsory examination under this Act.

conduct includes neglect, failure and inaction.

corrupt conduct has the meaning given by Part 3.

Inspector means the Inspector of the Independent Commission Against Corruption, appointed under this Act.

investigate includes examine.

investigation means an investigation under this Act, and (without limitation) includes a preliminary investigation referred to in section 20A.

Joint Committee means the joint committee called the Committee on the Independent Commission Against Corruption, constituted under this Act.

local government authority means a council or a county council within the meaning of the [Local Government Act 1993](#) or any person or body exercising all or any of the functions of such a council or county council.

member of staff of the Commission means:

- (a) a member of staff appointed by the Commissioner under section 104, or
- (b) a person whose services are made use of under section 104A or who performs services for the Commission under that section.

officer of the Commission means:

- (a) the Commissioner, or
- (b) an Assistant Commissioner, or
- (c) a member of staff of the Commission, or
- (d) a person engaged by the Commission under section 104B to provide the Commission with services, information or advice.

officer of the Inspector means the Inspector or a member of staff of the Inspector.

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

public authority includes the following:

- (a) a Government Department or the Teaching Service,
- (b) a statutory body representing the Crown,
- (c) a declared authority under the *Public Service Act 1979*,
- (d) a person or body 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 under the *Public Finance and Audit Act 1983*,
or
 - (ii) is required by or under any Act to be audited by the Auditor-General, or
 - (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 if requested to do so by a Minister of the Crown,
- (e) a local government authority,
- (f) the NSW Police Force,
- (g) a body, or the holder of an office, declared by the regulations to be a body or office within this definition.

public inquiry means a public inquiry under this Act.

public official means an individual having public official functions or acting in a public official capacity, and includes any of the following:

- (a) the Governor (whether or not acting with the advice of the Executive Council),
- (b) a person appointed to an office by the Governor,
- (c) a Minister of the Crown, a member of the Executive Council or a Parliamentary Secretary,
- (d) a member of the Legislative Council or of the Legislative Assembly,
- (e) a person employed by the President of the Legislative Council or the Speaker of the Legislative Assembly or both,

- (f) a judge, a magistrate or the holder of any other judicial office (whether exercising judicial, ministerial or other functions),
- (g) an officer or temporary employee of the Public Service or the Teaching Service,
- (h) an individual who constitutes or is a member of a public authority,
- (i) a person in the service of the Crown or of a public authority,
- (j) an individual entitled to be reimbursed expenses, from a fund of which an account mentioned in paragraph (d) of the definition of **public authority** is kept, of attending meetings or carrying out the business of any body constituted by an Act,
- (k) a member of the NSW Police Force,
- (k1) an accredited certifier within the meaning of the *Environmental Planning and Assessment Act 1979*,
- (l) the holder of an office declared by the regulations to be an office within this definition,
- (m) an employee of or any person otherwise engaged by or acting for or on behalf of, or in the place of, or as deputy or delegate of, a public authority or any person or body described in any of the foregoing paragraphs.

search warrant means a search warrant issued under this Act.

task force includes a body of persons that is similar to a task force, however the body is described.

(2) 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.

(3) Notes included in this Act do not form part of this Act.

Part 2 Constitution of Commission

4 Commission

- (1) There is constituted by this Act a corporation with the corporate name of the Independent Commission Against Corruption.
- (2) The Commission has the functions conferred or imposed on it by or under this or any other Act.
- (3) The functions of the Commission are exercisable by the Commissioner, and any act,

matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, shall be taken to have been done by the Commission.

- (4) A reference in this Act to a compulsory examination or public inquiry before the Commission or anything done or omitted by, to or in relation to the Commission includes a reference to a compulsory examination or public inquiry before, or a thing done or omitted by, to or in relation to, the Commissioner or another officer of the Commission having authority in the circumstances.

5 Commissioner

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

5A Veto of proposed appointment as Commissioner

- (1) A person is not to be appointed as Commissioner until:
 - (a) a proposal that the person be appointed has been referred to the Joint Committee under section 64A, and
 - (b) either the period that the Joint Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this section and section 64A, **appointment** includes re-appointment.

6 Assistant Commissioners

- (1) The Governor may, with the concurrence of the Commissioner, appoint one or more Assistant Commissioners for the Independent Commission Against Corruption.
- (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) An Assistant Commissioner shall assist the Commissioner, as the Commissioner requires.

Part 3 Corrupt conduct

7 Corrupt conduct

- (1) For the purposes of this Act, corrupt conduct is any conduct which falls within the description of corrupt conduct in either or both of subsections (1) and (2) of section 8, but which is not excluded by section 9.
- (2) Conduct comprising a conspiracy or attempt to commit or engage in conduct that would be corrupt conduct under section 8 (1) or (2) shall itself be regarded as corrupt conduct under section 8 (1) or (2).
- (3) Conduct comprising such a conspiracy or attempt is not excluded by section 9 if, had the conspiracy or attempt been brought to fruition in further conduct, the further conduct could constitute or involve an offence or grounds referred to in that section.

8 General nature of corrupt conduct

- (1) Corrupt conduct is:
 - (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
 - (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
 - (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
 - (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.
- (2) Corrupt conduct is also any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the exercise of official functions by any public official, any group or body of public officials or any public authority and which could involve any of the following matters:
 - (a) official misconduct (including breach of trust, fraud in office, nonfeasance, misfeasance, malfeasance, oppression, extortion or imposition),
 - (b) bribery,
 - (c) blackmail,

- (d) obtaining or offering secret commissions,
 - (e) fraud,
 - (f) theft,
 - (g) perverting the course of justice,
 - (h) embezzlement,
 - (i) election bribery,
 - (j) election funding offences,
 - (k) election fraud,
 - (l) treating,
 - (m) tax evasion,
 - (n) revenue evasion,
 - (o) currency violations,
 - (p) illegal drug dealings,
 - (q) illegal gambling,
 - (r) obtaining financial benefit by vice engaged in by others,
 - (s) bankruptcy and company violations,
 - (t) harbouring criminals,
 - (u) forgery,
 - (v) treason or other offences against the Sovereign,
 - (w) homicide or violence,
 - (x) matters of the same or a similar nature to any listed above,
 - (y) any conspiracy or attempt in relation to any of the above.
- (3) Conduct may amount to corrupt conduct under this section even though it occurred before the commencement of this subsection, and it does not matter that some or all of the effects or other ingredients necessary to establish such corrupt conduct occurred before that commencement and that any person or persons involved are no longer public officials.
- (4) Conduct committed by or in relation to a person who was not or is not a public official

may amount to corrupt conduct under this section with respect to the exercise of his or her official functions after becoming a public official.

- (5) Conduct may amount to corrupt conduct under this section even though it occurred outside the State or outside Australia, and matters listed in subsection (2) refer to:
 - (a) matters arising in the State or matters arising under the law of the State, or
 - (b) matters arising outside the State or outside Australia or matters arising under the law of the Commonwealth or under any other law.
- (6) The specific mention of a kind of conduct in a provision of this section shall not be regarded as limiting the scope of any other provision of this section.

9 Limitation on nature of corrupt conduct

- (1) Despite section 8, conduct does not amount to corrupt conduct unless it could constitute or involve:
 - (a) a criminal offence, or
 - (b) a disciplinary offence, or
 - (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official, or
 - (d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.
- (2) It does not matter that proceedings or action for such an offence can no longer be brought or continued, or that action for such dismissal, dispensing or other termination can no longer be taken.
- (3) For the purposes of this section:

applicable code of conduct means, in relation to:

- (a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations, or
- (b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.

criminal offence means a criminal offence under the law of the State or under any other law relevant to the conduct in question.

disciplinary offence includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary

action under any law.

- (4) Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.
- (5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commission identifies that law in the report.
- (6) A reference to a disciplinary offence in this section and sections 74A and 74B includes a reference to a substantial breach of an applicable requirement of a code of conduct required to be complied with under section 440 (5) of the *Local Government Act 1993*, but does not include a reference to any other breach of such a requirement.

10 Complaints about possible corrupt conduct

- (1) Any person may make a complaint to the Commission about a matter that concerns or may concern corrupt conduct.
- (2) The Commission may investigate a complaint or decide that a complaint need not be investigated.
- (3) The Commission may discontinue an investigation of a complaint.
- (4) If a prisoner informs the governor of the prison that the prisoner wishes to make a complaint under this section, the governor of the prison must:
 - (a) take all steps necessary to facilitate the making of the complaint, and
 - (b) send immediately to the Commission, unopened, any written matter addressed to the Commission.
- (5) For the purposes of subsection (4), **prisoner** and **governor of a prison** have the same meanings as **inmate** and **governor** have in the *Crimes (Administration of Sentences) Act 1999*.

11 Duty to notify Commission of possible corrupt conduct

- (1) This section applies to the following persons:
 - (a) the Ombudsman,
 - (b) the Commissioner of Police,

- (c) the principal officer of a public authority,
 - (d) an officer who constitutes a public authority,
 - (e) a Minister of the Crown.
- (2) A person to whom this section applies is under a duty to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct.
- (2A) Despite subsection (2), the Commissioner of Police is not under a duty to report to the Commission any matter that concerns or may concern corrupt conduct of a police officer or administrative officer (within the meaning of the *Police Integrity Commission Act 1996*) unless the Commissioner of Police suspects on reasonable grounds that the matter also concerns or may concern corrupt conduct of another public official.
- (2B) Despite subsection (2), the Commissioner for the New South Wales Crime Commission (***the Crime Commissioner***) is not under a duty to report to the Commission any matter that concerns or may concern corrupt conduct of a Crime Commission officer (within the meaning of the *Police Integrity Commission Act 1996*) unless the Crime Commissioner suspects on reasonable grounds that the matter also concerns or may concern corrupt conduct of another public official.
- (3) The Commission may issue guidelines as to what matters need or need not be reported.
- (3A) A Minister of the Crown who is under a duty under this section to report a matter may (despite subsection (2)) report the matter either to the Commission or to the head of any agency responsible to the Minister.
- (4) This section has effect despite any duty of secrecy or other restriction on disclosure.
- (5) The regulations may prescribe who is the principal officer of a public authority, but in the absence of regulations applying in relation to a particular public authority, the principal officer is the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.
- (6) The regulations may prescribe the principal officer of a separate office within a public authority as the principal officer of the public authority in relation to matters concerning the separate office.

Part 4 Functions of Commission

Division 1 Functions generally

12 Public interest to be paramount

In exercising its functions, the Commission shall regard the protection of the public

interest and the prevention of breaches of public trust as its paramount concerns.

12A Serious corrupt conduct and systemic corrupt conduct

In exercising its functions, the Commission is, as far as practicable, to direct its attention to serious corrupt conduct and systemic corrupt conduct and is to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.

13 Principal functions

(1) The principal functions of the Commission are as follows:

- (a) to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:
 - (i) corrupt conduct, or
 - (ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct, or
 - (iii) conduct connected with corrupt conduct,may have occurred, may be occurring or may be about to occur,
- (b) to investigate any matter referred to the Commission by both Houses of Parliament,
- (c) to communicate to appropriate authorities the results of its investigations,
- (d) to examine the laws governing, and the practices and procedures of, public authorities and public officials, in order to facilitate the discovery of corrupt conduct and to secure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corrupt conduct,
- (e) to instruct, advise and assist any public authority, public official or other person (on the request of the authority, official or person) on ways in which corrupt conduct may be eliminated,
- (f) to advise public authorities or public officials of changes in practices or procedures compatible with the effective exercise of their functions which the Commission thinks necessary to reduce the likelihood of the occurrence of corrupt conduct,
- (g) to co-operate with public authorities and public officials in reviewing laws, practices and procedures with a view to reducing the likelihood of the occurrence of corrupt conduct,
- (h) to educate and advise public authorities, public officials and the community on strategies to combat corrupt conduct,

- (i) to educate and disseminate information to the public on the detrimental effects of corrupt conduct and on the importance of maintaining the integrity of public administration,
 - (j) to enlist and foster public support in combating corrupt conduct,
 - (k) to develop, arrange, supervise, participate in or conduct such educational or advisory programs as may be described in a reference made to the Commission by both Houses of Parliament.
- (1A) Subsection (1) (d) and (f)–(h) do not extend to the conduct of police officers, Crime Commission officers or administrative officers within the meaning of the *Police Integrity Commission Act 1996*.
- (2) The Commission is to conduct its investigations with a view to determining:
- (a) whether any corrupt conduct, or any other conduct referred to in subsection (1) (a), has occurred, is occurring or is about to occur, and
 - (b) whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct, and
 - (c) whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct.
- (2A) Subsection (2) (a) does not require the Commission to make a finding, on the basis of any investigation, that corrupt conduct, or other conduct, has occurred, is occurring or is about to occur.
- (3) The principal functions of the Commission also include:
- (a) the power to make findings and form opinions, on the basis of the results of its investigations, in respect of any conduct, circumstances or events with which its investigations are concerned, whether or not the findings or opinions relate to corrupt conduct, and
 - (b) the power to formulate recommendations for the taking of action that the Commission considers should be taken in relation to its findings or opinions or the results of its investigations.
- (3A) The Commission may make a finding that a person has engaged or is engaging in corrupt conduct of a kind described in paragraph (a), (b), (c) or (d) of section 9 (1) only if satisfied that a person has engaged in or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.
- (4) The Commission is not to make a finding, form an opinion or formulate a

recommendation which section 74B (Report not to include findings etc of guilt or recommending prosecution) prevents the Commission from including in a report, but section 9 (5) and this section are the only restrictions imposed by this Act on the Commission's powers under subsection (3).

