

# Law Enforcement Conduct Commission Act 2016 No 61

[2016-61]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **Does not include amendments by**  
[Government Sector Finance Legislation \(Repeal and Amendment\) Act 2018 No 70](#) (not commenced)
- **See also**  
[Law Enforcement Conduct Commission Amendment \(Commissioners\) Bill 2021](#)

### Authorisation

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# Law Enforcement Conduct Commission Act 2016 No 61



New South Wales

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# Law Enforcement Conduct Commission Act 2016 No 61



New South Wales

An Act to constitute the Law Enforcement Conduct Commission and to define its functions; to repeal the *Police Integrity Commission Act 1996* and amend Part 8A of the *Police Act 1990* and the *Ombudsman Act 1974*; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Law Enforcement Conduct Commission Act 2016*.

### 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by subsection (2).
- (2) Parts 1-3 of, and Schedules 1-3 and 7 to, this Act commence on the date of assent to this Act.

### 3 Objects of Act

The objects of this Act are as follows—

- (a) to promote the integrity and good repute of the NSW Police Force and the Crime Commission by ensuring that they properly carry out their functions and responsibilities in relation to the handling of complaints (and information that the Commission becomes aware of otherwise than through a complaint that indicates or suggests conduct is (or could be) officer misconduct or officer maladministration or agency maladministration),
- (b) to provide for the independent detection, investigation and exposure of serious misconduct and serious maladministration within the NSW Police Force and the Crime Commission that may have occurred, be occurring, be about to occur or that is likely to occur,
- (c) to provide for independent oversight and review (including, where appropriate, real time monitoring and review) of the investigation by the NSW Police Force of

misconduct matters concerning the conduct of its members and the Crime Commission concerning its officers,

- (d) to prevent officer misconduct and officer maladministration and agency maladministration within the NSW Police Force and the Crime Commission by—
  - (i) providing for the identification of systemic issues that are likely to be conducive to the occurrence of officer misconduct, officer maladministration and agency maladministration, and
  - (ii) assessing the effectiveness and appropriateness of their procedures relating to the legality and propriety of activities of their members and officers, and
  - (iii) encouraging collaborative evaluation of opportunities for, and implementation of, desirable changes in such procedures, and
  - (iv) making recommendations with respect to education and training about prevention of officer misconduct, officer maladministration and agency maladministration,
- (e) to ensure that agencies work collaboratively to support and promote the prevention of officer misconduct, officer maladministration and agency maladministration and to improve their processes and systems,
- (f) to recognise the primary responsibilities of the NSW Police Force and Crime Commission to investigate and prevent officer misconduct and officer maladministration within those agencies and agency maladministration while providing for oversight of those functions,
- (g) to foster an atmosphere in which complaints, provision of other information about misconduct and independent oversight are viewed positively as ways of preventing officer misconduct, officer maladministration and agency maladministration,
- (h) to provide for independent oversight and real time monitoring of critical incident investigations undertaken by the NSW Police Force,
- (i) to provide for the scrutiny of the exercise of powers by the Law Enforcement Conduct Commission and its officers by an Inspector and for the Commission and for the Inspector to be accountable to Parliament,
- (j) to provide for the oversight by the Inspector of the use of covert powers under various Acts.

## Part 2 Interpretation and key concepts

### Division 1 Interpretation

#### 4 Definitions

(1) In this Act—

**administrative employee** means any member of the NSW Police Force other than a police officer.

**administrative employee complaint**—see section 12.

**administrative employee misconduct**—see section 9 (2).

**agency complaint**—see section 12.

**agency maladministration**—see section 11 (1).

**approved former police officer**—see section 8 (1).

**Assistant Commissioner** means an Assistant Commissioner appointed under section 20.

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

**Chief Commissioner** means the Chief Commissioner appointed under section 18.

**coercive examination power**—see section 15.

**Commission** means the Law Enforcement Conduct Commission constituted by this Act.

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

**Commission misconduct matters**—see section 122 (2) (b).

**Commissioner** means the Chief Commissioner, Commissioner for Integrity or Commissioner for Oversight.

**Commissioner for Integrity** means the Commissioner for Integrity appointed under section 18.

**Commissioner for Oversight** means the Commissioner for Oversight appointed under section 18.

**complainant**—see section 12.

**complaint**—see section 12.

**correctional centre** has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

**corrupt conduct** has the same meaning as in the *Independent Commission Against Corruption Act 1988*.

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

**Crime Commission complaint**—see section 12.

**Crime Commission investigation**, in relation to a complaint or misconduct information about conduct of the Crime Commission that is (or could be) agency maladministration or conduct of a Crime Commission officer that is (or could be) Crime Commission officer misconduct or officer maladministration means—

