

# Crime Commission Act 2012 No 66

[2012-66]



New South Wales

## Status Information

### Currency of version

Historical version for 5 July 2013 to 2 September 2013 (accessed 3 December 2023 at 5:53)

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### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 5 July 2013

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# Crime Commission Act 2012 No 66



New South Wales

An Act to re-enact the *New South Wales Crime Commission Act 1985* to implement certain recommendations of the Special Commission of Inquiry into the New South Wales Crime Commission; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Crime Commission Act 2012*.

### 2 Commencement

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

### 3 Object

The object of this Act is to reduce the incidence of organised and other serious crime.

### 4 Interpretation

(1) In this Act:

**approved form** means a form approved by the Commissioner.

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

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

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

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

**executive officer** means the following:

- (a) the Commissioner,
- (b) an Assistant Commissioner.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**government agency** means the following:

- (a) a public authority constituted by or under an Act,
- (b) a public sector agency within the meaning of the *Public Sector Employment and Management Act 2002*,
- (c) a NSW Government agency,
- (d) a local council or other local authority,
- (e) a State owned corporation,
- (f) any other holder of an office or body prescribed by the regulations for the purposes of this definition.

**head** of a government agency or investigative agency means:

- (a) the chief executive officer or other principal officer of the agency, or
- (b) a person who is specified by the regulations as the head of a particular agency for the purposes of this definition.

**Inspector** means the Inspector of the New South Wales Crime Commission appointed under this Act.

**investigation** means an investigation or reinvestigation conducted by the Commission under this Act and includes any inquiry into matters connected with, or arising out of, the exercise of the Commission's functions.

**investigative agency** means the following:

- (a) the Ombudsman's Office,
- (b) the Independent Commission Against Corruption,
- (c) the Inspector of the Independent Commission Against Corruption and any staff of the Inspector,
- (d) the Police Integrity Commission,
- (e) the Inspector of the Police Integrity Commission and any staff of the Inspector,
- (f) any law enforcement agency,
- (g) any person or body prescribed by the regulations for the purposes of this definition.



**Joint Committee**—see section 70.

**law enforcement agency** means the following:

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

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

**member of a government agency** includes an officer or employee of, or any person otherwise engaged by or acting for or on behalf of, or in place of, or as deputy or delegate of, a government agency.

**officer of the Commission**—see section 72.

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

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

**production notice**—see sections 28 and 29.

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

**relevant offence**—see section 5.

**search warrant** means a search warrant issued under section 17.

**serious crime concern** means any circumstances implying, or any allegations, that relevant offences of a particular type or class are being, or are likely to continue to be, committed in an organised, systemic or sustained way so as:

- (a) to have, or be likely to have, a significant impact on the community, or
- (b) to involve, or be likely to involve, substantial proceeds (within the meaning of the [Criminal Assets Recovery Act 1990](#)) of illegal activity (within the meaning of that Act).

**staff**—see section 74.

**task force**—see section 58.

- (2) A reference in this Act to a person who has ***special legal qualifications*** is a reference to a person who is:
- (a) qualified to be appointed as (but who is not) 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).

## 5 Meaning of “relevant offence”

- (1) In this Act:

***relevant offence*** means an offence that is punishable by imprisonment for life or for a term of 3 or more years (other than an offence the time for the commencement of a prosecution for which has expired).

- (2) For the purposes of this Act, an offence that is not a relevant offence but that the Commission suspects may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a relevant offence (whether or not the Commission has identified the nature of that relevant offence), is, for so long as the Commission so suspects, taken to be a relevant offence.

## 6 Notes

Notes included in this Act do not form part of this Act.

# Part 2 New South Wales Crime Commission

## Division 1 Constitution of Commission

### 7 Commission

- (1) There is constituted by this Act a corporation with the corporate name of the New South Wales Crime Commission.
- (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. 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, is taken to have been done by the Commission.
- (4) A reference in this Act to a hearing before the Commission or anything done or omitted by, to or in relation to the Commission includes a reference to a hearing before, or a thing done or omitted by, to or in relation to the Commissioner or another executive officer of the Commission having authority in the circumstances.

## **8 Commissioner**

- (1) The Governor may appoint a Commissioner for the New South Wales Crime Commission.
- (2) The Commissioner has and may exercise the functions conferred or imposed on the Commissioner by or under this or any other Act.
- (3) Schedule 1 contains ancillary provisions with respect to the office of Commissioner.

## **9 Assistant Commissioners**

- (1) The Governor may, with the concurrence of the Commissioner, appoint 2 or more Assistant Commissioners for the New South Wales Crime Commission.
- (2) At least one of the Assistant Commissioners must have special legal qualifications.
- (3) An Assistant Commissioner has and may exercise the functions conferred or imposed on an Assistant Commissioner by or under this or any other Act.
- (4) The Commissioner may determine the functions an Assistant Commissioner is required to exercise and allocate the functions to be exercised by each Assistant Commissioner.
- (5) Schedule 1 contains ancillary provisions with respect to the office of Assistant Commissioner.

## **Division 2 Functions of Commission**

### **10 Principal functions of Commission**

- (1) The principal functions of the Commission are as follows:
  - (a) to investigate matters relating to a relevant criminal activity or serious crime concern referred to the Commission by the Management Committee for investigation,
  - (b) to assemble evidence that would be admissible in the prosecution of a person for a relevant offence arising out of any such matters and to furnish any such evidence to the Director of Public Prosecutions,
  - (c) to furnish evidence obtained in the course of its investigations (being evidence that would be admissible in the prosecution of a person for an indictable offence against the law of the Commonwealth or another State or Territory) to the Attorney General or to the appropriate authority in the jurisdiction concerned,
  - (d) to reinvestigate matters relating to any criminal activity that were the subject of a police inquiry (being an inquiry referred for reinvestigation to the Commission by the Management Committee) and to furnish its findings to the Committee together

with any recommendation as to action the Commission considers should be taken in relation to those findings,

(e) to furnish in accordance with this Act reports relating to organised and other crime, which include, where appropriate, recommendations for changes in the laws of the State,

(f) to provide investigatory, technological and analytical services to such persons or bodies as the Commission thinks fit,

(g) with the approval of the Management Committee, to work in co-operation with such persons or authorities of the Commonwealth, the State or another State or Territory (including any task force and any member of a task force) as the Commission considers appropriate.

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

#### **11 Functions under [Criminal Assets Recovery Act 1990](#)**

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

#### **12 Information and reports with respect to government agencies and members of government agencies**

(1) The Commission may, if it considers it desirable to do so:

(a) furnish any information relating to the exercise of the functions of a government agency that the Commission obtains, or a report on that information, to the relevant Minister, and

(b) make to that Minister such recommendations (if any) relating to the exercise of the functions of the government agency, as the Commission considers appropriate.

(2) The Commission may, if it considers it desirable to do so:

(a) furnish any information relating to the conduct of a member of a government agency, in his or her capacity as such, that the Commission obtains, or a report on that information, to the head of that agency or (if the member is the head of the agency) to the relevant Minister, and

(b) make to the head or Minister such recommendations (if any) relating to the

conduct of the member as the Commission considers appropriate.

### **13 Liaison with other bodies**

The Commission may, in accordance with guidelines (if any) furnished by the Management Committee:

- (a) disseminate intelligence and information to such persons or bodies of the Commonwealth, the State or another State or Territory (including any task force and any member of a task force) as the Commission thinks appropriate, and
- (b) co-operate and consult with such persons or bodies as the Management Committee thinks appropriate.

**Note—**

Section 80 applies to a person to whom information is given by the Commission under this section in certain circumstances.

### **14 Incidental powers of Commission**

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

**Note—**

Staff to enable the Commission to exercise its functions may be employed under Chapter 1A of the [Public Sector Employment and Management Act 2002](#) in the Government Service. However, the Commission may still, under section 74, arrange for the use of services of staff or facilities of other agencies and for police officers to perform services for the Commission, as well as engage consultants.

### **15 Delegation by Commission**

- (1) The Commission may delegate to an executive officer or a member of staff of the Commission any of its functions, other than this power of delegation.
- (2) The Commissioner may delegate to an Assistant Commissioner or member of staff of the Commission any of his or her functions.
- (3) An Assistant Commissioner or member of staff of the Commission may delegate to a member of staff of the Commission any of the functions delegated to the Assistant Commissioner, subject to any conditions to which the delegation is subject.
- (4) The following functions may not be delegated (except as provided by subsection (5)):
  - (a) a function of making a report under this Act,
  - (b) the power of an executive officer to require the head of a government agency to

furnish information under section 28,

(c) the power of an executive officer to require a person to appear before the Commission and produce documents or things under section 24,

(d) the power of an executive officer to require a person to attend and produce a document or thing under section 29,

(e) the power of the Commissioner to issue a warrant for the arrest of a person under section 36.