- (5) The following are examples of the findings and opinions permissible under subsection (3) but do not limit the Commission's power to make findings and form opinions:
- (a) findings that particular persons have engaged, are engaged or are about to engage in corrupt conduct,
 - (b) opinions as to:
 - (i) whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or
 - (ii) whether consideration should or should not be given to the taking of other action against particular persons,
 - (c) findings of fact.

14 Other functions of Commission

- (1) Other functions of the Commission are as follows:
- (a) to gather and assemble, during or after the discontinuance or completion of its investigations, evidence that may be admissible in the prosecution of a person for a criminal offence against a law of the State in connection with corrupt conduct and to furnish such evidence to the Director of Public Prosecutions,
 - (b) to furnish, during or after the discontinuance or completion of its investigations, other evidence obtained in the course of its investigations (being evidence that may be admissible in the prosecution of a person for a criminal offence against a law of another State, the Commonwealth or a Territory) to the Attorney General or to the appropriate authority of the jurisdiction concerned.
- (1A) Evidence of the kind referred to in subsection (1) (b) may be accompanied by any observations that the Commission considers appropriate and (in the case of evidence furnished to the Attorney General) recommendations as to what action the Commission considers should be taken in relation to the evidence.
- (1B) A copy or detailed description of any evidence furnished to the appropriate authority of another jurisdiction, together with a copy of any accompanying observations, is to be furnished to the Attorney General.
- (2) If the Commission obtains any information in the course of its investigations relating to the exercise of the functions of a public authority, the Commission may, if it

considers it desirable to do so:

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

(2A) A copy of any information or report furnished to a public authority under subsection (2), together with a copy of any such recommendation, is to be furnished to the Minister for the authority.

(3) If the Commission furnishes any evidence or information to a person under this section on the understanding that the information is confidential, the person is subject to the secrecy provisions of section 111 in relation to the information.

15 Task forces

The Commission may, in connection with its principal functions:

- (a) arrange for the establishment of task forces within the State, and
- (b) seek the establishment of joint task forces with authorities of the Commonwealth or other States or Territories, and
- (c) co-operate with State task forces, Commonwealth task forces, joint task forces or other task forces, and
- (d) co-ordinate or co-operate in co-ordinating any such task forces.

16 Co-operation with other agencies

(1) In exercising its principal functions relating to the investigation of conduct, the Commission:

- (a) shall, as far as practicable, work in co-operation with law enforcement agencies, and
- (b) may work in co-operation with the Auditor-General, the Ombudsman, the Australian Crime Commission, the Australian Bureau of Criminal Intelligence and such other persons and bodies as the Commission thinks appropriate.

(2) In exercising its other principal functions, the Commission shall, as far as practicable, work in co-operation with the Auditor-General, the Ombudsman, educational institutions, management consultants and such other persons and bodies as the Commission thinks appropriate.

(3) The Commission may consult with and disseminate intelligence and information to law

enforcement agencies, the Australian Crime Commission, the Australian Bureau of Criminal Intelligence and such other persons and bodies (including any task force and any member of a task force) as the Commission thinks appropriate.

- (4) If the Commission disseminates information to a person or body under this section on the understanding that the information is confidential, the person or body is subject to the secrecy provisions of section 111 in relation to the information.
- (5) In this section:

law enforcement agency means:

- (a) the NSW Police Force, or
- (b) a police force of another State or Territory, or
- (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.

17 Evidence and procedure

- (1) 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.
- (2) The Commission shall exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission shall accept written submissions as far as is possible and compulsory examinations and public inquiries shall be conducted with as little emphasis on an adversarial approach as is possible.
- (3) Despite subsection (1), section 127 (Religious confessions) of the [Evidence Act 1995](#) applies to any compulsory examination or public inquiry before the Commission.

18 Court proceedings

- (1) The Commission may do any or all of the following:
 - (a) commence, continue, discontinue or complete any investigation,
 - (b) furnish reports in connection with any investigation,
 - (c) do all such acts and things as are necessary or expedient for those purposes,despite any proceedings that may be in or before any court, tribunal, coroner, Magistrate or other person.
- (2) If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commission must, to the extent to which the Commission thinks it necessary to do so to ensure that the accused's right to a fair trial is not

prejudiced:

- (a) ensure that, as far as practicable, the investigation is conducted in private during the currency of the proceedings, and
- (b) give directions under section 112, having effect during the currency of the proceedings, and
- (c) defer making a report to Parliament in relation to the investigation during the currency of the proceedings.

(2A) Subsection (2) does not apply:

- (a) (in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings, and
- (b) (in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.

(3) This section has effect whether or not the proceedings commenced before or after the relevant investigation commenced and has effect whether or not the Commission or an officer of the Commission is a party to the proceedings.

19 Incidental powers

- (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) The Commission or an officer of the Commission may seek the issue of a warrant under the [Surveillance Devices Act 2007](#).

Division 2 Investigations

20 Investigations generally

- (1) The Commission may conduct an investigation on its own initiative, on a complaint made to it, on a report made to it or on a reference made to it.
- (2) The Commission may conduct an investigation even though no particular public official or other person has been implicated.
- (3) The Commission may, in considering whether or not to conduct, continue or discontinue an investigation (other than in relation to a matter referred by both Houses of Parliament), have regard to such matters as it thinks fit, including whether or not (in the Commission's opinion):

- (a) the subject-matter of the investigation is trivial, or
 - (b) the conduct concerned occurred at too remote a time to justify investigation, or
 - (c) if the investigation was initiated as a result of a complaint—the complaint was frivolous, vexatious or not in good faith.
- (4) (Repealed)
- (5) If the Commission decides to discontinue or not to commence an investigation of a complaint or report made to it, the Commission must inform the complainant or officer who made the report in writing of its decision and the reasons for it.

20A Preliminary investigations

- (1) An investigation may be in the nature of a preliminary investigation.
- (2) A preliminary examination can be conducted, for example, for the purpose of assisting the Commission:
- (a) to discover or identify conduct that might be made the subject of a more complete investigation under this Act, or
 - (b) to decide whether to make particular conduct the subject of a more complete investigation under this Act.
- (3) Nothing in this section affects any other provision of this Act.

21 Power to obtain information

- (1) For the purposes of an investigation, the Commission may, by notice in writing served on a public authority or public official, require the authority or official to produce a statement of information.
- (2) A notice under this section must specify or describe the information concerned, must fix a time and date for compliance and must specify the person (being the Commissioner, an Assistant Commissioner or any other officer of the Commission) to whom the production is to be made.
- (3) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the public authority or public official and may, but need not, specify the person or class of persons who may so act.

22 Power to obtain documents etc

- (1) For the purposes of an investigation, the Commission may, by notice in writing served on a person (whether or not a public authority or public official), require the person:
- (a) to attend, at a time and place specified in the notice, before a person (being the

Commissioner, an Assistant Commissioner or any other officer of the Commission) specified in the notice, and

(b) to produce at that time and place to the person so specified a document or other thing specified in the notice.

(2) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the person on whom it was imposed and may, but need not, specify the person or class of persons who may so act.

23 Power to enter public premises

(1) For the purposes of an investigation, the Commissioner or an officer of the Commission authorised in writing by the Commissioner may, at any time:

(a) enter and inspect any premises occupied or used by a public authority or public official in that capacity, and

(b) inspect any document or other thing in or on the premises, and

(c) take copies of any document in or on the premises.

(2) (Repealed)

(3) The public authority or public official shall make available to the Commissioner or authorised officer such facilities as are necessary to enable the powers conferred by this section to be exercised.

24 Privilege as regards information, documents etc

(1) This section applies where, under section 21 or 22, the Commission requires any person:

(a) to produce any statement of information, or

(b) to produce any document or other thing.

(2) The Commission shall set aside the requirement if it appears to the Commission that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commission that the person consents to compliance with the requirement.

(3) The person must however comply with the requirement despite:

(a) any rule which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest, or

(b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law, or

- (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

25 Privilege as regards entry on public premises

- (1) This section applies to the powers of entry, inspection and copying conferred by section 23.
- (2) The powers shall not be exercised if it appears to the Commissioner or authorised officer that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist inspection of the premises or production of the document or other thing and it does not appear to the Commissioner or authorised officer that the person consents to the inspection or production.
- (3) The powers may however be exercised despite:
 - (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or other thing on grounds of public interest, or
 - (b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law, or
 - (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

26 Self-incrimination

- (1) This section applies where, under section 21 or 22, the Commission requires any person:
 - (a) to produce any statement of information, or
 - (b) to produce any document or other thing.
- (2) If the statement, document or other thing tends to incriminate the person and the person objects to production at the time, neither the fact of the requirement nor the statement, document or thing itself (if produced) may be used in any proceedings against the person (except proceedings for an offence against this Act).
- (3) They may however be used for the purposes of the investigation concerned, despite any such objection.

27 Injunctions

The Supreme Court may, on application made by the Commission, grant an injunction restraining any conduct in which a person (whether or not a public authority or public official) is engaging or in which such a person appears likely to engage, if the conduct is the subject of, or affects the subject of, an investigation or proposed investigation by the

Commission.

28 Provisions relating to injunctions

- (1) The Supreme Court shall not grant an injunction under section 27 unless it is of the opinion that:
 - (a) the conduct sought to be restrained is likely to impede the conduct of the investigation or proposed investigation, or
 - (b) it is necessary to restrain the conduct in order to prevent irreparable harm being done because of corrupt conduct or suspected corrupt conduct.
- (2) The Commission shall not be required, as a condition for the granting of an injunction under section 27, to give any undertaking as to damages.

29 Powers exercisable whether or not compulsory examination or public inquiry being held

Powers may be exercised under this Division in relation to an investigation whether or not a compulsory examination or public inquiry before the Commission is being held for the purposes of the investigation.

Division 3 Compulsory examinations and public inquiries

30 Compulsory examinations

- (1) For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a compulsory examination.
- (2) A compulsory examination is to be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner.
- (3) A person required to attend a compulsory examination is entitled to be informed, before or at the commencement of the compulsory examination, of the nature of the allegation or complaint being investigated.
- (4) A failure to comply with subsection (3) does not invalidate or otherwise affect the compulsory examination.
- (5) A compulsory examination is to be conducted in private.

Note—

Section 17 (2) requires the Commission to conduct compulsory examinations with as little emphasis on an adversarial approach as possible.

- (6) The Commission may (but is not required to) advise a person required to attend a compulsory examination of any findings it has made or opinions it has formed as a result of the compulsory examination.

31 Public inquiries

- (1) For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a public inquiry.
- (2) Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission is to consider the following:
 - (a) the benefit of exposing to the public, and making it aware, of corrupt conduct,
 - (b) the seriousness of the allegation or complaint being investigated,
 - (c) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry),
 - (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.
- (3) An Assistant Commissioner may determine to conduct a public inquiry only with the concurrence of the Commissioner. However, concurrence is not required if the Commissioner would or might have a conflict of interest in relation to the inquiry.

Note—

Powers of the Commission under this Division may be delegated to an Assistant Commissioner under section 107 (5) (e).

- (4) A public inquiry is to be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner.
- (5) At a public inquiry, the person presiding must announce the general scope and purpose of the inquiry.
- (6) A person required to attend a public inquiry is entitled to be informed of the general scope and purpose of the public inquiry and the nature of the allegation or complaint being investigated before or at the time the person is required to appear at the inquiry.
- (7) A failure to comply with subsection (6) does not invalidate or otherwise affect the public inquiry.
- (8) A public inquiry is to be held in public.
- (9) Despite subsection (8), the Commission may decide to hold part of the inquiry in private if it considers this to be in the public interest.
- (10) Without limiting subsection (9), the Commission may decide to hear closing submissions in private. This extends to a closing submission by a person appearing before the Commission or an Australian legal practitioner representing such a person,

as well as to a closing submission by an Australian legal practitioner assisting the Commission as counsel.

Note—

Section 17 (2) requires the Commission to conduct public inquiries with as little emphasis on an adversarial approach as possible.

31A Directions as to presence of persons at compulsory examinations and public inquiries

The Commissioner may give directions as to the persons who may be present at a compulsory examination or any part of a public inquiry that is held in private. A person must not be present in contravention of any such direction.

Note—

It is an offence to contravene a direction under section 31A—see section 85.

32 Right of appearance of affected person

If it is shown to the satisfaction of the Commission that any person is substantially and directly interested in any subject-matter of a public inquiry, the Commission may authorise the person to appear at the public inquiry or a specified part of the public inquiry.

33 Legal representation

(1) The Commission may, in relation to a compulsory examination or public inquiry, authorise:

- (a) a person giving evidence at the compulsory examination or public inquiry, or
- (b) a person referred to in section 32,

to be represented by an Australian legal practitioner at the compulsory examination or public inquiry or a specified part of the compulsory examination or public inquiry.

(2) The Commission is required to give a reasonable opportunity for a person giving evidence at the compulsory examination or public inquiry to be legally represented.

(3) An Australian legal practitioner appointed by the Commission to assist it may appear before the Commission.

33A Groups and unincorporated associations

(1) A group or unincorporated association may be authorised to appear at a compulsory examination or public inquiry or authorised or required to give evidence at a compulsory examination or public inquiry.

(2) Accordingly, references in sections 32 and 33, and in other provisions of this Act, to a “person” extend for this purpose to a group or unincorporated association.

- (3) However, this section does not affect the application in any other context of the principle that a reference to a word in the singular form includes a reference to the word in the plural form.