- (a) an investigation by the Crime Commission under the *Crime Commission Act 2012*, or
- (b) action taken by the Crime Commissioner to deal with an allegation of misconduct by a Crime Commission officer under the *Government Sector Employment Act 2013*.

**Crime Commission officer** means any of the following—

- (a) the Crime Commissioner for the Crime Commission,
- (b) an Assistant Commissioner for the Crime Commission,
- (c) any other officer of the Crime Commission within the meaning of the *Crime Commission Act 2012*.

**Crime Commission officer misconduct**—see section 9 (3).

**Crime Commissioner** means the Commissioner for the Crime Commission.

**criminal offence**, in relation to any conduct, means a criminal offence under the law of the State or under the law of any other jurisdiction that is relevant to the conduct in question.

**critical Crime Commission information**—see section 179.

**critical incident**—see section 108.

**critical police information**—see section 179.

**disciplinary infringement** includes any misconduct, irregularity, neglect of duty, breach of discipline or substantial breach of a code of conduct or other matter that

constitutes or may constitute grounds for disciplinary action under any law.

**disciplinary proceedings** means proceedings or action taken in relation to a disciplinary infringement.

**examination** means an investigation by way of public or private hearing under Division 3 of Part 6.

**examining Commissioner** means the Commissioner holding an examination under section 62 and includes, where an Assistant Commissioner is appointed under section 20 to carry out an examination, the Assistant Commissioner.

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

**ICAC Commissioner** means the Commissioner for the Independent Commission Against Corruption.

**Independent Commission Against Corruption** or **ICAC** means the Independent Commission Against Corruption constituted by the [Independent Commission Against Corruption Act 1988](#).

**Inspector** means the Inspector appointed under section 120.

**investigation** means an investigation by the Commission under Part 6 and includes, in relation to serious misconduct or serious maladministration, an examination under that Part.

**investigation power** means a power conferred by Part 6 and includes, in relation to conduct that is (or could be) serious misconduct or serious maladministration, the power to conduct an examination.

**Joint Committee**—see section 130.

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

**misconduct information**—see section 13.

**misconduct matter** means—

- (a) a complaint, or
- (b) misconduct information.

**misconduct matters information system** is the system required to be kept under section 128 of the [Police Act 1990](#).

**misconduct matters management guidelines**—see section 14.

**notifiable misconduct matter**—see section 14.

**officer maladministration**—see section 11 (2).

**officer misconduct** means police misconduct, administrative employee misconduct or Crime Commission officer misconduct.

**officer of the Children’s Guardian** includes the following—

- (a) an acting Children’s Guardian,
- (b) a Deputy Children’s Guardian,
- (c) an Assistant Children’s Guardian.

**officer of the Commission** means the following—

- (a) a Commissioner,
- (b) an Assistant Commissioner,
- (c) a member of staff of the Commission.

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

**officer of the Ombudsman** includes the following—

- (a) an acting Ombudsman,
- (b) a Deputy Ombudsman,
- (c) an Assistant Ombudsman.

**oversight** of an agency by the Commission means holding the agency to account through the scrutiny, review and monitoring by the Commission under this Act of the exercise by the agency of its functions.

**police complaint**—see section 12.

**police investigation** means—

- (a) in relation to an agency complaint or misconduct information about conduct of the NSW Police Force that is (or could be) agency maladministration—investigation by the NSW Police Force under Part 8A of the *Police Act 1990*, or
- (b) in relation to a police complaint or misconduct information about conduct of a police officer that is (or could be) police misconduct or officer maladministration—investigation by the NSW Police Force under Part 8A of the *Police Act 1990*, or
- (c) in relation to an administrative employee complaint or misconduct information



about conduct of an administrative employee that is (or could be) administrative employee misconduct or officer maladministration—action taken by the Commissioner of Police to deal with an allegation of misconduct by an administrative employee under the [Government Sector Employment Act 2013](#).