(5) The functions referred to in subsection (4) (a) and (e) may be delegated to an Assistant Commissioner.

## **Division 3 Search warrants**

### **16 Definitions**

In this Division:

**thing** includes a document.

**things of a relevant kind** means a thing or things of a particular kind:

(a) connected with a matter relating to a relevant criminal activity or serious crime concern into which the Commission is conducting an investigation, or

(b) that may be used in evidence in proceedings for the taking, by or on behalf of the Crown in right of the State, of civil remedies in respect of a matter connected with, or arising out of, an offence to which the relevant criminal activity or serious crime concern relates.

### **17 Search warrants**

(1) An executive officer may apply to an authorised officer for the issue of a search warrant if the Commission has reasonable grounds to believe that there is, or within one month may be, in or on any premises things of a relevant kind.

(2) An authorised officer to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising 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 things of the relevant kind, and

(c) to seize any things of the relevant kind found in or on the premises and deliver things so seized to the Commission, and

- (d) in addition, to seize any other thing found in the course of executing the warrant that the person executing the warrant believes on reasonable grounds:
  - (i) to be evidence that would be admissible in the prosecution of another person for a relevant offence, or for an indictable offence against the law of the Commonwealth, of a State or of a Territory, and
  - (ii) that it is necessary to seize in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence.
- (3) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this section.
- (4) A search warrant issued under this section must include:
  - (a) a statement of the purpose for which the warrant is issued, and
  - (b) a description of the kind of things (other than those referred to in subsection (2) (d)) authorised to be seized.
- (5) The statement must include a reference to the matter relating to a relevant criminal activity or serious crime concern into which the Commission is conducting an investigation and with which the things of the relevant kind are connected.

**Note—**

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

## **18 Dealing with seized things**

- (1) The Commission may retain a thing seized under a search warrant if, and for so long as, retention of the thing is considered by the Commission to be reasonably necessary for the purposes of an investigation to which the thing is relevant.
- (2) If the thing may be used for the purposes of evidence in proceedings:
  - (a) for the taking, by or on behalf of the Crown in right of the State, of civil remedies in respect of a matter connected with, or arising out of, an offence to which a relevant criminal activity or serious crime concern relates—the Commission must deliver it to the authority or person responsible for taking the proceedings, or
  - (b) in the prosecution of a person for an indictable offence against the law of the Commonwealth or another State or Territory—the Commission may deliver it to the Attorney General or to the appropriate authority in that jurisdiction, or
  - (c) in the prosecution of a person for a relevant offence—the Commission may deliver it to the Director of Public Prosecutions.
- (3) Except as provided by subsection (4), the Commission must return the thing to the

owner or person who had lawful possession of the thing before it was seized if the Commission is satisfied that:

- (a) its retention for the purposes referred to in subsection (1) or (2) is not required, and
- (b) it is lawful for the person to have possession of the thing.

(4) If it appears to the Commission:

- (a) that there is no person who is entitled to possession of any thing referred to in subsection (3), or
- (b) that there is such a person, but the person does not wish to have possession of any such thing,

the Commission may apply to the Local Court for directions as to its disposal and dispose of it in accordance with the directions given by the Local Court in response to the application.

## **Division 4 Hearings**

### **19 Hearings**

- (1) For the purposes of an investigation the Commission may hold hearings.
- (2) A hearing must be conducted by one or more executive officers, as determined by the Commissioner.
- (3) The Commissioner or (if the Commissioner is not conducting the hearing) an Assistant Commissioner with special legal qualifications determined by the Commissioner is to preside at a hearing conducted by 2 or more executive officers.

### **20 Procedure at hearings generally**

The procedure at a hearing of the Commission is, subject to this Act and any directions of the Commissioner, to be determined by the executive officer presiding at the hearing.

### **21 Hearings to be held in private**

- (1) A hearing before the Commission is to be held in private and the Commission may give directions as to the persons who may be present during the hearing or a part of the hearing.
- (2) Nothing in a direction given by the Commission under subsection (1) prevents the presence, when evidence is being taken at a hearing before the Commission, of an Australian legal practitioner representing:
  - (a) the person giving evidence, or



(b) under section 22 (1) (b), a person who because of a direction given by the Commission under subsection (1) is entitled to be present.

- (3) A person (other than an executive officer, counsel assisting the Commission in relation to the matter that is the subject of a hearing or a member of staff of the Commission approved by the Commission) must not be present at the hearing unless the person is entitled to be present because of a direction given by the Commission under subsection (1) or because of subsection (2).

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

## **22 Legal representation**

- (1) At a hearing before the Commission:

- (a) a person giving evidence may be represented by an Australian legal practitioner, and
- (b) if, because of the existence of special circumstances, the Commission consents to a person who is not giving evidence being represented by an Australian legal practitioner—the person may be so represented.

- (2) Subsection (1) does not prevent the Commission from refusing to permit a particular Australian legal practitioner to represent a particular witness in an investigation if it believes on reasonable grounds and in good faith that to allow representation by the particular legal practitioner will, or is likely to, prejudice its investigation.

## **23 Evidence**

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

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

- (1) An executive officer with special legal qualifications may summon a person to appear before the Commission at a hearing to give evidence and to produce such documents or other things (if any) as are referred to in the summons.
- (2) The summons may require the immediate attendance of a person before the Commission if the executive officer believes on reasonable grounds that delay in attendance might result in:
- (a) the commission of an offence, or
- (b) the escape of an offender, or
- (c) the loss or destruction of evidence, or
- (d) serious prejudice to the conduct of an investigation.

- (3) The summons must be accompanied by a copy of the notice, or of each of the notices, by which the matter or matters to which the hearing relates was or were referred to the Commission by the Management Committee.
- (4) The summons must set out, so far as is reasonably practicable, the general nature of the matters in relation to which the Commission intends to question the person unless the Commission is satisfied that, in the particular circumstances of an investigation to which the hearing relates, it would prejudice the effectiveness of the investigation for the summons to do so.
- (5) Nothing in subsection (4) prevents the Commission from questioning the person in relation to any matter that relates to an investigation.
- (6) The executive officer presiding at a hearing before the Commission may require a person appearing at the hearing to produce a document or other thing (whether or not the document or thing is present at the hearing).
- (7) The Commission may, at a hearing, take evidence on oath or affirmation and for that purpose:
  - (a) the person presiding at the hearing may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and
  - (b) the person presiding or an authorised person may administer an oath or affirmation to a person so appearing at the hearing.
- (8) In this section:

**authorised person** means a person authorised in writing, or a person included in a class of persons authorised in writing, for the purposes of this section by the Commissioner.

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

- (1) A person served with a summons to appear as a witness at a hearing before the Commission must not, without reasonable excuse:
  - (a) fail to attend as required by the summons, or
  - (b) fail to attend from day to day unless excused, or released from further attendance, by an executive officer.
- (2) A person appearing as a witness at a hearing before the Commission must not, without reasonable excuse or except as provided by section 39 or 40:
  - (a) when required under section 24 either to take an oath or make an affirmation—refuse or fail to comply with the requirement, or

(b) refuse or fail to answer a question that the person is required to answer by the executive officer presiding at the hearing, or

(c) refuse or fail to produce a document or thing that the person was required to produce by a summons served on the person under this Act.

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

## **26 Examination of witnesses**

At a hearing before the Commission for the purposes of an investigation:

(a) counsel assisting the Commission generally or in relation to the matter to which the investigation relates, or

(b) any person authorised by the Commission to appear before it at the hearing, or

(c) any Australian legal practitioner representing a person at the hearing,

may, so far as the Commission thinks appropriate, examine or cross-examine any witness on any matter that the Commission considers relevant to the investigation.

## **27 False or misleading evidence**

(1) A person must not, at a hearing before the Commission, give evidence that is, to the knowledge of the person, false or misleading in a material particular.

(2) A contravention of subsection (1) is an indictable offence and, subject to this section, is punishable, on conviction, by a fine not exceeding 500 penalty units or by imprisonment for a period not exceeding 5 years, or both.

(3) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(4) A court of summary jurisdiction that convicts a person of an offence against subsection (1) may impose a fine not exceeding 100 penalty units or imprisonment for a period not exceeding 2 years, or both.

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

## **Division 5 Obtaining information, documents and things**

### **28 Commission may require information from certain government agencies**

(1) An executive officer may, by notice in writing served on the head of a government

agency or a person who is a member of a government agency (a **production notice**), require the head or member to produce to the Commission, in writing signed by the head or member, information that:

(a) was acquired by the government agency in the ordinary course of exercising its functions, or was acquired by the person in that person's capacity as such a member, and

(b) in the opinion of the executive officer is relevant to an investigation.