34 Examination and cross-examination

- (1) An Australian legal practitioner appointed by the Commission to assist it, or a person or a person's Australian legal practitioner authorised to appear at a compulsory examination or public inquiry, may, with the leave of the Commission, examine or cross-examine any witness on any matter that the Commission considers relevant.
- (2) Any witness so examined or cross-examined has the same protection and is subject to the same liabilities as if examined by the Commissioner or an Assistant Commissioner.

35 Power to summon witnesses and take evidence

- (1) The Commissioner may summon a person to appear before the Commission at a compulsory examination or public inquiry at a time and place named in the summons (the **required appearance**):
- (a) to give evidence, or
 - (b) to produce such documents or other things (if any) as are referred to in the summons,
- or both.
- (2) The person presiding at a compulsory examination or public inquiry before the Commission may require a person appearing at the compulsory examination or public inquiry to produce a document or other thing.
- (3) The Commission may, at a compulsory examination or public inquiry, take evidence on oath or affirmation and for that purpose:
- (a) the person presiding at the compulsory examination or public inquiry may require a person appearing at the compulsory examination or public inquiry to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) the person presiding, or a person authorised for the purpose by the person presiding, may administer an oath or affirmation to a person so appearing at the compulsory examination or public inquiry.
- (4) A witness who has been summoned to appear before the Commission shall appear and report himself or herself from day to day unless the witness is excused from appearance or until the witness is released from further appearance by the person presiding at the compulsory examination or public inquiry.

- (4A) The Commissioner may, by notice in writing, excuse a person who has been summoned to appear before the Commission and produce documents or other things from the required appearance on condition that the person (or a person acting on the person's behalf) produces those documents or things in accordance with any directions given by the Commissioner before the time of the the required appearance.
- (5) A person who, without being excused or released under subsection (4) or (4A), fails to appear and report shall be taken to have failed to appear before the Commission in obedience to the summons.
- (5A) A person who, after being excused under subsection (4A) from the required appearance, fails to produce the documents or things concerned in accordance with the Commissioner's directions is taken to have failed to appear before the Commission in obedience to the summons.
- (6) A Judge or Magistrate may, on the application of the Commissioner, issue any summons that the Commissioner is authorised to issue under this section.
- (7) The purpose of subsection (6) is to enable the summons to be given the character of a summons issued by a judicial officer, for the purposes of the *Service and Execution of Process Act 1901* of the Commonwealth and any other relevant law.

36 Arrest of witness

- (1) If a person served with a summons to attend the Commission as a witness fails to attend in answer to the summons, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness.
- (2) If the Commissioner is satisfied by evidence on oath or affirmation that it is probable that a person whose evidence is desired and is necessary and relevant to an investigation under this Act:
- (a) will not attend before the Commission to give evidence without being compelled to do so, or
 - (b) is about to or is making preparations to leave the State and the person's evidence will not be obtained by the Commission if the person departs,
- the Commissioner may issue a warrant for the arrest of the person.
- (3) The Commissioner is authorised to administer an oath or affirmation for the purposes of subsection (2).
- (4) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.
- (5) A warrant may be issued under subsection (2) after the issue of a summons to the

person whose evidence is desired, even though the time named in the summons for the person to attend has not yet passed.

- (6) A warrant under this section authorises the arrest of the witness and his or her being promptly brought before the Commission and detained in a prison or elsewhere for that purpose until released by order of the Commissioner.
- (7) A warrant issued under this section may be executed by any member of the NSW Police Force, or by any person to whom it is addressed, and the person executing it may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.
- (8) The issue of a warrant or the arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with a summons.

36A Conditional release of witness

- (1) The release of a witness by order of the Commissioner under section 36 (6) may (but need not) be made subject to one or more of the following conditions (or any other conditions):
 - (a) that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the person presiding at the relevant compulsory examination or public inquiry of the Commission, and
 - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

36B Review by Supreme Court

- (1) A witness who has not been released by the Commissioner under section 36 (6) 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.

37 Privilege as regards answers, documents etc

- (1) A witness summoned to attend or appearing before the Commission at a compulsory examination or public inquiry is not entitled to refuse:
- (a) to be sworn or to make an affirmation, or
 - (b) to answer any question relevant to an investigation put to the witness by the Commissioner or other person presiding at a compulsory examination or public inquiry, or
 - (c) to produce any document or other thing in the witness's custody or control which the witness is required by the summons or by the person presiding to produce.
- (2) A witness summoned to attend or appearing before the Commission at a compulsory examination or public inquiry is not excused from answering any question or producing any document or other 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.
- (3) An answer made, or document or other thing produced, by a witness at a compulsory examination or public inquiry before the Commission or in accordance with a direction given by the Commissioner under section 35 (4A) 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.
- (4) Nothing in this section makes inadmissible:
- (a) any answer, document or other thing in proceedings for an offence against this Act or in proceedings for contempt under this Act, or
 - (b) any answer, document or other 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 (2), or
 - (c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.
- (5) Where:
- (a) an Australian legal practitioner or other person is required to answer a question or produce a document or other thing at a compulsory examination or public inquiry before the Commission or in accordance with a direction given by the Commissioner under section 35 (4A), and

(b) the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between an Australian legal practitioner (in his or her capacity as an Australian legal practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a compulsory examination or public inquiry before the Commission,

the Australian 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.

(6) (Repealed)

38 Declaration as to objections by witness

The Commissioner or person presiding at the compulsory examination or public inquiry 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.

39 Attendance of prisoner before Commission

- (1) If the Commissioner requires the attendance at a compulsory examination or public inquiry before the Commission of a prisoner, the Commissioner may, by order in writing served on the governor of the prison in whose custody the prisoner is, direct the governor to produce the prisoner, or have the prisoner produced, at the time and place stated in the order.
- (2) Such an order is sufficient authority to the governor of the prison for producing or having produced the prisoner, who shall be produced accordingly.
- (3) A prisoner shall, when produced under this section in the actual custody of the governor of the prison, a prison officer or a member of the NSW Police Force, be taken to be in lawful custody.
- (4) The governor, prison officer or member of the NSW Police Force shall in due course return the prisoner to the prison.
- (5) In this section, **governor of a prison**, **prison** and **prisoner** have the same meanings as **governor**, **correctional centre** and **inmate** have in the [Crimes \(Administration of Sentences\) Act 1999](#).

Division 4 Search warrants

40 Issue of search warrant

- (1) An authorised officer to whom an application is made under subsection (4) may issue a search warrant if satisfied that there are reasonable grounds for doing so.

- (2) The Commissioner, on application made to the Commissioner under subsection (4), may issue a search warrant if the Commissioner thinks fit in the circumstances and is satisfied that there are reasonable grounds for doing so.
- (3) Search warrants should, as far as practicable, be issued by authorised officers, but nothing in this subsection affects the discretion of the Commissioner to issue them.
- (4) An officer of the Commission may apply to an authorised officer or the Commissioner for a search warrant if the officer has reasonable grounds for believing that there is in or on any premises a document or other thing connected with any matter that is being investigated under this Act or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises.

41 Authority conferred by warrant

- (1) A search warrant authorises any member of the NSW Police Force, or any other person, named in the warrant:
 - (a) to enter the premises, and
 - (b) to search the premises for documents or other things connected with any matter that is being investigated under this Act, and
 - (c) to seize any such documents or other things found in or on the premises and deliver them to the Commission.
- (2) A member of the NSW Police Force, or a senior Commission investigator, named in and executing a search warrant may search a person found in or on the premises whom the member of the NSW Police Force or senior Commission investigator reasonably suspects of having a document or other thing mentioned in the warrant.
- (3) In this section:

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

42 Duty to show warrant

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

43 Use of force

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

of the search.

44 Use of assistants to execute warrant

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

45 Execution of warrant by day or night

(1) A search warrant may be executed by day, but shall not be executed by night unless the person issuing the warrant, by the warrant, authorises its execution by night.

(2) In this section:

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

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

46 Expiry of warrant

A search warrant ceases to have effect:

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

whichever first occurs.

47 Seizure pursuant to warrant—special provisions

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

(a) the person executing the warrant finds a document or other thing that the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an indictable offence against the law of the Commonwealth, a State or a Territory, and

(b) the first-mentioned person believes on reasonable grounds that it is necessary to seize the document or other thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence,

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

(2) If a document or other thing is seized pursuant to a search warrant:

(a) the Commission may retain the document or other thing if, and for so long as, its

retention by the Commission is reasonably necessary for the purposes of an investigation to which it is relevant, and

- (b) if the retention of the document or other thing by the Commission is not, or ceases to be, reasonably necessary for such purposes, the Commission shall cause it to be delivered to:
 - (i) the person who appears to the Commission to be entitled to possession of the document or other thing, or
 - (ii) the Attorney General or the Director of Public Prosecutions, with a recommendation as to what action should be taken in relation to the document or other thing.

48 Search warrants

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

Division 4A Disposal of property

48A Application to property

This Division applies to property:

- (a) that is lawfully in the custody of the Commission in connection with an investigation, and
- (b) is not required for the purposes of an investigation or a criminal prosecution or disciplinary or other proceeding.

48B Disposal of property on application to court

- (1) The Commission may apply to a court for an order under this Division in relation to property to which this Division applies if it appears to the Commission that no person is lawfully entitled to the property.
- (2) A court to which such an application is made may order that the property be dealt with as the court thinks fit.
- (3) Without limiting subsection (2), in determining an application a court may:
 - (a) order that the property be forfeited to the Crown, and

(b) make any necessary incidental or ancillary orders.

(4) Property ordered to be forfeited to the Crown:

(a) if money, is to be paid to the Treasurer for payment into the Consolidated Fund, or

(b) in any other case, may be sold by or on behalf of the Commissioner at public auction and the proceeds of sale paid to the Treasurer for payment into the Consolidated Fund.

(5) If the property is not money or is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commissioner.

48C Application to Treasurer for recovery of money or proceeds of sale

A person who is lawfully entitled to any property that has been dealt with in accordance with this Division may recover from the Treasurer the money or proceeds of sale held by the Treasurer. This Act authorises the Treasurer to pay the amount out of the Consolidated Fund (which is appropriated to the necessary extent).

48D Courts having jurisdiction under this Division

The court to which an application under this Division may be made is:

(a) the Local Court, if the estimated value of the property (or the amount of the money) does not exceed \$40,000, or

(b) the District Court, if the estimated value of the property (or the amount of the money) exceeds \$40,000 but does not exceed \$250,000, or

(c) the Supreme Court, if the estimated value of the property (or the amount of the money) exceeds \$250,000.

Division 5 Miscellaneous

49 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 compulsory examination or public inquiry conducted by the Commission or any other investigative activity involving the Commission or an officer of the Commission.

50 Protection of witnesses and persons assisting Commission

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

without reasonable excuse is guilty of an indictable offence.

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

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

51 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 an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the Commission determines.

52 Legal and financial assistance for witness

- (1) A witness who is appearing or about to appear before the Commission may apply to the Attorney General for legal or financial assistance.
- (2) The Attorney General may approve the provision of legal or financial assistance to the applicant if of the opinion that this is appropriate, having regard to any one or more of the following:
 - (a) the prospect of hardship to the witness if assistance is declined,
 - (b) the significance of the evidence that the witness is giving or appears likely to give,
 - (c) any other matter relating to the public interest.
- (3) On giving the approval, the Attorney General may authorise the provision to the witness of legal or financial assistance determined by the Attorney General in respect of the witness's appearance before the Commission. The assistance is to be provided out of money provided by Parliament for the purpose.
- (4) The assistance may be provided unconditionally or subject to conditions determined by the Attorney General.
- (5) The Attorney General may delegate one or more of his or her functions under this section to the Director-General of the Attorney General's Department.

Part 5 Referral of matters by Commission

53 Referral of matter

- (1) The Commission may, before or after investigating a matter (whether or not the investigation is completed, and whether or not the Commission has made any findings), refer the matter for investigation or other action to any person or body considered by the Commission to be appropriate in the circumstances.
- (2) The person or body to whom a matter is referred is called in this Part a **relevant**

authority.

- (3) The Commission may, when referring a matter, recommend what action should be taken by the relevant authority and the time within which it should be taken.
- (4) The Commission may communicate to the relevant authority any information which the Commission has obtained during the investigation of conduct connected with the matter.
- (5) The Commission shall not refer a matter to a person or body except after appropriate consultation with the person or body and after taking into consideration the views of the person or body.
- (6) If the Commission communicates information to a person or body under this section on the understanding that the information is confidential, the person or body is subject to the secrecy provisions of section 111 in relation to the information.

54 Report to Commission

- (1) The Commission may, when referring a matter under this Part, require the relevant authority to submit to the Commission a report or reports in relation to the matter and the action taken by the relevant authority.
- (2) A report shall be of such a nature as the Commission directs.
- (3) A report shall be submitted to the Commission within such time as the Commission directs.

55 Further action by Commission

- (1) If the Commission is not satisfied that a relevant authority has duly and properly taken action in connection with a matter referred under this Part, the Commission shall inform the relevant authority of the grounds of the Commission's dissatisfaction and shall give the relevant authority an opportunity to comment within a specified time.
- (2) If, after considering any comments received from the relevant authority within the specified time, the Commission is still not satisfied, the Commission may submit a report to the Minister for the relevant authority setting out the recommendation concerned and the grounds of dissatisfaction, together with any comments from the relevant authority and the Commission.
- (3) If, after considering any comments received from the Minister for the authority within 21 days after the report was submitted to that Minister under subsection (2), the Commission is still of the opinion that the recommendation should be adopted, the Commission may make a report as referred to in section 77.