**Note—**

The [Government Sector Employment Regulation 2014](#) prescribes that part of the NSW Police Force comprising administrative employees as a government sector agency for the purposes of sections 69 and 70 of the [Government Sector Employment Act 2013](#) and Part 8 of the [Government Sector Employment Rules 2014](#).

**police misconduct**—see section 9 (1).

**police officer** means a member of the NSW Police Force holding a position that is designated under the [Police Act 1990](#) as a position to be held by a police officer.

**preliminary investigation**—see section 52.

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

**production requirement** means the following—

- (a) a requirement under section 54 to produce a statement of information,
- (b) a requirement under section 55 to produce a document or other thing,
- (c) a power under section 69 to summon a person to produce a document or other thing.

**public authority** has the same meaning as in the [Independent Commission Against Corruption Act 1988](#).

**public official** has the same meaning as in the [Independent Commission Against Corruption Act 1988](#), and includes a former public official.

**release order** means an order under section 71.

**search warrant** means a search warrant issued under this Act.

**serious maladministration**—see section 11 (3).

**serious misconduct**—see section 10.

**special legal qualifications**—see section 5.

**special report**—see sections 138 and 140.

**staff of the Commission**—see section 21.

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

body is described.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

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

## 5 References to special legal qualifications

A reference in this Act to a person who has ***special legal qualifications*** is a reference to a person who—

- (a) is, or is qualified to be appointed as, a Judge or other judicial officer of a superior court of record of the State or of any other State or Territory or of Australia, or
- (b) is a former Judge or judicial officer of such a court.

**Note—**

Examples of judicial officers of superior courts of record are Judges and Justices of a Supreme Court of any State or Territory or of the High Court, Federal Court or Family Court of Australia.

## 6 References to Presiding Officers

- (1) In this Act, a reference to a Presiding Officer of a House of Parliament is a reference to the President of the Legislative Council or the Speaker of the Legislative Assembly.
- (2) If there is a vacancy in the office of President, the reference to the President is taken to be a reference to the Clerk of the Legislative Council.
- (3) If there is a vacancy in the office of Speaker, the reference to the Speaker is taken to be a reference to the Clerk of the Legislative Assembly.

## 7 References to assisting Commission or examining Commissioner and examinations

- (1) **Meaning of examination before Commission** A reference in this Act to an examination before the Commission or anything done or omitted by, to or in relation to an examination before the Commission includes a reference to an examination before, or a thing done or omitted by, to or in relation to the examination by an examining Commissioner.
- (2) **Meaning of assisting Commission or examining Commissioner** In this Act, a reference to a ***person assisting*** the Commission or examining Commissioner is a reference to a person who—
  - (a) has appeared, is appearing or is required to appear as a witness before the Commission or examining Commissioner, or
  - (b) has complied with or is required to comply with a production requirement, or

- (c) has assisted, is assisting or is to assist the Commission or examining Commissioner in some other manner.

## **8 Former police of other jurisdictions**

- (1) The Commission may designate an officer of the Commission as an **approved former police officer** for the purposes of this Act, if—

- (a) the officer has served for at least 5 years in one or more of the following capacities—
  - (i) as a member of the Australian Federal Police,
  - (ii) as a member of the Police Force of another State or Territory,
  - (iii) as a member of the Police Force of any prescribed foreign country, and
- (b) the Commission is satisfied after inquiry that the officer's service in any such capacity was satisfactory, and
- (c) the officer is not a police officer or former police officer of New South Wales.

- (2) In this section—

**prescribed foreign country** means the following—

- (a) any country that is, or was, a member of the Commonwealth of Nations,
- (b) any country that is, or was, a member of the European Union,
- (c) the Special Administrative Region of the People's Republic of China known as Hong Kong,
- (d) the United States of America,
- (e) any other country prescribed by the regulations.