(2) The notice must specify or describe the information concerned and must fix a time and date, and manner, for compliance with the notice.

(3) An executive officer may, by notice in writing served on the head of a government agency (a **production notice**), require that head:

(a) to attend, at a time and place and before an officer of the Commission, specified in the notice, and

(b) to produce at that time and place to the officer a document or thing specified or described in the notice that relates to the exercise by the agency of its functions and that in the opinion of the executive officer is relevant to an investigation.

(4) Subject to the provisions of any enactment prescribed for the purposes of this subsection, but despite any other provision of a law of the State that prohibits the divulging or communicating of information or the production of a document or thing, a person must not:

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

(b) in purported compliance with a production notice served on the person under subsection (1), knowingly produce information that is false or misleading.

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

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

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

(1) An executive officer with special legal qualifications may, by notice in writing served on a person (a **production notice**), require the person:

(a) to attend at a time and place, and before an officer of the Commission, specified in the notice, and

(b) to produce at that time and place to that officer a document or thing specified in the notice, being a document or thing that is relevant to an investigation.

- (2) The production notice may provide that the requirement may be satisfied by some other person acting on behalf of the person on whom it was imposed and may, but need not, specify the person or class of persons who may so act.
- (3) A requirement to produce a document that is in electronic form, or to make any such document available for inspection, includes a requirement to produce, or make available, a hard copy form of the document, including the generation of reports or the extraction of data.
- (4) The Commission is to seal a document or thing produced in accordance with a production notice immediately after it is deposited with the Commission and is to retain it in safe custody for the purposes of the investigation.
- (5) The Commission may examine and take extracts or copies from a deposited document.
- (6) A document or thing produced in accordance with a production notice may be retained and dealt with as if it were a thing referred to in section 18.
- (7) A production notice may be issued in relation to an investigation whether or not a hearing before the Commission is being held for the purposes of the investigation.
- (8) A production notice may require the immediate production of a document or thing if the executive officer who issues the notice believes on reasonable grounds that delay in the production of the document or thing may result in:
  - (a) its destruction, removal or concealment, or
  - (b) serious prejudice to the conduct of an investigation.
- (9) A person must not, without reasonable excuse, refuse or fail to comply with a production notice served on the person.

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

### **30 Refusal or failure of person to produce document or thing**

- (1) This section applies if a person is required to produce a document or thing to an officer of the Commission in accordance with a production notice under section 28 or 29.
- (2) A person may not claim that he or she is entitled to refuse or fail to produce the document or thing unless the claim is made personally to the officer to whom the person is required to produce the document or thing by the production notice.
- (3) If the person makes such a claim, the officer of the Commission is to inform the person that, if the document or thing is not produced:
  - (a) he or she will be served with a summons requiring the person to appear as a

witness at a hearing before the Commission and to produce the document or thing, and

(b) the document or thing will be required to be deposited with the Commission so that it may be sealed and kept in safe custody pending the hearing.

(4) If the document or thing is not produced after the person is so informed:

(a) an executive officer with special legal qualifications is to summon the person (in accordance with section 24) to appear as a witness at a hearing before the Commission and to produce the document or thing, and

(b) the person must deposit the document or thing with the Commission.

(5) The Commission is to cause the document or thing to be sealed immediately after it is deposited with the Commission and is to retain it in safe custody pending the hearing.

(6) The Commission may examine and take extracts or copies from a deposited document.

### **31 Hearing following refusal or failure to produce document or thing**

(1) At a hearing referred to in section 30 (4), the Commission:

(a) may withdraw the requirement to produce the document or thing, or

(b) may insist that the document or thing be produced.

(2) If the Commission withdraws the requirement to produce the document or thing, the document or thing must be delivered to the person who deposited it.

#### **Note—**

See section 39 for the effect of the witness refusing or failing to produce a document or thing that the Commission insists be produced.

## **Division 6 Refusal or failure to produce documents or things or answer questions**

### **32 Definitions**

In this Division:

**appropriate officer** means the Principal Registrar or other officer of the Supreme Court prescribed by rules of court as the appropriate officer for the purposes of this Division.

**appropriate Registry** means the Principal Registry of the Supreme Court or other Registry of the Supreme Court prescribed by rules of court as the appropriate Registry for the purposes of this Division.

### **33 Applications to Supreme Court for review of Commission's decisions concerning entitlement to refuse to produce documents or things or answer questions**

- (1) This section applies to a person who claims to be entitled to refuse:
  - (a) to produce information or a document or thing that the person is required to produce by a production notice under section 28, or
  - (b) to answer a question put to the person, or to produce a document or thing that the person was required to produce, at a hearing before the Commission under section 30 (4).
- (2) The Commission must decide as soon as practicable whether in its opinion the claim of a person to whom this section applies is justified and notify the person of its decision.
- (3) If the person is dissatisfied with the Commission's decision, the person may apply to the Supreme Court for review of the decision.
- (4) The person is not entitled to apply to the Supreme Court for review unless the person has produced the document or thing to the Commission or placed the document or thing in the custody of the appropriate officer of that Court.
- (5) If the person produces the document or thing and makes such an application, the Commission must cause the document or thing to be placed in the custody of the appropriate officer of that Court.
- (6) An application by a person under subsection (3) must:
  - (a) be made in such manner as is prescribed by rules of court, and
  - (b) set out the grounds of the application, and
  - (c) be lodged with the appropriate Registry of the Supreme Court within the period of 5 days (excluding days on which the Registry is closed) immediately after the date on which the Commission notified the person of the decision to which the application relates.
- (7) If a decision of the Commission under this section relates to 2 or more questions, or to 2 or more documents or things, the decision must, to the extent to which it relates to a particular question or document or thing, be taken, for the purposes of this Act, to constitute a separate decision relating to that question or document or thing only.

### **34 Decisions on review**

- (1) Following its review of a decision under section 33, the Supreme Court may make an order:
  - (a) affirming the decision, or

(b) setting aside the decision.

- (2) If the Supreme Court makes an order setting aside the Commission's decision with respect to a document or thing, the Supreme Court must make a further order directing that the document or thing be delivered to the person.
- (3) An order of the Supreme Court under this section is, subject to any appeal from that order, conclusive for the purposes of any other proceedings.

### **35 Time for commencing prosecutions**

A prosecution for an offence under section 28 or 29 must not be commenced in respect of a refusal or failure by a person to produce a document or thing or answer a question:

- (a) if the person has claimed to be entitled to refuse to produce the document or thing or answer the question, and the Commission decides that, in its opinion, the claim is not justified—until the expiration of the period of 5 days (excluding days on which the appropriate Registry of the Supreme Court is closed) immediately after the Commission has notified the person of the decision, or
- (b) if the person has made an application to the Supreme Court under this Division for review of such a decision of the Commission—until the application and any appeal from an order made by the Supreme Court on the application have been determined or otherwise disposed of.

## **Division 7 Attendance before Commission**

### **36 Arrest of witness**

- (1) If a person served with a summons to appear as a witness at a hearing before the Commission fails to attend as required by the summons, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness.
- (2) The Commissioner may also issue a warrant for the arrest of a person who has been served with a summons to appear as a witness at a hearing before the Commission if the Commissioner is satisfied:
  - (a) by evidence on oath or affirmation that the person has made a representation that the person intends not to appear at the hearing as required by the summons, and
  - (b) that it is in the public interest that the person be compelled to do so to avoid serious prejudice to the conduct of an investigation.
- (3) The Commissioner may require a person to take an oath or affirmation for the purposes of this section.
- (4) A warrant may be issued under this section even though the time specified in the



summons for the person to attend has not yet passed.

- (5) A warrant issued under this section authorises the arrest of the witness and his or her being promptly brought before the Commission and detained in a prison or elsewhere for that purpose until released by order of the Commissioner.
- (6) A warrant issued under this section may be executed by any police officer or by any person to whom it is addressed.
- (7) A person executing a warrant issued under this section may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.
- (8) The issue of a warrant or arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with the summons.
- (9) In this section:  
**representation** includes:
  - (a) an express or implied representation (whether oral or in writing), or
  - (b) a representation to be inferred from conduct, or
  - (c) a representation not intended by its maker to be communicated to or seen by another person, or
  - (d) a representation that for any reason is not communicated.

### **37 Conditional release of witness**

- (1) The release of a witness by order of the Commissioner under section 36 (5) may (but need not) be made subject to one or more of the following conditions (or to any other conditions):
  - (a) that the witness appear before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by an executive officer,
  - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.
- (3) A witness who, without reasonable excuse, fails to comply with a condition to which the release of the witness is subject is guilty of an offence.

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

### **38 Review by Supreme Court**

- (1) A witness who has not been released by the Commissioner under section 36 (5) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness.
- (3) 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.
- (4) An order of the Supreme Court under this section is taken to be an order of the Commissioner.