56 Responsibility of relevant authority

It is the duty of a relevant authority to comply with any requirement or direction of the Commission under this Part.

57 Revocation of referral, recommendation etc

- (1) The Commission may revoke a referral under this Part.
- (2) The Commission may revoke or vary a recommendation, requirement or direction of the Commission under this Part.
- (3) The Commission may vary any time within which a requirement under this Part is to be complied with.

Part 5A Inspector of the Independent Commission Against Corruption

57A Inspector of the Independent Commission Against Corruption

- (1) **Appointment** The Governor may appoint an Inspector of the Independent Commission Against Corruption.
- (2) **Schedule of provisions relating to Inspector** Schedule 1A has effect.

57B Principal functions of Inspector

- (1) The principal functions of the Inspector are:
 - (a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
 - (b) to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
 - (c) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and
 - (d) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.
- (2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Joint Committee or any public authority or public official.
- (3) The Inspector is not subject to the Commission in any respect.

- (4) For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:
- (a) contrary to law, or
 - (b) unreasonable, unjust, oppressive or improperly discriminatory, or
 - (c) based wholly or partly on improper motives.
- (5) Without affecting the power of the Inspector to make a report under Part 8, the Inspector may, at any time:
- (a) make a recommendation or report concerning any matter relating to the functions of the Inspector under this section that the Inspector considers may effectively be dealt with by recommendation or report under this section, and
 - (b) provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any other affected person.

57C Powers of Inspector

The Inspector:

- (a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and
- (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and
- (c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and
- (d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and
- (e) may investigate and assess complaints about the Commission or officers of the Commission, and
- (f) may refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and
- (g) may recommend disciplinary action or criminal prosecution against officers of the Commission.

57D Inquiries

- (1) For the purposes of the Inspector's functions, the Inspector may make or hold inquiries.
- (2) For the purposes of any inquiry under this section, the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923* and that Act (section 13 excepted) applies to any witness summoned by or appearing before the Inspector in the same way as it applies to a witness summoned by or appearing before a commissioner.
- (3) A witness summoned by or appearing before the Inspector is to be paid such amount as the Inspector determines, but not exceeding the amount that would be payable to such a witness if he or she were a Crown witness subpoenaed by the Crown to give evidence.

57E Staff of Inspector

- (1) Such staff as may be necessary to assist the Inspector may be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) The Inspector may also employ staff. Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of any such staff.
- (3) The Inspector may engage persons as consultants to the Inspector or to perform services for the Inspector.
- (4) The Inspector may arrange for the use of the services of:
 - (a) any staff or facilities of the Commission, a Department or a local or public authority, or
 - (b) any staff who are employed by or for or assigned to the person who is Inspector, in his or her capacity as the holder of some other position (for example, as a Judge).
- (4A) The Department Head of a Department in which staff of the Inspector are employed may delegate to the Inspector or a member of staff of the Inspector any of the Department Head's functions under the *Public Sector Employment and Management Act 2002* with respect to those staff (other than this power of delegation).
- (5) Such provisions of this Act as are prescribed by the regulations apply to persons referred to in subsections (1)–(4) in the same way as they apply to staff of the Commission, with any necessary adaptations and with such modifications as are prescribed.
- (6) In this section:

Department has the same meaning as in the *Public Sector Employment and Management Act 2002*.

Department Head has the same meaning as in the *Public Sector Employment and Management Act 2002*.

57F Incidental powers

- (1) The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions. Any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this section.
- (2) Section 40 of the *Surveillance Devices Act 2007* does not apply to the use, publication or communication of protected information within the meaning of that Act in relation to the exercise of the Inspector's functions under section 57B.

57G Former officers of the Commission

For the avoidance of doubt, a reference in any other provision of this Part to an officer of the Commission includes a reference to a former officer of the Commission.

Part 6

58-62 (Repealed)

Part 7 Parliamentary Joint Committee

63 Constitution of Joint Committee

As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Independent Commission Against Corruption, shall be appointed.

64 Functions

- (1) The functions of the Joint Committee are as follows:
 - (a) to monitor and to review the exercise by the Commission and the Inspector of the Commission's and Inspector's functions,
 - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or the Inspector or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,
 - (c) to examine each annual and other report of the Commission and of the Inspector and report to both Houses of Parliament on any matter appearing in, or arising out

of, any such report,

- (d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector,
- (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

(2) Nothing in this Part authorises the Joint Committee:

- (a) to investigate a matter relating to particular conduct, or
- (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint, or
- (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint.

64A Power to veto proposed appointment of Commissioner or Inspector

- (1) The Minister is to refer a proposal to appoint a person as Commissioner or Inspector to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.
- (2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.
- (3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.
- (4) A referral or notification under this section is to be in writing.

65 Membership

- (1) The Joint Committee shall consist of 11 members, of whom:
 - (a) 3 shall be members of, and appointed by, the Legislative Council, and
 - (b) 8 shall be members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the Joint Committee shall, as far as practicable, be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.

- (3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

66 Vacancies

- (1) A member of the Joint Committee ceases to hold office:
- (a) when the Legislative Assembly is dissolved or expires by the effluxion of time, or
 - (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or
 - (c) if the member ceases to be a member of the Legislative Council or Legislative Assembly, or
 - (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or
 - (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or
 - (f) if the member is discharged from office by the House of Parliament to which the member belongs.
- (2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Joint Committee appointed by that House.

67 Chair and Deputy Chair

- (1) There shall be a Chair and a Deputy Chair of the Joint Committee, who shall be elected by and from the members of the Joint Committee.
- (2) A member of the Joint Committee ceases to hold office as Chair or Deputy Chair of the Joint Committee if:
- (a) the member ceases to be a member of the Committee, or
 - (b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or
 - (c) the member is discharged from office by the Committee.
- (3) At any time when the Chair is absent from New South Wales or is, for any reason, unable to perform the duties of Chair or there is a vacancy in that office, the Deputy Chair may exercise the functions of the Chair under this Act or under the [Parliamentary Evidence Act 1901](#).

68 Procedure

- (1) The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the

Committee.

- (2) The Clerk of the Legislative Assembly shall call the first meeting of the Joint Committee in each Parliament in such manner as the Clerk thinks fit.
- (3) At a meeting of the Joint Committee, 6 members constitute a quorum, but the Committee shall meet as a joint committee at all times.
- (4) The Chair or, in the absence of the Chair, the Deputy Chair or, in the absence of both the Chair and the Deputy Chair, a member of the Joint Committee elected to chair the meeting by the members present shall preside at a meeting of the Joint Committee.
- (5) The Deputy Chair or other member presiding at a meeting of the Joint Committee shall, in relation to the meeting, have all the functions of the Chair.
- (6) The Chair, Deputy Chair or other member presiding at a meeting of the Joint Committee shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.
- (7) A question arising at a meeting of the Joint Committee shall be determined by a majority of the votes of the members present and voting.
- (8) The Joint Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.
- (9) The Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

68A Procedure if Parliament not in session

- (1) If a House of Parliament is not sitting when the Joint Committee seeks to furnish a report to it, the Committee may present copies of the report to the Clerk of the House.
- (2) The report:
 - (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.

69 Evidence

- (1) The Joint Committee shall have power to send for persons, papers and records.

- (2) Subject to section 70, the Joint Committee shall take all evidence in public.
- (3) Where the Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence.
- (4) The production of documents to the Joint Committee shall be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.

70 Confidentiality

- (1) Where any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or producing the document shall:
 - (a) take the evidence in private, or
 - (b) direct that the document, or the part of the document, be treated as confidential.
- (1A) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to the proposed appointment of a person as Commissioner or Inspector, the Committee must (despite any other provision of this section):
 - (a) take the evidence in private, or
 - (b) direct that the document, or the part of the document, be treated as confidential.
- (1B) Despite any other provision of this section except subsection (6), the Joint Committee must not, and a person (including a member of the Committee) must not, disclose any evidence or the contents of a document or that part of a document to which subsection (1A) applies.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (1C) Despite any other provision of this section except subsection (6), the Joint Committee (including a member of the Committee) must not, and any person assisting the Committee or present during the deliberations of the Committee must not, except in accordance with section 64A (3), disclose whether or not the Joint Committee or any member of the Joint Committee has vetoed, or proposes to veto, the proposed appointment of a person as Commissioner or Inspector.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

- (2) Where a direction under subsection (1) applies to a document or part of a document produced in evidence to the Joint Committee, the contents of the document or part shall, for the purposes of this section, be taken to be evidence given by the person producing the document and taken by the Committee in private.
- (3) Where, at the request of a witness, evidence is taken by the Joint Committee in private:
- (a) the Committee shall not, without the consent in writing of the witness, and
 - (b) a person (including a member of the Committee) shall not, without the consent in writing of the witness and the authority of the Committee under subsection (5), disclose or publish the whole or a part of that evidence.
- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.
- (4) Where evidence is taken by the Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) shall not, without the authority of the Committee under subsection (5), disclose or publish the whole or a part of that evidence.
- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.
- (5) The Joint Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chair, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (3).
- (6) Nothing in this section prohibits:
- (a) the disclosure or publication of evidence that has already been lawfully published, or
 - (b) the disclosure or publication by a person of a matter of which the person has become aware other than by reason, directly or indirectly, of the giving of evidence before the Joint Committee.
- (7) This section has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.
- (8) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section, sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.

Note—

The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter

that is contained in evidence taken by, or documents produced to, the Joint Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section.

Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

71 Application of certain Acts etc

For the purposes of the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes:

- (a) the Joint Committee shall be taken to be a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the Joint Committee shall be taken to have originated in the Legislative Assembly.

72 Validity of certain acts or proceedings

Any act or proceeding of the Joint Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee, or
- (b) any defect in the appointment, or any disqualification, of a member of the Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

Part 7A Parliamentary ethical standards

Division 1 Legislative Council

72A Definition

In this Division:

designated committee means the committee of the Legislative Council that is for the time being designated under section 72B.

72B Designation of committee

- (1) As soon as practicable after the commencement of this Division and the commencement of the first session of each Parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this Division.

- (2) Another committee of the Legislative Council may be designated by such a resolution from time to time in place of any previously designated.
- (3) The designation of a committee under this section does not affect the functions that the committee has apart from this Division.

72C Functions of committee

- (1) The functions of the designated committee are:
 - (a) to prepare for consideration by the Legislative Council draft codes of conduct for members of the Legislative Council and draft amendments to codes of conduct already adopted, and
 - (b) to carry out educative work relating to ethical standards applying to members of the Legislative Council, and
 - (c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Council, but not in relation to actual or alleged conduct of any particular person.
- (2) The designated committee may seek comments from the public in relation to any of its functions under this section.
- (3) Before presenting a draft code of conduct for consideration by the Legislative Council, the designated committee must:
 - (a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public, and
 - (b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice, and
 - (c) specify, in the notice, the period during which submissions may be made to the committee.
- (4) Any person may, during the period referred to in subsection (3) (c), make submissions in writing to the designated committee with respect to the provisions of the draft code of conduct. The committee must take any such submissions into consideration.
- (5) The designated committee is to review a code of conduct adopted by the Legislative Council at least once every 4 years.
- (6) (Repealed)

Division 2 Legislative Assembly

72D Definition

In this Division:

designated committee means the committee of the Legislative Assembly that is for the time being designated under section 72DA.

72DA Designation of committee

- (1) As soon as practicable after the commencement of this section and the commencement of the first session of each Parliament, a committee of the Legislative Assembly is to be designated by resolution of the Legislative Assembly as the designated committee for the purposes of this Division.
- (2) Another committee of the Legislative Assembly may be designated by such a resolution from time to time in place of any previously designated.
- (3) The designation of a committee under this section does not affect the functions that the committee has apart from this Division.

72E Functions of committee

- (1) The functions of the designated committee are:
 - (a) to prepare for consideration by the Legislative Assembly draft codes of conduct for members of the Legislative Assembly and draft amendments to codes of conduct already adopted, and
 - (b) to carry out educative work relating to ethical standards applying to members of the Legislative Assembly, and
 - (c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Assembly, but not in relation to actual or alleged conduct of any particular person.
- (1A) The designated committee may appoint any member of the public for the purpose of assisting the committee to carry out any of its functions under this section in relation to a code of conduct.
- (2) The designated committee may seek comments from the public in relation to any of its functions under this section.
- (3) Before presenting a draft code of conduct for consideration by the Legislative Assembly, the designated committee must:
 - (a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public, and

- (b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice, and
 - (c) specify, in the notice, the period during which submissions may be made to the committee.
- (4) Any person may, during the period referred to in subsection (3) (c), make submissions in writing to the designated committee with respect to the provisions of the draft code of conduct. The committee must take any such submissions into consideration.
- (5) The designated committee is to review a code of conduct adopted by the Legislative Assembly at least once every 4 years.
- (6) (Repealed)

72F-72K (Repealed)

Part 8 References by and reports to Parliament

Division 1 References to Commission by, and reports by Commission to, Parliament

73 References by Parliament

- (1) Both Houses of Parliament may, by resolution of each House, refer to the Commission any matter as referred to in section 13.
- (2) It is the duty of the Commission to fully investigate a matter so referred to it for investigation.
- (3) It is the duty of the Commission to comply as fully as possible with any directions contained in a reference of a matter referred to in section 13 (1) (k).
- (4) Both Houses of Parliament may, by resolution of each House, amend or revoke a reference made under this section.