## **Division 2 Key concepts**

### **9 Police misconduct, administrative employee misconduct and Crime Commission officer misconduct**

- (1) **Definition—police misconduct** For the purposes of this Act, **police misconduct** means any misconduct (by way of action or inaction) of a police officer—
  - (a) whether or not it also involves participants who are not police officers, and
  - (b) whether or not it occurs while the police officer is officially on duty, and
  - (c) whether or not it occurred before the commencement of this subsection, and

(d) whether or not it occurred outside the State or outside Australia.

(2) **Definition—administrative employee misconduct** For the purposes of this Act, **administrative employee misconduct** means any misconduct (by way of action or inaction) of an administrative employee—

(a) whether or not it also involves participants who are not administrative employees, and

(b) whether or not it occurs while the administrative employee is officially on duty, and

(c) whether or not it occurred before the commencement of this subsection, and

(d) whether or not it occurred outside the State or outside Australia.

(3) **Definition—Crime Commission officer misconduct** For the purposes of this Act, **Crime Commission officer misconduct** means any misconduct (by way of action or inaction) of a Crime Commission officer—

(a) whether or not it also involves participants who are not Crime Commission officers, and

(b) whether or not it occurs while the Crime Commission officer is officially on duty, and

(c) whether or not it occurred before the commencement of this subsection, and

(d) whether or not it occurred outside the State or outside Australia.

(4) **Examples** Police misconduct, administrative employee misconduct or Crime Commission officer misconduct can involve (but is not limited to) any of the following conduct by a police officer, administrative employee or Crime Commission officer respectively—

(a) conduct of the officer or employee that constitutes a criminal offence,

(b) conduct of the officer or employee that constitutes corrupt conduct,

(c) conduct of the officer or employee that constitutes unlawful conduct (not being a criminal offence or corrupt conduct),

(d) conduct of the officer or employee that constitutes a disciplinary infringement.

(5) **Former police officers, administrative employees and Crime Commission officers** Conduct may be dealt with, or continue to be dealt with, under this Act even though any police officer, administrative employee or Crime Commission officer involved is no longer a police officer, administrative employee or Crime Commission officer (but only in relation to conduct occurring while he or she was a police officer, administrative

employee or Crime Commission officer). Accordingly, references in this Act to a police officer, administrative employee or Crime Commission officer extend, where appropriate, to include a former police officer, administrative employee and Crime Commission officer, respectively.

## 10 Meaning of “serious misconduct”

- (1) For the purposes of this Act, **serious misconduct** means any one of the following—
- (a) conduct of a police officer, administrative employee or Crime Commission officer that could result in prosecution of the officer or employee for a serious offence or serious disciplinary action against the officer or employee for a disciplinary infringement,
  - (b) a pattern of officer misconduct, officer maladministration or agency maladministration carried out on more than one occasion, or that involves more than one participant, that is indicative of systemic issues that could adversely reflect on the integrity and good repute of the NSW Police Force or the Crime Commission,
  - (c) corrupt conduct of a police officer, administrative employee or Crime Commission officer.

- (2) In this section—

**serious disciplinary action** against an officer or employee means terminating the employment, demoting or reducing the rank, classification or grade of the office or position held by the officer or employee or reducing the remuneration payable to the officer or employee.

**serious offence** means a serious indictable offence and includes an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a serious indictable offence.

## 11 Maladministration

- (1) For the purposes of this Act, **agency maladministration** means any conduct (by way of action or inaction) of the NSW Police Force or the Crime Commission other than excluded conduct—
- (a) that is unlawful (that is, constitutes an offence or is corrupt conduct or is otherwise unlawful), or
  - (b) that, although it is not unlawful—
    - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
    - (ii) arises, wholly or in part, from improper motives, or