### **39 Privilege concerning answers and documents**

- (1) A witness summoned to attend or appearing before the Commission at a hearing is not (except as provided by section 40) excused from answering any question or producing any document or thing on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground.
- (2) An answer made, or document or thing produced, by a witness at a hearing before the Commission is not (except as otherwise provided in this section) admissible in evidence against the person in any civil or criminal proceedings (other than a proceeding for the falsity of evidence given by the witness) or in any disciplinary proceedings.
- (3) Nothing in this section makes inadmissible:
  - (a) any answer, document or thing in proceedings for an offence against this Act or in proceedings for contempt under this Act, or
  - (b) any answer, document or thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (1), or
  - (c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document, or

(d) any answer made, or document or thing produced, by a corporation at a hearing before the Commission.

(4) If:

(a) an Australian legal practitioner or other person is required to answer a question or produce a document or thing at a hearing before the Commission, and

(b) the answer to the question would disclose, or the document or thing contains, a privileged communication passing between the legal practitioner (in his or her capacity as a legal practitioner) and a person (the **client**),

the legal practitioner or client is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.

(5) However, the Australian legal practitioner must, if so required by the executive officer presiding at the hearing, furnish to the Commission the name and address of the client to whom or by whom the privileged communication was made.

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

#### **40 Religious confessions**

(1) A person who is or was a member of the clergy of any church or religious denomination is entitled to refuse to divulge that a religious confession was made, or the contents of a religious confession made, to the person when a member of the clergy.

(2) Subsection (1) does not apply if the communication involved in the religious confession was made for a criminal purpose.

(3) In this section:

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

#### **41 Reimbursement of expenses of witnesses**

A witness appearing before the Commission is to be paid out of money provided by Parliament in respect of the expenses of the witness's attendance such amount (if any) as the Commission determines.

## 42 Legal and financial assistance

- (1) A witness who is appearing, or is about to appear, before the Commission may make an application to the Attorney General for the provision of assistance under this section in respect of the witness's appearance.
- (2) A person who proposes to make, or has made, an application to the Supreme Court under section 33 for review of a decision of the Commission may make an application to the Attorney General for the provision of assistance under this section in respect of the application to the Supreme Court.
- (3) Where an application is made by a person under this section, the Attorney General may, if satisfied that:
  - (a) it would involve substantial hardship to the person to refuse the application, or
  - (b) the circumstances of the case are of such a special nature that the application should be granted,

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

## 43 Appearance of inmate before Commission

- (1) If the Commission requires an inmate to appear before it at a hearing, the Commission may, by order in writing served on the general manager of the correctional centre in whose custody the inmate is, direct the general manager to produce the inmate, or have the inmate produced, at the time and place stated in the order.
- (2) Such an order is sufficient authority to the general manager of the correctional centre for producing the inmate or having the inmate produced, and the inmate must be produced accordingly.
- (3) An inmate is, when produced under this section in the actual custody of the general manager of the correctional centre, a correctional officer or a police officer, taken to be in lawful custody.
- (4) The general manager, correctional officer or police officer must in due course return the inmate to the correctional centre.
- (5) In this section, **correctional centre**, **general manager of a correctional centre** and **inmate** have the same meanings as **correctional centre**, **general manager** and **inmate** have in the *Crimes (Administration of Sentences) Act 1999*.

## **Division 8 Protection of witnesses and evidence**

### **44 Protection of witnesses**

- (1) 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 at a hearing 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 otherwise than at a hearing.
- (2) 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 (including arrangements with the Minister or with members of the NSW Police Force) as are necessary:
  - (a) to protect the safety of any such person, or
  - (b) to protect any such person from intimidation or harassment.
- (3) Nothing in this section affects the [Witness Protection Act 1995](#).

### **45 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, 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 hearing, must not be published, or must not be published except in such manner, and to such persons, as the Commission specifies.
- (2) The Commission must give such a direction if the failure to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.
- (3) A person must not make a publication in contravention of a direction given under this section.

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

(4) If:

- (a) a person has been charged with an offence before a court of the State, and
- (b) the court considers that it may be desirable in the interests of justice that particular evidence given before the Commission in relation to which the Commission has given a direction under this section be made available to the person or to a legal practitioner representing the person,

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

(5) If:

- (a) the Commission makes evidence available to a court in accordance with subsection (4), and
- (b) the court, after examining the evidence, is satisfied that the interests of justice so require,

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

#### **46 Indemnities and undertakings**

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

## **Division 9 Miscellaneous**

### **47 Contempt of Commission**

A person must not:

- (a) obstruct or hinder the Commission or an officer of the Commission in the exercise of the functions of the Commission, or
- (b) disrupt a hearing before the Commission.

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

### **48 Protection from liability**

- (1) An executive officer has, in the exercise of functions as an executive officer in relation to a hearing before the Commission, the same protection and immunity as a Judge of the Supreme Court.
- (2) An Australian legal practitioner assisting the Commission or representing a person at a hearing before the Commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness has the same protection as a witness in proceedings in the Supreme Court.
- (4) No criminal or civil liability (apart from this Act) attaches to a person for compliance, or purported compliance in good faith, with any requirement made under this Act.
- (5) In particular, if a person produces any document or other thing under section 29, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

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

### **49 The Management Committee**

- (1) There is constituted by this Act a New South Wales Crime Commission Management Committee.
- (2) The Management Committee has the functions conferred or imposed on it by or under this or any other Act.

### **50 Members of the Management Committee**

- (1) The Management Committee is to consist of the following 5 members:
  - (a) an independent Chairperson appointed by the Minister,

- (b) the Commissioner of Police,
  - (c) the Chair of the Board of the Australian Crime Commission,
  - (d) the Commissioner,
  - (e) the Chief Executive of the Ministry for Police and Emergency Services.
- (2) Schedule 2 contains ancillary provisions with respect to the members and procedure of the Management Committee.

### **51 Functions of the Management Committee**

- (1) The principal functions of the Management Committee are:
- (a) to refer (by a written notice in accordance with section 54) matters relating to relevant criminal activities to the Commission for investigation, and
  - (b) to refer (by a written notice in accordance with section 54) matters relating to serious crime concerns to the Commission for investigation, and
  - (c) to refer (by a written notice in accordance with section 54) to the Commission, for reinvestigation, police inquiries into matters relating to any criminal activities, and
  - (d) to make arrangements (in accordance with section 58) for task forces to assist the Commission in carrying out its functions, and
  - (e) to review and monitor generally the work of the Commission, and
  - (f) to give approvals for the purposes of section 13 (Liaison with other bodies).
- (2) The Management Committee is not to refer a matter to the Commission for investigation unless it is satisfied that:
- (a) the use of the Commission's powers appear to be necessary to fully investigate the relevant criminal activity or serious crime concern, and
  - (b) the investigation of the relevant criminal activity or serious crime concern by the Commission is in the public interest, and
  - (c) the relevant criminal activity or serious crime concern is sufficiently serious or prevalent to warrant its investigation by the Commission.

### **52 Review of references**

- (1) The Management Committee is to conduct a review of the status and progress of each reference it makes under section 51 and renewal of reference it makes under this section.
- (2) The review is to be conducted no later than 3 months (or such longer period not



exceeding 2 years as the Management Committee thinks appropriate) after the anniversary of the date on which the reference is made or renewed.

- (3) On completion of the review of a reference or renewal of a reference, the Management Committee may (by written notice) renew the reference or discontinue the reference.
- (4) A reference may be renewed under this section on more than one occasion.

### **53 Limitations on reference or renewal of reference**

The Management Committee may, by the terms of a reference or renewal of a reference, impose limitations:

- (a) on the carrying out of an investigation by the Commission into any matter relating to a relevant criminal activity or serious crime concern referred to the Commission for investigation, and
- (b) on the carrying out of a reinvestigation of a police inquiry referred to the Commission.

### **54 Notices referring matters for investigation**

- (1) The notice referring a matter relating to a relevant criminal activity or serious crime concern to the Commission for investigation or renewing such a reference:
  - (a) may describe the matter (wholly or partly) by reference to information given at a meeting of the Management Committee or other extrinsic material, whether or not the information or material is included in or annexed to the notice, and
  - (b) must describe the general nature of the circumstances or allegations constituting the relevant criminal activity or serious crime concern, and
  - (c) must set out the general purpose of the investigation.
- (2) If information or other extrinsic material referred to in a notice is not included in or annexed to the notice, it does not form part of the notice for the purposes of section 24 (3) (relating to the matter to accompany a summons to a witness).

### **55 Independent legal advice**

The Management Committee may, at the expense of the Commission, obtain independent legal advice with respect to the content of any notice under this Part.