74 Reports on referred matters etc

- (1) The Commission may prepare reports in relation to any matter that has been or is the subject of an investigation.
- (2) The Commission shall prepare reports in relation to a matter referred to the Commission by both Houses of Parliament, as directed by those Houses.
- (3) The Commission shall prepare reports in relation to matters as to which the Commission has conducted a public inquiry, unless the Houses of Parliament have given different directions under subsection (2).
- (4) The Commission shall furnish reports prepared under this section to the Presiding

Officer of each House of Parliament.

(5), (6) (Repealed)

(7) A report required under this section shall be furnished as soon as possible after the Commission has concluded its involvement in the matter.

(8) The Commission may defer making a report under this section if it is satisfied that it is desirable to do so in the public interest, except as regards a matter referred to the Commission by both Houses of Parliament.

(9) (Repealed)

74A Content of reports to Parliament

(1) The Commission is authorised to include in a report under section 74:

- (a) statements as to any of its findings, opinions and recommendations, and
- (b) statements as to the Commission's reasons for any of its findings, opinions and recommendations.

(2) The report must include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- (a) obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,
- (b) the taking of action against the person for a specified disciplinary offence,
- (c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.

(3) An "affected" person is a person described as such in the reference made by both Houses of Parliament or against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.

(4) Subsection (2) does not limit the kinds of statement that a report can contain concerning any such "affected" person and does not prevent a report from containing a statement described in that subsection in respect of any other person.

74B Report not to include findings etc of guilt or recommending prosecution

(1) The Commission is not authorised to include in a report under section 74 a statement as to:

- (a) a finding or opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence), or
 - (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence).
- (2) A finding or opinion that a person has engaged, is engaging or is about to engage:
- (a) in corrupt conduct (whether or not specified corrupt conduct), or
 - (b) in specified conduct (being conduct that constitutes or involves or could constitute or involve corrupt conduct),
- is not a finding or opinion that the person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.
- (3) In this section and section 74A, **criminal offence** and **disciplinary offence** have the same meanings as in section 9.

74C Reports relating to local government and planning authorities

- (1) The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the making of a proclamation under the [Local Government Act 1993](#) that all civic offices in relation to a local government authority be declared vacant if the Commission is of the opinion that systemic corruption exists within the local government authority.
- (2) The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the suspension of a councillor from civic office under the [Local Government Act 1993](#) with a view to his or her dismissal for serious corrupt conduct.
- (2A) The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the suspension of a councillor from civic office under Division 3 (Misbehaviour) of Part 1 of Chapter 14 of the [Local Government Act 1993](#).
- (3) The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the suspension from duty of a member of the staff of a local government authority with a view to the institution of disciplinary or criminal proceedings against the member of staff for serious corrupt conduct.
- (3A) The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the appointment of a person under

section 118 of the *Environmental Planning and Assessment Act 1979* to administer functions of a council under that Act because of serious corrupt conduct by any of the councillors in connection with the exercise or purported exercise of those functions.

- (3B) The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the suspension of a development consent granted by a consent authority under the *Environmental Planning and Assessment Act 1979*, or of a modification of such a consent, with a view to its revocation because of serious corrupt conduct by the consent authority or by a councillor or other officer or member of staff of the consent authority in connection with the grant of the consent or modification.
- (3C) The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the removal from office under the *Environmental Planning and Assessment Act 1979* of a member of the Planning Assessment Commission or of a joint regional planning panel because of corrupt conduct by the member.
- (4) The Commission is not to make a recommendation under this section unless the Commission is of the opinion that prompt action is required in the public interest.
- (5) This section does not limit any other recommendation that the Commission is authorised to include in a report under section 74 in relation to a local government authority, councillor or member of staff.
- (6) This section extends to a report in relation to a matter that has been the subject of an investigation conducted before the commencement of this section.

74D Reports relating to Aboriginal Land Councils

- (1) The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to:
 - (a) the suspension of a councillor or Board member from office under Division 3A of Part 10 of the *Aboriginal Land Rights Act 1983*, or
 - (b) the taking of action against a member of staff of an Aboriginal Land Council under that Division.
- (2) The Commission is not to make a recommendation under this section unless the Commission is of the opinion that prompt action is required in the public interest.
- (3) This section does not limit any other recommendation that the Commission is authorised to include in a report under section 74 in relation to a councillor, Board member or member of staff.
- (4) This section extends to a report in relation to a matter that has been the subject of an

investigation conducted before the commencement of this section.

75 Special reports

The Commission may, at any time, make a special report to the Presiding Officer of each House of Parliament on any administrative or general policy matter relating to the functions of the Commission.

76 Annual reports

- (1) The Commission shall, within the period of 4 months after each 30 June, prepare a report of its operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.
- (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 to the Commission,
 - (b) a description of the matters investigated by the Commission,
 - (ba) the following details with respect to matters investigated by the Commission:
 - (i) the time interval between the lodging of each complaint and the Commission deciding to investigate the complaint,
 - (ii) the number of complaints commenced to be investigated but not finally dealt with during the year,
 - (iii) the average time taken to deal with complaints and the actual time taken to investigate any matter in respect of which a report is made,
 - (iv) the total number of compulsory examinations and public inquiries conducted during the year,
 - (v) the number of days spent during the year in conducting public inquiries,
 - (vi) the time interval between the completion of each public inquiry conducted during the year and the furnishing of a report on the matter,
 - (c) any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made as a result of the exercise of its functions,
 - (d) the general nature and extent of any information furnished under this Act by the Commission during the year to a law enforcement agency,
 - (e) the extent to which its investigations have resulted in prosecutions or disciplinary action in that year,

- (f) the number of search warrants issued by authorised officers and the Commissioner respectively under this Act in that year,
- (g) a description of its activities during that year in relation to its educating and advising functions.

77 Reports relating to authorities

- (1) The Commission may furnish to the Presiding Officer of each House of Parliament a report setting out a recommendation referred to in section 55 which it is of the opinion should be adopted and the reasons for its opinion.
- (2) Such a report shall not be furnished until after the period of 21 days referred to in section 55 (3) has passed.

Division 2 Reports by Inspector

77A Special reports

The Inspector may, at any time, make a special report to the Presiding Officer of each House of Parliament on:

- (a) any matters affecting the Commission, including, for example, its operational effectiveness or needs, and
- (b) any administrative or general policy matter relating to the functions of the Inspector, and
- (c) any other matter relating to the exercise of a function to audit, deal with or assess any matter under section 57B that the Inspector considers warrants the making, in the public interest, of a special report.

77B Annual reports of Inspector

The Inspector is required to prepare, within the period of 4 months after each 30 June, a report of the Inspector's operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.

Division 3 General

78 Provisions relating to reports

- (1) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Part shall be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.
- (1A) The Inspector may include in a report a recommendation that the report be made public forthwith.

- (2) The Commission may include in a report a recommendation that the report be made public forthwith.
- (3) If a report includes a recommendation by the Commission or the Inspector that the report be made public forthwith, a Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.
- (4) If such a report is made public by the Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.
- (5) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

79 References to Presiding Officers

- (1) References in this Part to a Presiding Officer are references to the President of the Legislative Council or the Speaker of the Legislative Assembly.
- (2) If there is a vacancy in the office of President, the reference to the President shall be taken to be a reference to the Clerk of the Legislative Council.
- (3) If there is a vacancy in the office of Speaker, the reference to the Speaker shall be taken to be a reference to the Clerk of the Legislative Assembly.

Part 9 Certain offences

80 Obstruction of Commission, Inspector and others

A person shall not:

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten:
 - (i) the Commission or an officer of the Commission in the exercise of functions under this Act, or
 - (ii) the Inspector or an officer of the Inspector in the exercise of functions under this Act, or
 - (iii) an Australian legal practitioner appointed by the Commission to assist the Commission as counsel in the exercise of functions as such counsel, or
 - (iv) an Australian legal practitioner or other person authorised to appear before the Commission in relation to that appearance, or
- (b) without reasonable excuse, refuse or wilfully fail to comply with any lawful requirement of the Commission or an officer of the Commission, or the Inspector or an

officer of the Inspector, under this Act, or

(c) wilfully make any false statement to or mislead, or attempt to mislead, the Commission or an officer of the Commission, or the Inspector or an officer of the Inspector, in the exercise of functions under this Act, or

(d) disrupt a compulsory examination or public inquiry before the Commission.

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

81 Complaints about possible corrupt conduct

A person shall not, in making a complaint under this Act, wilfully make any false statement to or mislead, or attempt to mislead, the Commission or an officer of the Commission.

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

82 Offences relating to obtaining information

A person shall not:

(a) without reasonable excuse, fail to comply with a notice served on the person under section 21, or

(b) in purported compliance with a notice served on the person or some other person under that section, knowingly furnish information that is false or misleading in a material particular.

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

83 Offences relating to obtaining documents etc

A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under section 22.

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

84 Obstruction of person executing search warrant

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

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

85 Compulsory examinations and public inquiries

A person who is present at a compulsory examination or public inquiry in contravention of section 31A is guilty of an offence.

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

86 Failure to attend etc

- (1) A person summoned to attend or appearing before the Commission at a compulsory examination or public inquiry shall not, without reasonable excuse, fail:
 - (a) to attend before the Commission in accordance with the summons, or
 - (b) to be sworn or to make an affirmation, or
 - (c) to answer any question relevant to an investigation put to the person by the Commissioner or other person presiding at the compulsory examination or public inquiry, or
 - (d) to produce any document or other thing in the person's custody or control which the person is required by the summons or by the person presiding to produce.

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

- (2) It is a defence to a prosecution for failing without reasonable excuse to produce a document or other thing if the defendant establishes that the document or other thing was not relevant to an investigation.
- (3) A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 36 (6) or 100A is subject, is guilty of an offence.

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

87 False and misleading evidence

- (1) A person who, at a compulsory examination or public inquiry conducted by the Commission, gives evidence that is false or misleading in a material particular knowing it to be false or misleading, or not believing it to be true, is guilty of an indictable offence.

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

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

88 Offences relating to documents or other things

- (1) A person who, knowing that any document or other thing is or may be required in connection with an investigation, wilfully destroys it or renders it incapable of identification or, in the case of a document, renders it illegible, indecipherable or unusable, with intent to prevent it from being used in connection with the investigation, is guilty of an indictable offence.

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

(2) A person who, with intent to delay or obstruct the carrying out by the Commission of any investigation:

- (a) destroys or alters any document or other thing relating to the subject-matter of the investigation, or
- (b) sends or attempts to send, or conspires with any other person to send, out of New South Wales any such document or other thing, or any property of any description belonging to or in the disposition of or under the control of any person whose affairs are the subject-matter of the investigation,

is guilty of an indictable offence.

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

(3) A person who, with intent to delay or obstruct the carrying out by the Commission of any investigation, or with intent to mislead the Commission, fabricates any document or other thing is guilty of an indictable offence, if the document or other thing is produced in evidence to the Commission or is produced in purported compliance with a requirement under section 21 or 22.

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

(4) If in any prosecution for an offence against subsection (2) it is proved that the person charged with the offence has destroyed or altered any document or other thing, or has sent or attempted to send, or conspired to send, out of New South Wales any such document or other thing, the onus of proving that in so doing the person had not acted in contravention of this section is on the person.

89 Procuring false testimony by witness

A person who procures or causes or attempts or conspires to procure or cause:

- (a) the giving of false testimony at a compulsory examination or public inquiry before the Commission, or
- (b) in purported compliance with a notice served on any person under section 21, the furnishing of information that is, to the knowledge of the person so served, false or misleading in a material particular,

is guilty of an indictable offence.

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

90 Bribery of witness

A person who:

- (a) gives, confers or procures, or promises to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, on or for any person, on any

agreement or understanding that any person called or to be called as a witness before the Commission will give false testimony or withhold true testimony, or

- (b) attempts by any means to induce a person called or to be called before the Commission to give false testimony, or to withhold true testimony, or
- (c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or herself, or for any other person, on any agreement or understanding that any person will as a witness before the Commission give false testimony or withhold true testimony,

is guilty of an indictable offence.

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

91 Fraud on witness

A person who practises any fraud or deceit on, or knowingly makes or exhibits any false statement, representation or writing to, any person:

- (a) called or to be called as a witness before the Commission with intent to affect the testimony of that person as a witness, or
- (b) required to comply with a notice under section 21 or 22 with intent to affect that person's compliance with the notice,

is guilty of an indictable offence.

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

92 Preventing witness from attending

- (1) A person who wilfully prevents or wilfully endeavours to prevent any person who has been summoned to attend as a witness before the Commission from attending as a witness or from producing anything in evidence pursuant to a summons to attend is guilty of an indictable offence.

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

- (2) A person who wilfully prevents or wilfully endeavours to prevent any person from complying with a requirement under section 21 or 22 is guilty of an indictable offence.

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

- (3) A reference in subsection (1) to a person who has been summoned to attend as a witness before the Commission includes a reference to a person who is in detention under a warrant under section 36 (6) or who, having been released under that subsection on condition that the person appear and report himself or herself before the Commission, is still subject to that condition.

93 Injury to witness or person assisting Commission

- (1) A person who uses, causes, inflicts or procures, or threatens to use, cause, inflict or procure, any violence, punishment, damage, loss or disadvantage to any person for or on account of:
- (a) his or her assisting the Commission, or
 - (b) any evidence given by him or her before the Commission,
- is guilty of an indictable offence.

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

- (2) In this section, a reference to a person assisting the Commission is a reference to a person who:
- (a) has appeared, is appearing or is to appear as a witness before the Commission, or
 - (b) has complied with or proposes to comply with a requirement under section 21 or 22, or
 - (c) has assisted, is assisting or is to assist the Commission in some other manner.