- (iii) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or
  - (iv) arises, wholly or in part, from a mistake of law or fact, or
  - (v) is conduct of a kind for which reasons should have (but have not) been given, or
- (c) that is engaged in in accordance with a law or established practice, being a law or practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its effect.
- (2) For the purposes of this Act, **officer maladministration** means any conduct (by way of action or inaction) of a police officer, administrative employee or Crime Commission officer that, although it is not unlawful (that is, does not constitute an offence or corrupt conduct)—
- (a) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
  - (b) arises, wholly or in part, from improper motives, or
  - (c) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration, or
  - (d) arises, wholly or in part, from a mistake of law or fact, or
  - (e) is conduct of a kind for which reasons should have (but have not) been given.
- (3) For the purposes of this Act, agency maladministration or officer maladministration is **serious maladministration**—
- (a) in the case of an agency—if the conduct involved is unlawful (that is, constitutes an offence or is corrupt conduct or is otherwise unlawful), or
  - (b) in the case of an agency or officer—if the conduct involved is of a serious nature and, although it is not unlawful—
    - (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect, or
    - (ii) arises, wholly or in part, from improper motives.
- (4) In this section—
- excluded conduct** means any of the following—
- (a) conduct of the Crime Commission in relation to a decision that could be the subject of an application for review by the Supreme Court under section 33 of the [Crime Commission Act 2012](#),
  - (b) conduct of the Crime Commission or Crime Commission officers in relation to the

carrying on or determination of a hearing under Division 4 of Part 2 of the *Crime Commission Act 2012* or any proceeding relating to an investigation conducted by the Crime Commission,

- (c) conduct of the Crime Commission or its officers where acting as a legal advisor to a public authority or as a legal representative of a public authority (including as counsel assisting a public authority),
- (d) conduct of the Crime Commission or its officers relating to the carrying on of any proceedings before a court (including a coronial inquiry and committal proceedings before a magistrate) or before any other person or body before whom witnesses may be compelled to appear and give evidence,
- (e) conduct in carrying out the functions of an executive officer or member of the Management Committee of the Crime Commission.

## 12 Meaning of “complainant” and “complaint”

In this Act—

**complainant** means a person by whom, or on whose behalf, a complaint is made.

**complaint** means an allegation that any conduct—

- (a) of a police officer (whether or not named or identified)—is (or could be) conduct that falls within the description of police misconduct or officer maladministration (a **police complaint**), or
- (b) of a Crime Commission officer (whether or not named or identified)—is (or could be) conduct that falls within the description of Crime Commission officer misconduct or officer maladministration (a **Crime Commission complaint**), or
- (c) of an administrative employee (whether or not named or identified)—is (or could be) conduct that falls within the description of administrative employee misconduct or officer maladministration (an **administrative employee complaint**), or
- (d) of the NSW Police Force or the Crime Commission—is (or could be) conduct that falls within the description of agency maladministration (an **agency complaint**).

## 13 Misconduct information

(1) In this Act—

**misconduct information** means a mandatory or other report or other information contained in any other document that the Commission becomes aware of otherwise than through a complaint that indicates or suggests conduct is (or could be) officer misconduct or officer maladministration or agency maladministration.

**Note—**

Information may include, for example, a sound recording or transcript of an intercepted telephone conversation or report of an audit of officer access to police information systems.

(2) In this section—

**mandatory report** means a report made under a duty imposed by section 33 of this Act or section 211F of the *Police Act 1990*.

#### **14 Misconduct matters management guidelines**

(1) Without limiting the agreements that may be entered into, the Commission may from time to time enter into written agreements with the Commissioner of Police and the Crime Commissioner concerning all or any of the following—

- (a) the kinds of misconduct matters that should or should not be investigated,
- (b) the kinds of misconduct matters required to be notified to the Commission (**notifiable misconduct matters**),
- (c) the kinds of misconduct matters that would ordinarily be investigated by the Commissioner of Police, the Crime Commission or the Commission,
- (d) the kinds of misconduct matters that should or should not be the subject of oversight by the Commission under Part 7 and the form of such oversight,
- (e) the manner of dealing with misconduct matters that should not be the subject of such oversight,
- (f) the level of detail required in notifying or referring a misconduct matter to the Commission, Commissioner of Police or Crime Commissioner,
- (g) the giving of notice with respect to misconduct matters to the Commission, the Commissioner of Police, the Crime Commissioner, the officer the subject of the misconduct matter, complainants and referring authorities,
- (h) arrangements with respect to the monitoring by the Commission under section 101 of police investigations and Crime Commission investigations of misconduct matters,
- (i) the kind of misconduct information that is required to be registered in the misconduct matters information system,
- (j) any other matter prescribed by the regulations.

(2) The Commission may issue guidelines reflecting agreements entered into under this section.