### **56 Commission may request reference**

- (1) The Commission may, if it considers it appropriate to do so, request the Management Committee to refer to the Commission:
  - (a) a matter relating to relevant criminal activity or a serious crime concern for investigation, and

(b) a police inquiry into a matter relating to any criminal activity for reinvestigation.

(2) A request by the Commission under subsection (1) is to be in writing and may be accompanied by such written submissions and other material as the Commission thinks fit.

### **57 Directions and guidelines to Commission**

(1) The Management Committee may give directions and furnish guidelines to the Commission with respect to the exercise of its functions.

(2) The Commission must comply with any such directions or guidelines.

(3) Without limiting subsection (1), the Management Committee:

(a) must furnish guidelines with respect to the negotiation by the Commission of the terms of agreements regarding orders made by consent under the *Criminal Assets Recovery Act 1990*, and

(b) may furnish guidelines with respect to the furnishing of evidence obtained in the course of the Commission's investigations (being evidence that would be admissible in the prosecution of a person for an indictable offence against the law of the Commonwealth or another State or Territory) to the Attorney General or to the appropriate authority in the jurisdiction concerned.

(4) The Management Committee may give directions and furnish guidelines to the Commission with respect to the internal management of the Commission and the Commission must comply with any such directions or guidelines.

(5) The Management Committee must furnish guidelines to the Police Integrity Commission with respect to the negotiation by the Police Integrity Commission of the terms of agreements regarding orders made by consent under the *Criminal Assets Recovery Act 1990*.

(6) Guidelines must not be furnished under subsection (5) unless the Management Committee has consulted with the Commissioner for the Police Integrity Commission about, and obtained his or her written agreement to, the furnishing of the guidelines.

### **58 Task forces to assist Commission**

(1) The Management Committee may make arrangements with the head of one or more investigative agencies for a body of persons from that or those agencies (a **task force**) to assist the Commission in carrying out an investigation into matters relating to a relevant criminal activity or a serious crime concern or any of its other functions.

(2) In assisting the Commission to carry out its functions, the task force is (subject to subsection (3)) under the control and direction of the head of the investigative agency or agencies concerned.

- (3) The Management Committee may give directions and furnish guidelines to the Commission and the head of an investigative agency (being an investigative agency of New South Wales) for the purpose of co-ordinating the activities of the task force in assisting the Commission, and the Commission and the head of the investigative agency must comply with any such directions and guidelines.

#### **59 Furnishing of reports and information**

- (1) The Commission must keep the Management Committee informed of the general conduct of its operations in the exercise of its functions and, if the Committee requests the Commission to provide to it information concerning a specific matter relating to the Commission's operations in the exercise of its functions, the Commission must comply with the request.
- (2) In particular, the Commission must report to each meeting of the Management Committee the particulars of any warrants issued by the Commissioner under section 36 that have not previously been reported to the Management Committee.
- (3) A report made by the Commission under this Act that sets out any finding that an offence has been committed, or makes any recommendation for the institution of a prosecution in respect of an offence, must not be released to the public by the Commission unless the Management Committee, in the special circumstances of the case, approves.

### **Part 4 Inspector of the New South Wales Crime Commission**

#### **60 Definition**

In this Part:

***officer of the Commission*** means a person who is, or was, an executive officer or member of staff of the Commission.

#### **61 Inspector of the New South Wales Crime Commission**

- (1) The Governor may appoint an Inspector of the New South Wales Crime Commission.
- (2) The Inspector has the functions conferred or imposed on the Inspector by or under this or any other Act.
- (3) Schedule 3 contains ancillary provisions relating to the office of Inspector.

#### **62 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 a government agency or member of a government agency.
- (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 section 67 or 68, 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.

### **63 Powers of Inspector**

- (1) 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.
- (2) A referral of a matter under this section to another public authority or public official for consideration or action must specify in writing the terms of the referral.

#### **64 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.

#### **65 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 must not be taken to be limited by implication by 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 63.

## **66 Staff of inspector**

- (1) The staff of the Inspector comprises:
  - (a) such staff as are employed to assist the Inspector under Chapter 1A of the *Public Sector Employment and Management Act 2002*, and
  - (b) the persons referred to in subsection (2).
- (2) The Inspector may arrange for the use of the services of:
  - (a) any staff or facilities of a government agency, 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 of a court of the State).
- (3) Without limiting subsection (2), the Inspector has the right to make reasonable use of the services of the staff or facilities of the Police Integrity Commission.

## **67 Special reports**

- (1) The Inspector may, at any time, make a special report to the Minister on any of the following:
  - (a) any matters affecting the Commission, including, for example, its operational effectiveness or needs,
  - (b) any administrative or general policy matter relating to the functions of the Inspector,
  - (c) any other matter relating to the exercise of a function to audit, deal with or assess any matter under section 62 that the Inspector considers warrants the making, in the public interest, of a special report.
- (2) The Minister is to lay (or cause to be laid) a copy of any report made to the Minister under this section before both Houses of Parliament as soon as practicable after the Minister receives the report.
- (3) Without affecting the power of the Inspector to make a report under this section, the Inspector may, at any time:
  - (a) make a recommendation or report concerning any matter relating to the functions of the Inspector 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 Minister.

## 68 Annual reports

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.

## 69 Obstruction of Inspector

A person must not:

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Inspector or an officer of the Inspector in the exercise of functions under this Act, or
- (b) without reasonable excuse, refuse or fail to comply with any lawful requirement of the Inspector or officer under this Act, or
- (c) make a statement to the Inspector or an assisting person knowing it to be false or misleading, or attempt to mislead, the Inspector or an assisting person in the exercise of functions under this Act.

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

## Part 5 Parliamentary Joint Committee

### 70 Definition

In this Act:

**Joint Committee** means the joint committee called the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission constituted under the [Ombudsman Act 1974](#).

### 71 Functions

- (1) The Joint Committee has the following functions under this Act:
- (a) to monitor and review the exercise by the Commission, the Management Committee and the Inspector of their functions,
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission, the Management Committee or the Inspector or connected with the exercise of their 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 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.

**Note—**

See also clause 10 of Schedule 1 and clause 9 of Schedule 3.

- (2) Nothing in this Part authorises the Joint Committee:
- (a) to reconsider a decision of the Management Committee regarding matters referred for investigation under section 51 (1) (a)–(c), or
  - (b) to inquire into any application of the Commission for a consent order under section 62 of the *Criminal Assets Recovery Act 1990*, or
  - (c) to reconsider any decision of the Commission in relation to operational matters concerning the exercise of its functions.

## **Part 6 Officers of the Commission**

### **Division 1 General**

#### **72 Definition**

In this Act:

***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 as a consultant under section 74 (2).

#### **73 Associated persons**

- (1) In this Part, a reference to a person who is associated with an officer of the Commission, or an applicant for a position as an officer of the Commission, is a reference to:
- (a) in the case of an officer or applicant who is an individual, any of the individual's family or business associates, or
  - (b) in the case of an officer or applicant that is a company engaged under section 74 (2):
    - (i) any of the company's key personnel, or
    - (ii) any of those key personnel's family or business associates, or



(iii) any of the company's related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth).

(2) For the purposes of this section:

(a) the following persons are an individual's family associates:

- (i) the individual's spouse or de facto partner,
- (ii) the individual's dependent children,
- (iii) such other members of the individual's household or family as the Commissioner may specify in respect of a particular individual or class of individuals, and

(b) the following persons are an individual's business associates:

- (i) the individual's employer,
- (ii) any such employer's key personnel (in the case of an employer that is a company),
- (iii) the individual's partners in any partnership of which the individual is a member,
- (iv) such employees of any such partnership, and such other persons having contractual relationships with the partnership, as the Commissioner may specify in respect of a particular partnership or class of partnerships,
- (v) the individual's employees,
- (vi) such other persons having contractual relationships with the individual as the Commissioner may specify in respect of a particular individual or class of individuals, and

(c) the following persons are a company's key personnel:

- (i) the directors of the company,
- (ii) the secretary of the company,
- (iii) such officers or employees of the company, such shareholders in the company and such other persons having contractual relationships with the company as the Commissioner may specify in respect of a particular company or class of companies.

## **74 Staff**

(1) The staff of the Commission comprises:

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

## **Division 2 Disclosure of financial interests and security**

### **75 Disclosure of certain financial information**

- (1) On becoming an officer of the Commission, the officer must furnish to the Commission a statement of financial interests, in the approved form, in relation to the officer.
- (2) Without limiting subsection (1), the Commission may at any time require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commission a statement of financial interests, in the approved form, in relation to:
  - (a) the officer or applicant, or
  - (b) any other person who is associated with the officer or applicant.