94 Dismissal of witness, or person assisting Commission, by employer

- (1) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Commission is guilty of an indictable offence.

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

- (2) In this section, a reference to a person assisting the Commission is a reference to a person who:
- (a) has appeared, is appearing or is to appear as a witness before the Commission, or
 - (b) has complied with or proposes to comply with a requirement under section 21 or 22, or
 - (c) has assisted, is assisting or is to assist the Commission in some other manner.
- (3) In any proceedings for an offence against this section, it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1).

95 Impersonation of officer of Commission

- (1) A person shall not directly or indirectly represent that he or she is an officer of the

Commission (whether generally or of a particular class of officer), unless the person is such an officer (or of that class).

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

- (2) For the purposes of subsection (1), a person represents that a state of affairs exists if the person does or says anything, or causes, permits or suffers anything to be done or said, whereby it is represented, or whereby a belief may be induced, that the state of affairs exists.

96 Bribery of officer of Commission

- (1) An officer of the Commission shall not corruptly ask for, receive or obtain, or agree to receive or obtain, any money, property or benefit of any kind for himself or herself, or for another person:
- (a) to forgo or neglect his or her duty, or influence him or her, in the exercise of his or her functions as an officer of the Commission, or
 - (b) on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him or her in the exercise of those functions, or
 - (c) to use, or take advantage of, his or her position as an officer of the Commission in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, another person.

Maximum penalty: 200 penalty units or imprisonment for 7 years, or both.

- (2) A person shall not corruptly give to, confer upon, or procure for, or promise or offer to give to, confer upon, or procure for, or attempt to procure for, an officer of the Commission, or for any other person, any money, property or benefit of any kind:
- (a) for the person who has those functions to forgo or neglect his or her duty, or to influence him or her in the exercise of his or her functions as an officer of the Commission, or
 - (b) on account of anything already done, or omitted to be done, by him or her in the exercise of those functions, or
 - (c) for the officer of the Commission to use or take advantage of his or her position as such an officer in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, the person first referred to in this subsection.

Maximum penalty: 200 penalty units or imprisonment for 7 years, or both.

- (3) An offence under this section is an indictable offence.

Part 10 Contempt of Commission

97 Definition

In this Part:

offender means a person guilty or alleged to be guilty of contempt of the Commission.

98 Contempt in the face or hearing of the Commission

A person who:

- (a) having been served with a summons to attend before the Commission as a witness, fails to attend in obedience to the summons, or
 - (aa) having been released under section 36 (6) on condition (under section 36A (1) (a)) that the person appear and report himself or herself before the Commission, fails so to appear and report, or
 - (b) having been served with a summons to attend before the Commission, fails to produce any document or other thing in the person's custody or control that the person is required by the summons to produce, or
 - (c) being called or examined as a witness before the Commission, refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question put to the person by the Commissioner or Assistant Commissioner, or
 - (d) wilfully threatens or insults:
 - (i) the Commissioner, an Assistant Commissioner or an officer of the Commission, or
 - (ii) an Australian legal practitioner appointed to assist the Commission as counsel, or
 - (iii) any witness or person summoned to attend before the Commission, or
 - (iv) an Australian legal practitioner or other person authorised to appear before the Commission,in proceedings before the Commission, or
 - (e) misbehaves himself or herself before the Commission, or
 - (f) interrupts or obstructs any proceedings before the Commission,
 - (g)-(i) (Repealed)
- is guilty of contempt of the Commission.

99 Punishment of contempt

- (1) Any contempt of the Commission under section 98 may be punished in accordance

with this section.

- (2) The Commissioner may present to the Supreme Court a certificate (in this Part called a **contempt of the Commission certificate**) in which the Commissioner sets out the facts that constitute the alleged contempt.
- (3) If the Commissioner presents a contempt of the Commission certificate to the Supreme Court:
 - (a) the Supreme Court shall thereupon inquire into the alleged contempt, and
 - (b) after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt, and after hearing any statement that may be offered in defence, the Supreme Court (if satisfied that the person is guilty of the contempt) may punish or take steps for the punishment of the person in like manner and to the like extent as if the person had committed that contempt in or in relation to proceedings in the Supreme Court, and
 - (c) the provisions of the *Supreme Court Act 1970* and the rules of court of the Supreme Court shall, with any necessary adaptations, apply and extend accordingly.
- (4) Such a certificate is prima facie evidence of the matters certified.
- (5) Neither liability to be punished nor punishment under this section for contempt referred to in section 98 (a) or (aa) excuses the offender from attending before the Commission in obedience to the summons, and the Commissioner may enforce attendance by warrant.
- (6) A person is not liable to be punished under this section where the person establishes that there was a reasonable excuse for the act or omission concerned.

100 General provisions regarding contempt

- (1) In the case of any alleged contempt of the Commission, the Commissioner may summon the offender to appear before the Commission at a time and place named in the summons to show cause why the offender should not be dealt with under section 99 for the contempt.
 - (1A) The summons is to set out the details of the alleged contempt.
 - (2) If the offender fails to attend before the Commission in obedience to the summons, and no reasonable excuse to the satisfaction of the Commissioner is offered for the failure, the Commissioner may, on proof of the service of the summons, issue a warrant to arrest the offender and bring the offender before the Commissioner to show cause why the offender should not be dealt with under section 99 for the contempt.

- (3) No summons need be issued against an offender committing a contempt in the face or hearing of the Commission, but the offender may, after being advised of the details of the alleged contempt, be taken into custody in a prison or elsewhere then and there by a member of the NSW Police Force and called upon to show cause why the offender should not be dealt with under section 99 for the contempt.
- (4) The Commissioner may issue a warrant to arrest the offender while the offender (whether or not already in custody under this section) is before the Commission and to bring the offender forthwith before the Supreme Court.
- (5) The warrant is sufficient authority to detain the offender in a prison or elsewhere, pending the offender's being brought before the Supreme Court.
- (6) The warrant is to be accompanied by the contempt of the Commission certificate in which the Commissioner sets out the facts that constitute the alleged contempt.
- (7) The Commissioner may revoke the warrant at any time before the offender is brought before the Supreme Court.
- (8) When the offender is brought before the Supreme Court, the Court may, pending determination of the matter, direct that the offender be kept in such custody as the Court may determine or direct that the offender be released.

100A Conditional release of offender

- (1) The Commissioner may by order release an offender detained under section 100 at any time before the offender is brought before the Supreme Court.
- (2) The release must be subject to the condition that the offender appear before the Supreme Court.
- (3) The release may (but need not) be made subject to:
 - (a) one or more conditions for the purpose of ensuring the appearance of the offender before the Supreme Court (for example the provision of sureties by the offender, the surrender of any passport held by the offender, a requirement as to where the offender is to live and regular reporting by the offender to the Commission), and
 - (b) any other conditions.
- (4) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

100B Review by Supreme Court

- (1) An offender who has not been released by the Commissioner under section 100A or whose release under that section 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

offender 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 offender or any condition imposed by the Commissioner on the release of the offender. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the offender. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the offender.
- (3) Such an order is taken to be an order of the Commissioner.

101 Act or omission that is both an offence and contempt

- (1) An act or omission may be punished as a contempt of the Commission even though it could be punished as an offence.
- (2) An act or omission may be punished as an offence even though it could be punished as a contempt of the Commission.
- (3) If an act or omission constitutes both an offence and a contempt of the Commission, the offender is not liable to be punished twice.

Part 10A Special powers

101A Definitions

In this Part:

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

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

seconded police officer means:

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

who is seconded or otherwise engaged to assist the Commission.

101B Commission investigator who is seconded police officer to have all powers of NSW

police officer

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

Part 11 Miscellaneous

102 Act binds Crown

This Act binds the Crown.

103 Provisions relating to Commissioner and Assistant Commissioners

Schedule 1 has effect.

104 Appointment of staff

- (1) The Commissioner may appoint, as members of staff of the Commission, such persons (including a Director of Operations and a Director of Administration) as may be necessary to enable the Commission to exercise its functions.
- (2) Those persons are taken to be employed by the Government of New South Wales in the service of the Crown, except as provided by subsection (9).
- (3) Each person who is appointed as a member of staff of the Commission under this section:
 - (a) continues, subject to the provisions of this section and the terms of the person's appointment, to be employed as a member of staff at the discretion of the Commissioner, and
 - (b) is, in the person's capacity as such a member, subject to the control and direction of the Commissioner.

- (4) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to the appointment or employment of a person under this section as a member of staff of the Commission.
- (5) The person appointed as the Director of Operations or as the Director of Administration is to be appointed for a term not exceeding 5 years, but is eligible for re-appointment.
- (6) The Commissioner may fix the salaries, wages, allowances and conditions of employment of the staff employed under this section in so far as they are not fixed by or under another Act or law.
- (7) The Commissioner may enter into an agreement with any association or organisation representing a group or class of staff employed under this section with respect to industrial matters. Any such agreement binds all persons in the class or group affected by the agreement, and no such person (whether a member of the association or organisation with which the agreement was entered into or not) has any right of appeal against the terms of the agreement.
- (8) An agreement under subsection (7) is not an enterprise agreement within the meaning of the *Industrial Relations Act 1996*. However, the Commissioner may enter into such an enterprise agreement as the employer of the members of staff concerned.
- (9) The Commissioner is, for the purposes of any proceedings relating to staff employed under this section held before a competent tribunal having jurisdiction to deal with such matters, taken to be the employer of the staff.
- (10) An appeal does not lie to the Industrial Relations Commission concerning a promotional or disciplinary matter affecting any staff employed under this section.
- (11) None of the following matters, and no matter, question or dispute relating to any of the following matters, is an industrial matter for the purposes of the *Industrial Relations Act 1996*:
 - (a) the appointment of, or failure to appoint, a person to any position as a member of staff of the Commission,
 - (b) the removal, retirement, termination of employment or other cessation of office of a person in any such position,
 - (c) any disciplinary proceedings or disciplinary action taken against a person employed under this section.
- (11A) Without limiting subsection (11), Part 6 of Chapter 2 of the *Industrial Relations Act 1996* does not apply to or in respect of the dismissal (within the meaning of that Part) of any person from any position as a member of the staff of the Commission.

(12) Schedule 3 has effect with respect to the rights of staff employed under this section.

104A Arrangements for use of services of other staff

(1) The Commission may:

(a) with the approval of the Minister responsible for the department or authority concerned, and

(b) on such terms and conditions as may be approved by the Minister administering this Act,

arrange for the use (by secondment or otherwise) of the services of any staff or facilities of a government department or public authority.

(2) The Commission may:

(a) with the approval of the Minister for Police after that Minister has consulted the Commissioner of Police, and

(b) on such terms and conditions as may be approved by the Minister administering this Act,

arrange for one or more police officers to be made available (by way of secondment or otherwise) to perform services for the Commission.

(3) The *Public Sector Employment and Management Act 2002* does not apply in relation to any such members of staff of the Commission and such a member of staff is not subject to that Act.

(4) Members of the staff of the Commission referred to in this section are under the control and direction of the Commissioner in their capacity as such members.

(5) The Commission may terminate an arrangement under subsection (1) or (2) at any time, and no appeal or other proceedings may be brought, in respect of the termination, by or on behalf of the person concerned.

(6) After the termination of such an arrangement respecting a former member of the staff of the Commission:

(a) disciplinary proceedings or disciplinary action may, in accordance with the procedures applicable to his or her principal employment, be taken against the former member in connection with any act or omission committed while a member of that staff, and

(b) any such act or omission shall, for the purposes of paragraph (a), be taken to have been committed by the former member in the course of or during his or her principal employment, and

- (c) no court or tribunal may make an order reinstating or having the effect of reinstating the former member as a member of the staff of the Commission.

104B Commission may engage consultants

The Commission may engage any suitably qualified person to provide the Commission with services, information or advice.

105 Powers of seconded police

While a member of the NSW Police Force is a member of the staff of the Commission, the member may continue to act as a constable.

106 Counsel assisting Commission

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

107 Delegation

- (1) The Commission may delegate to an Assistant Commissioner or an officer of the Commission any of its functions.
- (2) The Commissioner may delegate to an Assistant Commissioner or an officer of the Commission any of his or her functions.
- (3) An Assistant Commissioner or officer of the Commission may delegate to an officer of the Commission any of the functions delegated to the Assistant Commissioner or officer, 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 the Commissioner to issue a warrant for the arrest of a person under section 36 or 100,
 - (d) the power of the Commissioner to issue search warrants under section 40,
 - (e) the power of the Commissioner to certify as referred to in section 111 (4) (c).
- (5) The following functions may be delegated only to an Assistant Commissioner:
 - (a) the power to require a public authority or public official to produce a statement of information under section 21,
 - (b) the power to require a person to attend and produce a document or other thing under section 22,

- (c) the power to authorise an officer of the Commission to enter premises under section 23,
 - (d) the making of an application for an injunction under section 27,
 - (e) the powers of the Commission or the Commissioner under Division 3 of Part 4 at or in connection with a compulsory examination or public inquiry, except the power to issue a warrant for the arrest of a person under section 36,
 - (f) the powers of the Commissioner under Part 10 at or in connection with a hearing.
- (6) The functions referred to in subsection (4) may however be delegated to an Assistant Commissioner (and to an Assistant Commissioner only) if the Commissioner is of the opinion that there would or might be a conflict of interest or that it would be in the interests of justice to do so.
- (7) No person shall be concerned to inquire whether circumstances exist warranting a delegation under subsection (6), and a statement in the instrument of delegation of the Commissioner's opinion referred to in that subsection is sufficient.