(3) If the Commission, the Commissioner of Police or the Crime Commissioner does not enter into an agreement on any matter referred to in subsection (1), the Commission's



opinion is to be determinative as to the contents of any guideline concerning the matter and the application of the guideline.

(4) The Commission is to make the agreements and guidelines publicly available.

## 15 Coercive examination powers

In this Act—

**coercive examination power** means a power conferred under Part 6 in relation to conduct that is (or could be) serious misconduct or serious maladministration to—

- (a) conduct an examination under section 61, or
- (b) summon a witness under section 69 or contemnor under section 93 (1), or
- (c) punish for contempt under section 92 or 93, or
- (d) arrest a witness, or person in contempt, under section 71 or 93 (3), respectively, or
- (e) order attendance of an inmate under section 78, or
- (f) issue a search warrant under section 79 (2).

## 16 Nominated contact of an agency

(1) For the purposes of this Act—

**head of an agency** means—

- (a) if the agency is the NSW Police Force—the Commissioner of Police, or
- (b) if the agency is the Crime Commission—the Crime Commissioner, or
- (c) in any other case—the chief executive officer or other principal officer of the agency.

**nominated contact** of an agency in relation to an investigation means—

- (a) one or more staff members of the agency nominated under this section as the nominated contacts for the investigation, or
  - (b) if a staff member is not nominated—the head of the agency.
- (2) The head of an agency may nominate a staff member of the agency as the contact for an investigation if the Commission—
- (a) decides to deal with a misconduct matter by referring it to that agency for investigation, or
  - (b) decides to deal with a misconduct matter by overseeing an investigation of the misconduct matter by that agency, or

(c) decides to oversee an investigation of a critical incident by that agency.

## **Part 3 Constitution and management of Commission**

### **17 Constitution of Law Enforcement Conduct Commission**

There is constituted by this Act a corporation with the corporate name of the Law Enforcement Conduct Commission.

### **18 The Commissioners**

- (1) The Commission consists of the following members appointed by the Governor—
  - (a) a Chief Commissioner,
  - (b) a Commissioner for Integrity,
  - (c) a Commissioner for Oversight.
- (2) The Commissioner for Integrity and Commissioner for Oversight may only be appointed with the concurrence of the Chief Commissioner.
- (3) (Repealed)
- (4) A person is not eligible to be appointed as a Commissioner or to act in the office of a Commissioner unless the person has special legal qualifications.
- (5) A person is not eligible to be appointed as the Commissioner for Integrity or to act in that office if the person is a police officer or a former police officer.
- (6) A person is not eligible to be appointed as a member of the Commission or to act in that office if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.
- (7) Schedule 1 contains provisions relating to the Commissioners.

### **19 Exercise of Commission's functions**

- (1) Except as otherwise provided by this section, the functions of the Commission are exercisable by a Commissioner, and any act, matter or thing done in the name of, or on behalf of, the Commission by a Commissioner is taken to have been done by the Commission.
- (2) A decision of the Commission to exercise any of the following functions must be authorised by the Chief Commissioner and at least one other Commissioner—
  - (a) a decision under sections 44 (1) (a) and 51 (1), made after taking into account the relevant factors set out in sections 45 and 46, that conduct is (or could be) serious misconduct, serious maladministration, police misconduct, Crime Commission

officer misconduct, officer maladministration or agency maladministration and should be investigated,

- (b) a decision to hold an examination under Division 3 of Part 6 (except where there is a duty to hold an examination into conduct referred by Parliament for investigation under section 196),
  - (c) a decision under Division 3 of Part 6 to hold an examination (or part of an examination) in public,
  - (d) a decision under section 79 (2) that there are reasonable grounds to issue a search warrant,
  - (e) a decision under section 23 (1) to delegate a function of the Commission.
- (3) A decision of the Commission referred to in subsection (2) is presumed to have been duly authorised unless the contrary is established.
- (4) Except as provided by subsection (2), a decision of the Chief Commissioner prevails in the event of an inconsistency in the decisions of Commissioners with respect to a matter.