### **76 Changes in financial interests to be notified**

An officer of the Commission who becomes aware of any significant change in the financial interests in relation to:

- (a) the officer, or
  - (b) any person who is associated with the officer and in respect of whom the officer has previously furnished a statement of financial interests under this Division,
- must immediately furnish a statement of that change, in the approved form, to the Commission.

#### **77 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, executive officers and members of staff 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 must 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.

## **78 Compliance with Division a condition of employment**

- (1) It is a condition of an officer's employment or engagement with the Commission that the officer complies with the requirements of this Division and the regulations made under section 77 (Disclosure of pecuniary interests and other matters).
- (2) Failure to comply with any such requirement is sufficient ground for terminating the officer's employment or engagement.
- (3) This section has effect despite any other condition of the officer's conditions of employment or engagement.
- (4) A person does not fail to comply with the requirements of this Division merely because the person fails to disclose matters of which the person is not aware.

## **Part 7 Miscellaneous**

### **78A Vetting of prospective staff**

- (1) Vetting information that is held by the Inspector or Commission or obtained under this section may be used in determining whether to appoint a person (an **applicant**) as an officer of the Inspector or the Commission.
- (2) For the purposes of this section, **vetting information** is information of the following kind about an applicant, or about an associate or relative of an applicant:
  - (a) any criminal intelligence report or other criminal information,
  - (b) information held in the Births, Deaths and Marriages Register,
  - (c) information held by Roads and Maritime Services relating to licences or other authorities, offences or penalties,
  - (d) information held by Corrective Services NSW, Department of Attorney General and Justice,
  - (e) information held by CrimTrac,
  - (f) information held by a law enforcement agency,
  - (g) information held by an agency of the Commonwealth or of the State or another State or Territory investigating public sector corruption,
  - (h) information held by an agency of a jurisdiction outside Australia, being an agency responsible for the enforcement of laws of that jurisdiction,
  - (i) information prescribed by the regulations that is held by a public authority or held by a Government agency of another jurisdiction (whether in or outside Australia).

- (3) The Inspector or Commission may, with the consent of an applicant, request a public authority or other person or body to disclose vetting information about the applicant.
- (4) The Inspector or Commission may also, without consent, request a public authority or other person or body (not being an agency of a jurisdiction outside Australia) to disclose vetting information about associates or relatives of the applicant.
- (5) The Inspector or Commission must notify an applicant that the Inspector or Commission has the power under this section to request a public authority or other person or body (not being an agency of a jurisdiction outside Australia) to disclose vetting information about associates or relatives of the applicant. The notice must be given when the consent of the applicant is sought under subsection (3) or, if consent has not been sought for the purposes of that subsection, before the first request for information about associates or relatives of the applicant is made under this section.
- (6) A public authority that holds, or is responsible for the disclosure of, vetting information is authorised to disclose the information to the Inspector or Commission for the purposes of this section.
- (7) The Commissioner of Police is authorised at any time to disclose (or arrange for a member of the NSW Police Force to disclose) to the Inspector or Commission information about the criminal history of a person for the purposes of this section, including the following:
  - (a) information relating to spent convictions, despite anything to the contrary in the *Criminal Records Act 1991*,
  - (b) information relating to criminal charges, whether or not heard, proven, dismissed, withdrawn or discharged,
  - (c) information relating to offences, despite anything to the contrary in section 579 of the *Crimes Act 1900*.
- (8) For the purposes of the collection, disclosure or use of vetting information under this section or section 78B, the information may be collected, disclosed or used despite any other Act or law.

**Note—**

Section 80 makes it an offence for an officer or former officer of the Inspector or Commission to disclose information obtained in the exercise of functions under this Act.

- (9) This section does not restrict or prevent:
  - (a) the Inspector or Commission or any other person from collecting, disclosing or using any information that the Inspector, Commission or other person may otherwise lawfully collect, disclose or use, or
  - (b) the Inspector or Commission from considering information other than vetting

information in determining whether or not to appoint an applicant as an officer of the Inspector or Commission.

(10) In this section and section 78B:

**appoint** includes engage, make use of the services of and second.

**law enforcement agency** means the following:

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

**public authority** has the same meaning as it has in the *Independent Commission Against Corruption Act 1988*.

#### **78B Safeguards relating to use of vetting information**

- (1) The relevant body for a record must, for the period of 2 years commencing on the commencement of this section (the **review period**), keep a record of each occasion when vetting information about an associate or a relative of an applicant is considered under section 78A.
- (2) The relevant body is to record whether vetting information was the basis (wholly or partly) of a decision not to appoint the applicant and the information relied on for that purpose.
- (3) A person appointed by the Attorney General is to review the records kept under this section at the end of the review period.
- (4) The person appointed must be a person who is:
  - (a) a former Judge of the Supreme Court of the State or of any other State or Territory, a former Judge of the Federal Court of Australia or a former Justice of the High Court of Australia, or
  - (b) a person qualified to be appointed as (but who is not) a Judge or Justice of any such court.
- (5) The relevant body may, at the request of the person conducting the review, make available any records kept by the body under this section and any further information requested by the person that is reasonably related to the review.
- (6) The person conducting the review must, not later than 6 months after the end of the

review period, report on the records to the Minister and the Attorney General and provide a copy of the report to the relevant body.

- (7) A report may contain recommendations relating to the collection, use and disclosure of vetting information under section 78A and related procedures or practices of the relevant body.
- (8) The **relevant body** for a record relating to the use of information about an associate or a relative of an applicant for appointment in a position:
  - (a) as an officer of the Inspector—is the Inspector, or
  - (b) as an officer of the Commission—is the Commission.

### **79 Public sittings and bulletins**

- (1) The Commission may hold sittings in public for the purpose of informing the public of, or receiving submissions in relation to, the general conduct of its operations and the administration of its affairs.
- (2) At any such public sitting, the Commission may be constituted by one or more executive officers who have special legal qualifications.
- (3) The procedure for the calling and conduct of the sittings is, subject to this Act, to be as determined by the Commissioner.
- (4) The Commission may publish bulletins for the purpose of informing the public of the general conduct of its operations.
- (5) The Commission must not:
  - (a) divulge in the course of a sitting held under this section, or
  - (b) include in a bulletin published under this section,  
  
any matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

### **80 Secrecy**

- (1) This section applies to a person:
  - (a) who is or was an executive officer, and
  - (b) who is or was a member of the staff of the Commission, and
  - (c) who is or was an Inspector or a member of the staff of the Inspector, and
  - (d) 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

- (e) who is or was a member of a task force assisting the Commission in accordance with an arrangement under section 58, and
- (f) to whom information is given by the Commission or by a person referred to in paragraph (a), (b), (c), (d) or (e) after expressly informing the person that the information is to be treated by the person as confidential.

(1A) This section applies to a person conducting a review under section 78B in relation to the person's functions under that section.

(2) A person to whom this section applies must 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 because of, or in the course of, the exercise of functions under this Act.

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

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

- (a) to produce in any court any document or other thing that has come into the person's possession, custody or control because 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.

(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, Inspector or Management Committee, if the Commissioner, Inspector or Chairperson of the Management Committee certifies that it is necessary for the information to be divulged in the public interest, or



(d) to any prescribed authority or person.

(5) An authority or person to whom information is divulged under subsection (4), and any person or employee under the control of that authority or person, is, in respect of that information, 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 or inspection of.

#### **80A Disclosure of information and giving of evidence by Commission to Ombudsman**

- (1) The Commissioner, and any officer of the Commission acting with the approval of the Commissioner, may:
  - (a) furnish to the Ombudsman information obtained by the Commissioner or officer in exercising functions in relation to the Commission, or
  - (b) give evidence before the Ombudsman and produce any document to the Ombudsman in respect of any such information.
- (2) The Commissioner, and any officer of the Commission, can be compelled to give evidence before the Ombudsman or produce a document before the Ombudsman in respect of information obtained by the Commissioner or officer in exercising functions as referred to in subsection (1) only if:
  - (a) a matter has been referred by the Inspector of the Crime Commission, or the Inspector of the Police Integrity Commission, to the Ombudsman for investigation, and
  - (b) the evidence or document is relevant to the matter referred.
- (3) The Ombudsman may exercise the Ombudsman's powers under section 19 (2) of the [Ombudsman Act 1974](#) for the purposes of subsection (2).
- (4) This section applies despite section 80 and any other law.

#### **81 Disclosures prejudicing investigations**

- (1) A person who is required:
  - (a) by a production notice under section 28 or 29 to furnish information or to attend and produce a document or other thing, or
  - (b) by a summons under section 24 to give evidence or to produce a document or

other thing,

must not disclose any information about the notice or summons that is likely to prejudice the investigation to which it relates.