108 Service of documents

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.

109 Protection from liability

- (1) No matter or thing done by the Commission, the Commissioner, the Inspector or any person acting under the direction of the Commission, the Commissioner or the Inspector shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Commissioner, the Inspector or a person so acting personally to any action, liability, claim or demand.
- (2) (Repealed)
- (3) An Australian legal practitioner assisting the Commission or representing a person before the Commission has the same protection and immunity as a barrister (within

the meaning of the *Legal Profession Act 2004*) has in appearing for a party in proceedings in the Supreme Court.

- (4) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness, or producing a document or other thing to the Commission, has the same protection as a witness in proceedings in the Supreme Court.
- (5) No criminal or civil liability (apart from this Act) attaches to any person for compliance, or purported compliance in good faith, with any requirement made under this Act.
- (6) In particular, if a person gives any statement of information or produces any document or other thing under section 21 or 22, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

110 Disclosure of pecuniary interests and other matters

The regulations may make provision for or with respect to:

- (a) the disclosure by officers of the Commission of all or any of the following pecuniary interests or other matters:
 - (i) real or personal property,
 - (ii) income,
 - (iii) gifts,
 - (iv) financial or other contributions to any travel,
 - (v) shareholdings or other beneficial interests in corporations,
 - (vi) partnerships,
 - (vii) trusts,
 - (viii) positions (whether remunerated or not) held in, or membership of, corporations, trade unions, professional associations or other organisations or associations,
 - (ix) occupations, trades, professions or vocations,
 - (x) debts,
 - (xi) payments of money or transfers of property to relatives or other persons by, or under arrangements made by, officers of the Commission,
 - (xii) any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not, of a kind specified in the regulations, and
- (b) prescribing the manner in which, and the times at which, pecuniary interests or other

matters shall be disclosed and providing for the verification by statutory declaration or otherwise of any such disclosure, and

- (c) the compilation and maintenance of registers of pecuniary interests or other matters by officers of the Commission and the inspection and publication of any such register.

111 Secrecy

- (1) This section applies to:

- (a) a person who is or was an officer of the Commission, and
- (b) a person who is or was an Australian legal practitioner appointed to assist the Commission or who is or was a person who assists, or performs services for or on behalf of, such an Australian legal practitioner in the exercise of the Australian legal practitioner's functions as counsel to the Commission, and
- (c) (Repealed)
- (d) a person or body referred to in section 14 (3), 16 (4) or 53 (6), and
- (e) a person who is or was an officer of the Inspector.

- (2) A person to whom this section applies shall not, 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:

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

being information acquired by the person by reason of, or in the course of, the exercise of the person's functions under this Act.

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

- (3) A person to whom this section applies shall not be required:

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

except for the purposes of a prosecution or disciplinary proceedings instituted as a result of an investigation conducted by the Commission in the exercise of its functions.

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

- (a) for the purposes of and in accordance with this Act, or
 - (b) for the purposes of a prosecution or disciplinary proceedings instituted as a result of an investigation conducted by the Commission in the exercise of its functions, or
 - (c) in accordance with a direction of the Commissioner or Inspector, if the Commissioner or Inspector certifies that it is necessary to do so in the public interest, or
 - (d) to any prescribed authority or person.
- (5) An authority or person to whom information is divulged under subsection (4), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) as if he or she were a person to whom this section applies and had acquired the information in the exercise of functions under this Act.
- (6) In this section:

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

produce includes permit access to.

111A Secrecy provisions in other Acts

The following provisions do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under this Act:

- (a) section 15 (Secrecy) of the *Companies (Administration) Act 1981*.
- (b) (Repealed)

111B Privacy and Personal Information Protection Act 1998

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

111C Relationship with Ombudsman regarding conduct of Commission and Inspector

Conduct of the Commissioner or an officer or former officer of the Commission cannot be made the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1974*, except in relation to matters referred to the Ombudsman by the Inspector.

111D Complaints by public officials

- (1) A public official within the meaning of the *Public Interest Disclosures Act 1994* may complain to the Inspector (orally or in writing) about the conduct of the Commission, an officer or former officer of the Commission or an officer of the Inspector.
- (2) In this section:
conduct includes conduct by way of action or inaction or alleged action or inaction.

111E Public authority response to corruption prevention recommendations of Commission

- (1) As soon as practicable after making a recommendation under section 13 (3) (b) for a specified public authority to take action to reduce the likelihood of corrupt conduct occurring, the Commission must furnish a copy of the recommendation to the authority and to the Minister for the authority.
- (2) The public authority must inform the Commission in writing within 3 months (or such longer period as the Commission may agree to in writing) after receiving the recommendation, whether it proposes to implement any plan of action in response to the recommendation and, if so, of the plan of action.
- (3) A public authority that informs the Commission of such a plan must provide a written report to the Commission of any progress in implementing the plan:
 - (a) 12 months after informing the Commission of the plan, and
 - (b) if the plan is not then fully implemented, 12 months after that.

112 Restriction on publication of evidence

- (1) The Commission may direct that:
 - (a) any evidence given before it, or
 - (b) the contents of any document, or a description of any thing, produced to the Commission or seized under a search warrant issued under this Act, or
 - (c) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or
 - (d) the fact that any person has given or may be about to give evidence at a compulsory examination or public inquiry, or
 - (e) any written submissions received by the Commission (including, but not limited to, submissions made by Counsel assisting the Commission),shall not be published or shall not be published except in such manner, and to such persons, as the Commission specifies.

(1A) The Commission is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

(2) A person shall not make a publication in contravention of a direction given under this section.

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

113 Evidence in criminal proceedings

(1) If:

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

(b) the court considers that it is 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 section 112, be made available to the person or to an Australian legal practitioner representing the person or to the prosecutor,

the court may give to the Commission a certificate to that effect.

(2) The Commissioner may appear before the court for the purpose of making representations concerning the giving of such a certificate.

(3) On such a certificate being given, the Commission shall make the evidence or information available to the court.

(4) The court may make the evidence or information available to the person charged with the offence concerned, to an Australian legal practitioner representing the person charged or to the prosecutor, if the court has examined the evidence or information and is satisfied that the interests of justice so require.

(5) Nothing in section 111 prevents a person to whom that section applies from producing any document or other thing, or divulging or communicating any matter or thing, to the extent necessary to give effect to this section.

(6) Nothing in section 112 prevents the evidence or information being made available under this section.

114 Disclosures prejudicing investigations

(1) A person who is required:

(a) by a notice under section 21 or 22 to produce a statement of information or to attend and produce a document or other thing, or

(b) by a summons under section 35 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 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.

115 Penalties for offences committed by corporations

The maximum penalty applicable to a corporation convicted of an offence against this Act or the regulations is (except in so far as other provision is made by section 116) double the pecuniary penalty otherwise applying to the offence.

116 Proceedings for offences

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

- (a) in the case of an individual—the smaller of:
 - (i) a fine of 50 penalty units or imprisonment for 2 years, or both, or
 - (ii) the maximum penalty otherwise applicable to the offence when committed by an individual, or
- (b) in the case of a corporation—the smaller of:
 - (i) a fine of 100 penalty units, or
 - (ii) the maximum penalty otherwise applicable to the offence when committed by a corporation.
- (4) Proceedings for an alleged offence under section 80 (c), 81, 82 or 95 may be commenced within 3 years after the commission of the alleged offence.
- (5) Proceedings for an alleged offence under section 112 may be commenced within 2 years after the commission of the alleged offence.

117 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) In particular, the regulations may make provision for or with respect to:
 - (a) the appointment, conditions of employment, discipline, code of conduct and termination of employment of staff of the Commission, and
 - (b) security checks of officers of the Commission and applicants for appointment or engagement as officers of the Commission, and
 - (c) the service of a notice to an occupier whose premises are entered under a search warrant, and
 - (d) the issue of identity cards to officers of the Commission and their use, and
 - (e) forms to be used for the purposes of this Act, and
 - (f) the use and custody of the seal of the Commission.
- (3) A regulation may create an offence punishable by a penalty not exceeding 5 penalty units.
- (4) Regulations may be made only on the recommendation of the Commissioner, except regulations made under section 110.

117A Savings, transitional and other provisions

Schedule 4 has effect.

118-121 (Repealed)

122 Parliament

- (1) Nothing in this Act shall be taken to affect the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.
- (2) The Commission may use a relevant register:
 - (a) for the purpose of any investigation into whether or not a member of Parliament publicly disclosed a particular matter or as to the nature of any matter disclosed, and
 - (b) for the purpose of any finding, opinion or recommendation concerning the disclosure or non-disclosure,and for that purpose Parliament is taken to have waived any parliamentary privilege that may apply to the register.
- (3) Subsection (2) extends to investigations instigated, and relevant registers obtained for use, before the commencement of that subsection.
- (4) In this section, **relevant register** means a register of pecuniary interests or other matters required to be compiled and maintained pursuant to the regulations made under section 14A of the *Constitution Act 1902*, and includes:
 - (a) a copy of any such register (or of a part of any such register) that is published as a parliamentary paper or otherwise, and
 - (b) a return or other document furnished by a member of Parliament for the purpose of the compilation and maintenance of the register, or a copy of the whole or any part of any such return or document.

Schedule 1 Provisions relating to Commissioner and Assistant Commissioners

(Section 103)

1 Eligibility for appointment

- (1) A person is not eligible to be appointed as Commissioner or Assistant Commissioner or to act in either of those offices unless the person is:
 - (a) qualified to be appointed as a Judge of the Supreme Court of the State or of any other State or Territory, a Judge of the Federal Court of Australia or a Justice of the High Court of Australia, or

(b) a former Judge or Justice of any court referred to in paragraph (a).

(2) A person is not eligible to be appointed as Commissioner or Assistant Commissioner if the person is:

(a) the holder of any judicial office, or

(b) a member of the Legislative Council or the Legislative Assembly or is a member of a House of Parliament of another State or of the Commonwealth.

2 Acting Commissioner or Assistant Commissioner

(1) 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, and the person, while so acting, has all the functions of the Commissioner or Assistant Commissioner and shall be taken to be the Commissioner or Assistant Commissioner.

(2) The Governor may, at any time, remove a person from the office to which the person was appointed under this clause.

(3) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine.

(4) For the purposes of this clause:

(a) a vacancy in the office of Commissioner or Assistant Commissioner shall be regarded as an absence from office of Commissioner or Assistant Commissioner, and

(b) an Assistant Commissioner shall be regarded as 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

(1) Subject to this Schedule, the Commissioner shall hold office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is

eligible (if otherwise qualified) for re-appointment.

- (1A) Subject to this Schedule, an Assistant Commissioner is to hold office for such term not exceeding 9 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold the office of Commissioner for terms totalling more than 5 years.
- (3) A person may not hold the office of Assistant Commissioner for terms totalling more than 9 years.

5 Remuneration

- (1) The Commissioner or an Assistant Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as may be specified in the instrument of appointment or as may be afterwards determined by the Governor from time to time.
- (2) A determination does not operate so as to reduce the rate at which remuneration is payable during the person's current term of office.
- (3) Remuneration is payable out of the Consolidated Fund, which is accordingly appropriated to the necessary extent.

6 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) holds office for longer than the relevant period mentioned in clause 4, or
 - (d) resigns the office by instrument in writing addressed to the Governor, or
 - (e) becomes the holder of a judicial office, or
 - (f) is nominated for election as a member of the Legislative Council or the Legislative Assembly or as a member of a House of Parliament of another State or of the Commonwealth, or
 - (g) 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
 - (h) becomes a mentally incapacitated person, or
 - (i) 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

(j) is removed from office under subclause (2) or (3).

(2) The Commissioner may be removed from office by the Governor on the address of both Houses of Parliament.

(3) The Governor may remove an Assistant Commissioner from office for incapacity, incompetence or misbehaviour.

7 Filling of vacancy

(1) If the office of Commissioner becomes vacant, a person shall, subject to this Act, 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.

8 Public Sector Management Act 1988

The *Public Sector Management Act 1988* 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.

9 Judicial office

In this Schedule, **judicial office** means a judicial office of the State or elsewhere in Australia.

Schedule 1A Provisions relating to Inspector

(Section 57A (2))

1 Eligibility for appointment

A person is not eligible to be appointed as Inspector or to act in that office if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.

2 Acting Inspector

(1) The Governor may, from time to time, appoint a person to act in the office of Inspector during the illness or absence of the Inspector. The person, while so acting, has all the functions of the Inspector and is taken to be the Inspector.

(2) The Governor may, at any time, remove a person from the office to which the person was appointed under this clause.

- (3) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine.
- (4) For the purposes of this clause, a vacancy in the office of Inspector is taken to be an absence from office of Inspector.

3 Basis of office

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

4 Terms of office

- (1) Subject to this Schedule, the Inspector holds office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold the office of Inspector for terms totalling more than 5 years.

5 Remuneration

- (1) The Inspector is entitled to be paid such remuneration (including travelling and subsistence allowances) as may be specified in the instrument of appointment or as may be afterwards determined by the Governor from time to time.
- (2) A determination does not operate so as to reduce the rate at which remuneration is payable during the person's current term of office.
- (3) The Inspector is not, if a Judge of a New South Wales court and while receiving remuneration as such a Judge, entitled to remuneration under this Act.