## **20 Assistant Commissioners**

- (1) The Governor may, with the concurrence of the Chief Commissioner, appoint one or more Assistant Commissioners for the Commission.
- (2) An Assistant Commissioner has and may exercise the functions conferred or imposed on an Assistant Commissioner by or under this or any other Act.
- (3) Without limiting subsection (2), an Assistant Commissioner may be appointed—
  - (a) to investigate (including by an examination) a particular instance or instances of conduct that is (or could be) serious misconduct or serious maladministration that the Commission has decided in accordance with section 19 (2) is to be investigated or to assist a Commissioner in carrying out such an investigation or any other investigation, or
  - (b) to assist the Commission or one or more of the Commissioners in the exercise of their functions in relation to the oversight of a police investigation, an investigation of a critical incident or a Crime Commission investigation.
- (4) If an Assistant Commissioner is appointed to exercise a function with respect to investigation (including by examination) of conduct, a reference in this Act to a power (including a coercive examination power) that may be exercised by a Commissioner in exercising that function extends to the Assistant Commissioner.
- (5) A person is not eligible to be appointed as an Assistant Commissioner or to act in that

office unless the person has special legal qualifications.

- (6) A person is not eligible to be appointed as an Assistant Commissioner to execute any function under Part 6, or to assist a Commissioner in the execution of any function under Part 6 relating to the investigation of serious misconduct or serious maladministration, or to act in the office of an Assistant Commissioner appointed for such a purpose if the person is a police officer or a former police officer.
- (7) A person is not eligible to be appointed as an Assistant Commissioner or to act in that office if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.
- (8) Schedule 1 contains provisions relating to the Assistant Commissioners.

## 21 Staff of Commission

- (1) Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Commission and the Commissioners to exercise their functions. The persons so employed are to be employed in a separate Public Service agency and may (together with the persons referred to in subsections (2) and (3)) be referred to as members of staff of the Commission.

### Note—

Section 59 of the *Government Sector Employment Act 2013* provides that the persons so employed (or whose services the Commission makes use of) may be referred to as officers or employees, or members of staff, of the Commission. Section 47A of the *Constitution Act 1902* precludes the Commission from employing staff. The employer functions of the Government are to be exercised by a Chief Executive Officer (other than the functions of employing and terminating the employment of the Chief Executive Officer).

- (2) The Commission may also—
  - (a) arrange for the use of the services of any staff or facilities of a Public Service agency or a local or public authority, or
  - (b) arrange for the use of the services of any staff who are employed by or for or assigned to the person who is Chief Commissioner, in his or her capacity as the holder of some other position (for example, as a Judge), or
  - (c) engage persons as consultants to the Commission or to perform services for it.
- (3) Without limiting subsection (2), the Commission may arrange—
  - (a) for the use of the services of a police officer (whether by secondment or otherwise) to assist the Commission in carrying out any function other than a coercive examination power, or
  - (b) for—

- (i) a member of the Australian Federal Police, or
  - (ii) a member of the Police Force of another State or Territory, or
  - (iii) a member of the Police Force of any prescribed foreign country,
- to be seconded or otherwise engaged to assist the Commission.
- (4) However, police officers and former police officers cannot be appointed to, employed in or engaged by, or seconded to the service of, the Commission for the purpose of exercising or assisting in the exercise of any power conferred under Part 6 with respect to conduct that is (or could be) serious misconduct or serious maladministration and arrangements cannot be made under subsection (3) for the use of their services for such a purpose.
- (5) Subsection (4) does not, however, prevent arrangements being made by the Commission for police officers (in their capacity as police officers) to be otherwise involved in—
- (a) the work of task forces with which the Commission is involved, or
  - (b) carrying out or participating in investigations for or on behalf of or under the direction of the Commission.
- (6) While performing services for the Commission, a police officer retains rank, seniority and remuneration as a police officer and may continue to act as a constable.

## **22 Independence of Commission and Commissioners**

The Commission and Commissioners are not subject to the control or direction of the Minister in the exercise of their functions.

## **23 Delegation**

- (1) **Delegation by Commission** The Commission may delegate to an authorised person any of the functions of the Commission or of a Commissioner, other than this power of delegation.
- (2) **Sub-delegation** A delegate may sub-delegate to an authorised person any function delegated under subsection (1) if the delegate is authorised in writing to do so.
- (3) **Limitations on delegation** The following functions may not be delegated—
- (a) a function conferred under section 19 (2),
  - (b) a coercive examination power.