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

- (2) Subsection (1) does not apply to a notice or summons unless it (or a notice accompanying it) specifies that information about the notice or summons must not be disclosed.
- (3) A person does not contravene this section if:
  - (a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter, or
  - (b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons, or
  - (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.
- (4) A reference in this section to the disclosure of any information about a notice or summons includes a reference to:
  - (a) a disclosure about the existence or nature of the notice or summons or of the investigation to which it relates, and
  - (b) a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the notice or summons or of the investigation to which it relates.

## **82 Annual report**

- (1) The Commission must, within the period of 4 months after each 30 June, prepare a report of its operations during the year that ended on that 30 June and furnish the report to the Management Committee for transmission, together with such comments on the report as the Committee thinks fit, to the Minister.
- (2) A report by the Commission under this section in relation to a year must include the following:
  - (a) a description of the matters that were referred during that year to the Commission for investigation,
  - (b) a description, which may include statistics, of any patterns or trends, and the nature and scope, of organised and other crime that has come to the attention of the Commission during that year in the course of its investigations,

- (c) any recommendations for changes in the laws of the State, or for administrative action, that, as a result of the exercise of its functions, the Commission considers should be made,
  - (d) the general nature and the extent of any information furnished by the Commission during that year to an investigative agency,
  - (e) the extent to which its investigations have resulted in the prosecution in that year of persons for offences,
  - (f) particulars of warrants issued by the Commissioner under section 36, including whether a warrant was issued for a failure to appear as a witness at a hearing before the Commission or because the Commissioner was satisfied that a person intended not to appear at such a hearing,
  - (g) particulars of the number and results of:
    - (i) applications made to the Supreme Court under section 33 for review in respect of decisions of the Commission, and
    - (ii) other court proceedings involving the Commission,  
being applications and proceedings that were determined, or otherwise disposed of, during that year.
- (3) A report by the Commission under this section must not:
- (a) identify persons as being suspected of having committed offences, or
  - (b) identify persons as having committed offences unless those persons have been convicted of those offences.
- (4) In any report by the Commission under this section the Commission must take reasonable care to ensure that the identity of a person is not revealed if to reveal it might, having regard to any material appearing in the report, prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.
- (5) A report by the Commission under this section that contains particulars of a warrant issued by the Commissioner under section 36 must not reveal the identity of the person against whom the warrant was issued.
- (6) For the purpose of enabling the final report of the Commission to be prepared and dealt with in accordance with this section, the Minister may give directions as to the manner and time of preparation, but not the contents, of that report.
- (7) The Minister must cause a copy of:
- (a) a report of the Commission under this section that is received by the Minister, and

(b) any comments made on the report by the Management Committee, being comments that accompanied the report,

to be laid before each House of Parliament within 15 sitting days of that House after the report is received by the Minister.

(8) For the purposes of subsection (7), sitting days are to be counted whether or not they occur in the same session.

### **83 Counsel assisting Commission**

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

### **84 Service of documents**

(1) A document that is authorised or required by this Act or the regulations to be served on any person may be served by:

(a) in the case of a natural person:

(i) delivering it to the person personally, or

(ii) sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or

(iii) sending it by facsimile transmission to the facsimile number of the person, or

(b) in the case of a body corporate:

(i) leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or

(ii) sending it by facsimile transmission to the facsimile number of the body corporate.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.

### **85 Proceedings for offences**

(1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act are to be dealt with summarily before the Local Court.

(2) Despite any Act or law to the contrary (including, in particular, Division 2 of Part 4 of the *Crimes (Sentencing Procedure) Act 1999*), the court by which a person is

sentenced to imprisonment under this Act may direct the sentence to be cumulative on any previous sentence which has been imposed on the person by the court or to which the person is otherwise subject.

## **86 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 10 penalty units.

## **87 (Repealed)**

## **88 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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

(Sections 8 and 9)

### **1 Eligibility for appointment**

- (1) A person is not eligible to be appointed as Commissioner or to act in that office unless the person has special legal qualifications.
- (2) A person is not eligible to be appointed as Commissioner or Assistant Commissioner or to act in either of those offices 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 Commissioner or Assistant Commissioner**

- (1) **Long illness or absence** The Governor may, from time to time, appoint a person to act in the office of Commissioner or Assistant Commissioner during the illness or absence of the Commissioner or Assistant Commissioner.
- (2) **Short illness or absence** The Minister may appoint a person to act in the office of

Commissioner or Assistant Commissioner during the illness or absence of the Commissioner or Assistant Commissioner if the Minister has reason to believe that the duration of the illness or absence will not exceed 4 weeks. The Minister is not to make an appointment if there is a subsisting appointment under subclause (1).

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

### **3 Basis of offices**

- (1) The office of Commissioner is a full-time office.
- (2) The office of Assistant Commissioner may be a full-time or 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 holds office for such term (not exceeding 10 years) as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) Subject to this Schedule, an Assistant Commissioner holds office for such term as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (3) A person may not hold the office of Commissioner for terms totalling more than 10 years.

## **5 Remuneration**

- (1) The Commissioner or a full-time Assistant Commissioner is entitled to be paid:
  - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
  - (b) such travelling and subsistence allowances as the Minister may from time to time determine.
- (2) A part-time Assistant Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Assistant Commissioner.

## **6 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) being the Commissioner—holds office for longer than the period mentioned in clause 4 (3), or
  - (d) resigns the office by instrument in writing addressed to the Minister, 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,
  - (f) is absent from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence results from illness or other unavoidable cause, or
  - (g) engages in any paid employment outside the duties of his or her office, except with the consent of the Minister, or
  - (h) 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
  - (i) becomes a mentally incapacitated person, or
  - (j) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted outside of New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
  - (k) is removed from office under this clause.

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

(3) Without limiting subclause (2), the Governor may remove the Commissioner or Assistant Commissioner from office if he or she contravenes clause 7.

## **7 Disclosure of pecuniary interests**

(1) If:

(a) the Commissioner has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, and

(b) the interest appears to raise a conflict with the proper performance of the Commissioner's duties in relation to the consideration of the matter,

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

(2) If:

(a) an Assistant Commissioner has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, and

(b) the interest appears to raise a conflict with the proper performance of the Assistant Commissioner's duties in relation to the consideration of the matter,

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

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

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

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

(4) Particulars of any disclosure made under this clause must be recorded by the Commission in a register of interests kept for the purpose. A copy or extract from the record is to be made available on application in the approved form by any person on payment of the fee (if any) determined by the Commission.



- (5) After a person has disclosed the nature of an interest in any matter under this clause, the person must not, unless the Minister otherwise determines:
  - (a) be present during any deliberation of the Commission with respect to the matter, or
  - (b) take part in any decision of the Commission with respect to the matter, or
  - (c) exercise any functions under this Act with respect to that matter.
- (6) A contravention of this clause does not invalidate any decision of the Commission.

## **8 Filling of vacancy**

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

## **9 Effect of [Public Sector Employment and Management Act 2002](#)**

The [Public Sector Employment and Management Act 2002](#) does not apply to the appointment of the Commissioner or an Assistant Commissioner, and the holder of either office is not, as holder, subject to that Act.

## **10 Veto of proposed appointment of Commissioner**

- (1) A person is not to be appointed as Commissioner until:
  - (a) a proposal that the person be so appointed has been referred to the Joint Committee under section 31BA of the [Ombudsman Act 1974](#), and
  - (b) the period that the Joint Committee has under that section to veto the proposed appointment has ended without the Joint Committee having vetoed the proposed appointment or the Joint 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.

## **11 Personal liability**

A matter or thing done or omitted to be done by the Commission, the Commissioner or an Assistant Commissioner or any person acting under the direction of the Commission, the Commissioner or an Assistant Commissioner does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subject the Commissioner, Assistant Commissioner or a person so acting personally to any action,

liability, claim or demand.

## **Schedule 2 Provisions relating to the members and procedure of the Management Committee**

(Section 50)

### **1 Definitions**

In this Schedule:

**appointed member** means the person appointed as Chairperson of the Management Committee by the Minister.

**member** means a member of the Management Committee other than the appointed member.

### **2 Eligibility for appointment**

- (1) A person is not eligible to be appointed as Chairperson of the Management Committee or to act in that office unless the person is a former Judge of the District Court of New South Wales, a former Judge of the Supreme Court of the State or of any other State or Territory, a former Judge of the Federal Court of Australia or a former Justice of the High Court of Australia.
- (2) The following persons are ineligible to be appointed as Chairperson of the Management Committee or to act in that office:
  - (a) the Commissioner of Police,
  - (b) the Chair of the Board of the Australian Crime Commission,
  - (c) the Commissioner,
  - (d) the Chief Executive of the Ministry for Police and Emergency Services.

### **3 Basis of office**

The office of the appointed member is a part-time office.