6 Provisions where Judge is holding office as Inspector

- (1) The appointment of a person who is the holder of a judicial office as Inspector or service by a person who is the holder of a judicial office as Inspector 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 Inspector 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) **Vacancies** The office of Inspector becomes vacant if the holder:
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) holds office for longer than the relevant term mentioned in clause 4, or
 - (d) resigns the office by instrument in writing addressed to the Governor, or
 - (e) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, 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).
- (2) **Removal from office** The Inspector may be removed from office by the Governor on the address of both Houses of Parliament.

8 Filling of vacancy

If the office of Inspector becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

9 Effect of certain other Acts

- (1) The *Public Sector Employment and Management Act 2002* does not apply to the appointment of the Inspector, and the holder of that office is not, as holder, subject to that Act.
- (2) If by or under any other Act provision is made:
- (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,

the provision does not operate to disqualify the person from holding that office and also the office of Inspector or from accepting and retaining any remuneration payable to the person under this Act as Inspector.

10 Veto of proposed appointment of Inspector

(1) A person is not to be appointed as Inspector until:

(a) a proposal that the person be so appointed has been referred to the Joint Committee under section 64A, and

(b) the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.

(2) A person may be proposed for appointment on more than one occasion.

(3) In this clause, **appointment** includes re-appointment.

Schedule 2 (Repealed)

Schedule 3 Rights of certain staff of Commission

(Section 104 (12))

1 Definitions

In this Schedule:

member of staff means a member of staff of the Commission who is employed under section 104 otherwise than on a temporary basis.

proclaimed body means any body or organisation constituted or regulated by or under an Act that is declared by the Governor to be a body or organisation to which this Schedule applies.

superannuation scheme means a scheme, fund or arrangement, under which any superannuation or retirement benefits are provided and which is established by or under any Act.

2 Preservation of rights of staff previously public servants etc

(1) This clause applies where a member of staff was, immediately before being employed as a member of staff:

(a) an officer of the Public Service or the Teaching Service, or

- (b) a member of the NSW Police Force, or
- (c) a contributor to a superannuation scheme, or
- (d) an officer employed by a proclaimed body, or
- (e) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee.

(2) The member of staff:

- (a) shall retain any rights accrued or accruing to him or her as such an officer, member, contributor or person, and
- (b) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being employed as a member of staff, and
- (c) is entitled to receive any deferred or extended leave and any payment, pension or gratuity,

as if he or she had continued to be such an officer, member, contributor or person during his or her service as a member of staff.

- (3) Service as a member of staff shall be regarded as service as an officer or employee for the purposes of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred.
- (4) The member of staff shall be regarded as an officer or employee, and the Commissioner shall be regarded as the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.
- (5) If the member of staff would, but for this subclause, be entitled under subclause (2) to contribute to a superannuation scheme or to receive any payment, pension or gratuity under the scheme:
 - (a) he or she is not so entitled on becoming (whether on being employed as a member of staff or at any later time while a member of staff) a contributor to any other superannuation scheme, and
 - (b) the provisions of subclause (4) cease to apply to or in respect of him or her and the Commissioner in any case where he or she becomes a contributor to any such other superannuation scheme.
- (6) Subclause (5) does not prevent the payment to the member of staff (on his or her ceasing to be a contributor to a superannuation scheme) of such amount as would have been payable to him or her if he or she had ceased, because of resignation, to be an officer or employee for the purposes of the scheme.

(7) A member of staff is not, in respect of the same period of service, entitled to dual benefits of the same kind through the operation of this clause.

3 Member of staff entitled to re-appointment to former employment in certain cases

A person who:

- (a) being a member of staff, ceases to be employed under section 104 (except through dismissal on the ground of misbehaviour), and
- (b) was, immediately before being employed as a member of staff:
 - (i) an officer of the Public Service or the Teaching Service, or
 - (ii) an officer employed by a proclaimed body,
- (c) (Repealed)

is entitled to be appointed to some position in the Public Service, the Teaching Service or the service of the proclaimed body, as the case may be, not lower in classification and salary than that which the person held immediately before being employed as a member of staff.

4 Rank etc of seconded police

While a police officer is a member of the staff of the Commission by reason of performing services for the Commission, the member shall retain rank, seniority and remuneration as a police officer.

Schedule 4 Savings, transitional and other provisions

(Section 117A)

Part 1 Preliminary

1 Regulations

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

Independent Commission Against Corruption (Amendment) Act 1990

Investigative Bodies Legislation Amendment Act 1997

Independent Commission Against Corruption Amendment (Ethics Committee) Act 2003

Independent Commission Against Corruption Amendment Act 2005

Public Sector Employment Legislation Amendment Act 2006, to the extent that it amends this Act

Independent Commission Against Corruption Amendment Act 2008

Independent Commission Against Corruption and Ombudsman Legislation Amendment Act 2009

Independent Commission Against Corruption Amendment Act 2011

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Part 2 Provisions consequent on enactment of *Independent Commission Against Corruption (Amendment) Act 1990*

1A Definition

In this Part, **amending Act** means the *Independent Commission Against Corruption (Amendment) Act 1990*.

2 Secrecy—task force and members

Section 16 applies as amended by the amending Act to information disseminated before or after the commencement of the amendment to a task force or member of a task force.

3 Effect of pending proceedings on Commission's powers

Section 18 applies as amended by the amending Act to and in respect of proceedings whether the proceedings were commenced before or after the commencement of the amendment.

4 Commission's powers to make and report findings etc

- (1) In this clause:

the relevant amendments means the amendments made to this Act by Schedule 1 (6)–(10) to the amending Act.

- (2) Anything done or purporting to have been done by the Commission before the commencement of the relevant amendments which would have been validly done if

those amendments had then been in force is to be considered to have been, and always to have been, validly done.

- (3) This Act applies as amended by the relevant amendments to and in respect of a report under section 74:
- (a) even if the report relates to a reference made or an investigation or hearing commenced or completed before the commencement of those amendments, and
 - (b) even if the report was prepared before, or its preparation was begun before, the commencement of those amendments.

Part 3 Provision consequent on enactment of [Statute Law Revision \(Local Government\) Act 1995](#)

5 Saving provision

An investigation may be commenced and completed in relation to a reference made in accordance with this Act before the amendment of section 3 by the [Statute Law Revision \(Local Government\) Act 1995](#) in respect of an urban committee or a person or body exercising all or any of the functions of such a committee as if that section had not been so amended.

Part 4 Provisions consequent on the enactment of [Schedule 4 to Investigative Bodies Legislation Amendment Act 1997](#)

6 Definition

In this Part, **amending Act** means the [Investigative Bodies Legislation Amendment Act 1997](#).

7 Conditional release

- (1) Section 36A only applies to any release ordered on or after the commencement of that section.
- (2) Section 36B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

8 Preventing witness from attending

A reference in section 92 (3), as inserted by the amending Act, to a person who is in detention includes a reference to a person in detention at the commencement of that subsection even if the person was detained before that commencement.

9 Release of contemnor

- (1) The power, contained in section 100A, to release an offender detained under section

100 may be exercised in relation to an offender already in detention at the commencement of section 100A or detained at any time afterwards.

- (2) Section 100B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

10 Secrecy of identity and location of witness

A reference in section 112, 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.

Part 5 Provisions consequent on enactment of [Independent Commission Against Corruption Amendment Act 2005](#)

11 Definition

In this Part, **amending Act** means the [Independent Commission Against Corruption Amendment Act 2005](#).

12 Pending investigations

- (1) The amendments made by the amending Act apply to and in respect of a complaint or report made to, or investigation commenced by, the Commission before the commencement of this clause.
- (2) Despite subclause (1), the amendments made by the amending Act (other than those made to Part 10 (Contempt of Commission)) do not affect or apply to or in respect of any investigation in which a public hearing has commenced before the commencement of this clause.
- (3) In particular, the amendments made by the amending Act do not affect any step taken in respect of the public hearing or in connection with a hearing.

13 Annual reports

The amendments made to section 76 by the amending Act extend to the annual report for the year ended, except as provided by the regulations.

14 References to hearings

In any statutory instrument other than this Act, a reference to a hearing held under this Act is to be read as a reference to a compulsory examination or public inquiry as the case requires.

15 Inspector

Part 5A, as inserted by the amending Act, extends to complaints made, and conduct of the Commission or officers of the Commission that occurred, before the commencement of

this clause, and it does not matter that any person or persons involved are no longer public officials.

Part 6 Provisions consequent on enactment of [Public Sector Employment Legislation Amendment Act 2006](#)

16 Definitions

In this Part:

amending Act means the [Public Sector Employment Legislation Amendment Act 2006](#).

relevant commencement means the date on which Schedule 5.5 to the amending Act commences.

17 Existing staff of Commission

- (1) Each person who, immediately before the relevant commencement:
 - (a) was employed by the Commission under section 104 is, on that commencement, taken to have been appointed, in accordance with section 104 as substituted by the amending Act, as a member of staff of the Commission and to hold the same staff position that the person held immediately before that commencement, and
 - (b) was a member of staff of the Commission pursuant to any arrangements under section 104 is, on that commencement, taken to be a member of staff under section 104A (as inserted by the amending Act).
- (2) Any such person who, pursuant to subclause (1) (a), is taken to be appointed and employed as a member of staff of the Commission:
 - (a) retains any rights to leave (including annual leave, extended leave and sick leave) accrued or accruing to the person as an employee of the Commission before the relevant commencement, and
 - (b) is, until such time as provision is otherwise made under this or any other Act or law, to continue to be employed in accordance with any State industrial instrument or determination that applied to the person as an employee of the Commission.

Part 7 Provisions consequent on enactment of [Independent Commission Against Corruption Amendment \(Operations Review Committee\) Act 2006](#)

18 Definition

In this Part:

amending Act means the *Independent Commission Against Corruption Amendment (Operations Review Committee) Act 2006*.

19 Abolition of Committee

- (1) The Operations Review Committee is abolished.
- (2) A person who ceases to hold office as a member of the Operations Review Committee because of its abolition is not entitled to any remuneration or compensation because of the loss of that office.

20 Existing complaints and other matters

Despite the *Interpretation Act 1987* or any other law, the Operations Review Committee does not continue in existence to provide advice with respect to:

- (a) the investigation of any complaint, or
- (b) any other matter referred to the Committee by the Commissioner,

because the complaint was made, or the matter was referred, before the repeal of Part 6 of this Act by the amending Act.

21 Secrecy

Despite the repeal of section 111 (1) (c) by the amending Act, section 111 continues to apply to and in respect of a person who was a member of the Operations Review Committee as if that paragraph had not been repealed.

Part 8 Provisions consequent on enactment of *Independent Commission Against Corruption Amendment Act 2008*

22 Definition

In this Part:

amending Act means the *Independent Commission Against Corruption Amendment Act 2008*.

23 Restriction on publication of written submissions

The amendment made to section 112 by the amending Act extends to any written submissions received by the Commission before the commencement of the amendment.

24 Commencement of proceedings under section 82 or 95

The amendment made to section 116 by the amending Act extends to offences committed, or alleged to have been committed, before the commencement of the amendment.

25 Operation of amendments to section 11

Section 11, as amended by the amending Act, extends to possible corrupt conduct that occurred before the date of assent to that Act.

Part 9 Use of unlawful surveillance device recordings concerning Mr Michael Loch McGurk—2009 amending Act

26 Definitions

In this Part:

Commission includes an officer of the Commission.

relevant recording means a recording of any private conversation to which Mr Michael Loch McGurk, deceased former resident of Cremorne, was a party or was apparently a party.

surveillance device means a surveillance device within the meaning of the [Surveillance Devices Act 2007](#).

27 Use etc of relevant recordings despite [Surveillance Devices Act 2007](#)

- (1) Part 2 of the [Surveillance Devices Act 2007](#) is not contravened by:
 - (a) the Commission obtaining, possessing, publishing or communicating, before 31 December 2010, in accordance with a provision of this Act, any relevant recording that has been obtained by the use of a surveillance device in contravention of Part 2 of that Act, or
 - (b) a person providing any such relevant recording to the Commission, before 31 December 2010, in accordance with a requirement made of the person under this Act, or
 - (c) the possession, publication or communication at any time of a report of the Commission made before 31 December 2010 concerning any such relevant recording (or of any information in the report).
- (2) The Commission is to ensure that the publication or communication of a relevant recording referred to in subclause (1) is made only for the purposes of investigating or reporting on particular alleged corrupt conduct.

28 Operation of this Part

- (1) This Part extends to relevant recordings obtained by a person by the use of a surveillance device before the commencement of this Part.
- (2) Anything done by the Commission or other person before the commencement of this Part that would not have contravened Part 2 of the [Surveillance Devices Act 2007](#) if it

had been done after that commencement is taken not to have been a contravention of that Part.

Part 10 Provision consequent on enactment of [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2010](#)

29 Maximum period for which Assistant Commissioners may be appointed

Clause 4 (3) of Schedule 1, as amended by the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 2010](#), applies in relation to a term of office whether served before or after the commencement of the amendment.

Part 11 Provisions consequent on enactment of [Independent Commission Against Corruption Amendment Act 2011](#)

30 Definition

In this Part:

amending Act means the [Independent Commission Against Corruption Amendment Act 2011](#).

31 Use etc of protected information under [Surveillance Devices Act 2007](#) for audit of Commission operations by Inspector

The amendment made to section 57F by the amending Act extends to the use, publication or communication before the commencement of the amendment of protected information within the meaning of the [Surveillance Devices Act 2007](#) in relation to the exercise of the Inspector's functions under section 57B.

32 Saving of pending application for unfair dismissal

Section 104 (11A) as inserted by the amending Act does not apply to or in respect of an application made under Part 6 of Chapter 2 of the [Industrial Relations Act 1996](#) before the commencement of the amending Act.