### **4 Term of office**

Subject to this Schedule, the appointed member holds office for such period (not exceeding 3 years) as is specified in the appointed member's instrument of appointment, and is eligible for re-appointment.

### **5 Vacancy in office**

- (1) The office of an appointed member becomes vacant if the appointed member:
  - (a) dies, or

- (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) absents himself or herself from 4 consecutive meetings of the Management Committee of which reasonable notice has been given to the appointed member personally or in the ordinary course of post, unless:
    - (i) the Management Committee has granted the appointed member leave to be absent from those meetings, or
    - (ii) within 4 weeks after the last of those meetings, the appointed member is excused by the Management Committee for having been absent from those meetings, 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.
- (2) The Minister may remove an appointed member from office at any time.

## **6 Remuneration**

The appointed member is entitled to be paid such remuneration (including travelling and subsistence allowances), if any, as the Minister may from time to time determine in respect of the appointed member.

## **7 Filling of vacancies of members and appointed member**

- (1) If the office of an appointed member becomes vacant, a person is, subject to this Act, to be appointed by the Minister to fill the vacancy.
- (2) A member or, if the member fails to do so, the Chairperson may appoint a person to attend, in the place of the member, a meeting of the Committee at which the member is not present and a person so appointed is, when attending a meeting of the Committee in the place of a member, taken to be a member.
- (3) If for any reason there is a vacancy in the office of a member other than the appointed member, the Governor may appoint a person to act in that office.
- (4) While a person is acting as a member of the Management Committee the person has

and may exercise all the functions of the member.

## **8 Effect of certain other Acts**

- (1) Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of an appointed member.
- (2) If by or under any 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 an appointed member or from accepting and retaining any remuneration payable to the person under this Act as an appointed member.

## **9 Meetings of Committee**

- (1) Meetings of the Management Committee are to be held at such times and places as are from time to time agreed by the appointed and other members of the Committee.
- (2) The procedure for the calling of meetings of the Management Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.
- (3) An Assistant Commissioner may, with the consent of the appointed and other members of the Committee present at a meeting of the Committee, be present at the meeting and participate in the discussion of matters arising at the meeting.

## **10 Quorum**

The quorum for a meeting of the Management Committee is 4 members.

## **11 Presiding member**

- (1) The Chairperson is to preside at a meeting of the Management Committee.
- (2) The presiding member is to have a deliberative vote and, in the event of an equality of votes, a second or casting vote.

## **12 Voting**

A decision supported by a majority of the votes cast at a meeting of the Management Committee at which a quorum is present is the decision of the Committee.

### **13 Minutes**

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

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

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

## **Schedule 3 Provisions relating to Inspector**

(Section 61)

### **1 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 the Inspector.

## **2 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.

## **3 Term 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.

## **4 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.

## **5 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.

## 6 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 3, or
  - (d) resigns the office by instrument in writing addressed to the Governor, or
  - (e) 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
  - (f) becomes a mentally incapacitated person, or
  - (g) 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
  - (h) 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.

## 7 Filling of vacancy

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

## 8 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.

## 9 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 31BA of the *Ombudsman Act 1974*, and
  - (b) the period that the Joint Committee has under that section to veto the proposed appointment has ended without the Joint Committee having vetoed the proposed appointment or the Joint 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.

## 10 Personal liability

A matter or thing done or omitted to be done by the Inspector or any person acting under the direction of the Inspector does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this or any other Act, subject the Inspector or a person so acting personally to any action, liability, claim or demand.

## Schedule 4 Savings, transitional and other provisions

### Part 1 Regulations

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (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 on the NSW legislation website, 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 relating to enactment of this Act

### 2 Definitions

In this Part:

**Assistant Commissioner** means an Assistant Commissioner within the meaning of the repealed Act.

**Commissioner** means the Commissioner within the meaning of the repealed Act.

**repealed Act** means the *New South Wales Crime Commission Act 1985* as in force immediately before its repeal by this Act.

### 3 Meaning of “relevant offence”

A reference to an offence in the definition of **relevant offence** in section 5 extends to offences that were or may have been committed before the commencement of this clause.

### 4 Relevant criminal activities and serious crime concerns

- (1) A reference to a circumstance or allegation relating to a relevant offence in the definition of **relevant criminal activity** in section 4 (1) extends to circumstances or allegations relating to relevant offences that were or may have been committed before the commencement of this clause.
- (2) A reference to a circumstance or allegation relating to a particular class or type of relevant offence in the definition of **serious crime concern** in section 4 (1) extends to circumstances or allegations relating to relevant offences of a particular type or class that were or may have been committed before the commencement of this clause.

### 5 Existing Commissioner

The person who, immediately before the repeal of the repealed Act, held office as Commissioner under section 5A of the repealed Act holds office, subject to this Act, as Commissioner for the remainder of the person’s term of office as if appointed as Commissioner under section 8.

### 6 Existing Assistant Commissioner

A person who, immediately before the repeal of the repealed Act, held office as Assistant Commissioner under section 5B of the repealed Act holds office, subject to this Act, as Assistant Commissioner for the remainder of the person’s term of office as if appointed as Assistant Commissioner under section 9.

## **7 Commission and certain acts not affected**

- (1) The corporation constituted by section 7 is a continuation of, and the same legal entity, as the corporation constituted by section 5 (1) of the repealed Act.
- (2) Except to the extent provided by this Part, a provision of the repealed Act continues to apply to and in respect of anything to which it applied immediately before its repeal.
- (3) Without limiting subclause (2), the repealed Act continues to apply to and in respect of the following:
  - (a) any notice referring a matter to the Commission for investigation under section 25 of the repealed Act and any action taken in respect of such a notice,
  - (b) any investigation, inquiry or hearing commenced or pending under the repealed Act immediately before its repeal,
  - (c) any subpoena, notice or application under the repealed Act,
  - (d) any search warrant issued under the repealed Act.

## **8 Secrecy**

Sections 80 and 80A apply to and in respect of anything to which section 29 of the repealed Act applied immediately before its repeal and, for that purpose, a reference in section 80:

- (a) to a provision of this Act includes a reference to the corresponding provision of the repealed Act, and
- (b) to the exercise of functions under this Act includes a reference to the exercise of functions under the repealed Act.

## **9 References to repealed Act**

- (1) A reference in any Act (other than this Act), in any instrument made under an Act or in any document to the repealed Act is to be read:
  - (a) as a reference to this Act, unless it relates to a matter that under clause 7 continues to be dealt with by the repealed Act, or
  - (b) if it relates to such a matter—as a reference to the repealed Act.
- (2) Except as provided by subclause (1), in any other Act (other than this Act), in any instrument made under an Act or in any document:
  - (a) subject to paragraph (b), a reference to the repealed Act is to be read on and from the commencement of this clause as a reference to this Act, and
  - (b) a reference to a provision of the repealed Act is to be read on and from that

commencement as a reference to the corresponding provision (if any) of this Act or the regulations.

## **Part 3 Provisions relating to Independent Commission Against Corruption and Other Legislation Amendment Act 2013**

### **10 Validation**

A person who was appointed to the Management Committee before the commencement of Schedule 2 [3] to the *Independent Commission Against Corruption and Other Legislation Amendment Act 2013* and who would be eligible to be so appointed on that commencement is taken to have been validly appointed from the date of the person's appointment.

### **11 Previous collection, use and disclosure of vetting information**

Any collection, use or disclosure of vetting information to or by the Inspector or the Commission that occurred before the commencement of section 78A, as inserted by the *Independent Commission Against Corruption and Other Legislation Amendment Act 2013*, is taken to have been validly done if the collection, use or disclosure would have been valid if done on or after that commencement.

## **Schedule 5 Amendments of Acts and regulations**

### **5.1**

(Repealed)

### **5.2 Criminal Assets Recovery Act 1990 No 23**

**[1]-[12] (Repealed)**

**[13] Section 62**

Insert after section 61:

#### **62 Orders made by consent**

- (1) The Supreme Court may, on the application of the Commission and with the consent of all persons whose interest in property will be subject to an order under this Act, make that order by an order under this section (a **consent order**) that gives effect to the terms of an agreement negotiated between the Commission and any one or more persons whose interest in property will be subject to the order under this Act.
- (2) A consent order may be made by the Supreme Court without consideration of the matters that the Supreme Court would otherwise consider before making the

order.

- (3) In particular, and without limiting subsection (2), the Supreme Court is not required to consider the matters set out in section 16A in making a restraining order by consent order that makes provision of the kind referred to in section 10B (3) (b).
- (4) A confiscation order may only be made by consent order if the Commissioner for the Commission certifies that any guidelines with respect to the negotiation of the terms of agreements with respect to the making of consent orders given under section 57 (Directions and guidelines to Commission) of the *Crime Commission Act 2012* have been fully complied with.

### **5.3-5.16**

(Repealed)