### **Note—**

Paragraph (a) prevents functions of the Commission that can only be exercised by 2 or more of the

Commissioners from being delegated.

(4) Any other function conferred on the Commission or a Commissioner under Part 6 with respect to conduct that is (or could be) serious misconduct or serious maladministration may not be delegated to a person who is a police officer or former police officer.

(5) In this section—

**authorised person** means—

(a) a Commissioner, or

(b) an Assistant Commissioner, or

(c) the Chief Executive Officer or any other member of staff of the Commission.

## **24 Task forces**

(1) The Commission may, in connection with its functions—

(a) arrange for the establishment of task forces within the State, and

(b) seek the establishment of joint task forces with authorities of the Commonwealth or other States or Territories, and

(c) co-operate with State task forces, Commonwealth task forces, joint task forces or other task forces, and

(d) co-ordinate or co-operate in co-ordinating any such task forces.

(2) Participation of a person in the work of a task force does not affect or alter the employment status of the person.

## **Part 4 Functions of Commission**

### **25 Functions of Commission generally**

(1) The Commission has the functions conferred or imposed on it by or under this or any other Act.

(2) In exercising its functions, the Commission is to have regard to the objects of this Act.

### **26 Functions with respect to misconduct matters**

The functions of the Commission with respect to misconduct matters include the following—

(a) to receive misconduct matters directly or that are notified to it in accordance with misconduct matters management guidelines,

- (b) in accordance with misconduct matters management guidelines—
  - (i) to detect, investigate (including by carrying out examinations in appropriate cases) and expose conduct that is (or could be) serious misconduct or serious maladministration, and
  - (ii) to refer to the Commissioner of Police for police investigation misconduct matters relating to conduct of members of the NSW Police Force that are (or could be) officer misconduct or officer maladministration and conduct of the NSW Police Force that is (or could be) agency maladministration (other than conduct referred to in subparagraph (i)), and
  - (iii) to refer to the Crime Commissioner for Crime Commission investigation misconduct matters relating to conduct of Crime Commission officers that are (or could be) officer misconduct or officer maladministration and conduct of the Crime Commission that is (or could be) agency maladministration (other than conduct referred to in subparagraph (i)), and
  - (iv) to refer misconduct matters for investigation or action by other appropriate authorities, and
  - (v) to oversee the investigation or handling of misconduct matters referred by it to the Commissioner of Police, Crime Commissioner or other appropriate authorities.

**27 Administrative functions relating to education and prevention of officer misconduct**

- (1) The Commission may—
  - (a) make recommendations concerning officer misconduct, officer maladministration and agency maladministration education and prevention programs, and similar programs, conducted within the NSW Police Force or the Crime Commission or by other bodies for the NSW Police Force or Crime Commission, and
  - (b) assess the effectiveness and appropriateness of the procedures of those agencies for the ascertainment of whether there is officer misconduct, officer maladministration or agency maladministration or any circumstances that may be conducive to such misconduct or maladministration and make recommendations concerning those procedures, and
  - (c) advise those agencies on ways in which officer misconduct, officer maladministration and agency maladministration may be prevented and make recommendations about the action they should take.
- (2) Without limiting subsection (1), the Commission has the functions of working collaboratively (so far as practicable) with the NSW Police Force and the Crime Commission with respect to education of the officers and members of those agencies about officer misconduct, officer maladministration and agency maladministration and

the support and promotion of initiatives of those agencies directed at the prevention and elimination of such misconduct and maladministration.

- (3) The Commission may, at any time, prepare a report on matters arising out of the exercise of the Commission's functions under this section.
- (4) The report may include such comments and recommendations as the Commission thinks fit.
- (5) The Commission is to provide a copy of the report to the Minister and the Commissioner of Police or the Crime Commissioner (as appropriate).
- (6) If the Commission makes a recommendation under this section it may require the Commissioner of Police or Crime Commissioner to advise the Commission whether the Commissioner intends to implement the recommendation and, if not, the reasons for not doing so.
- (7) The functions of the Commission under this section are administrative functions for the purposes of section 27 (2) of the *Privacy and Personal Information Protection Act 1998* and section 17 of the *Health Records and Information Privacy Act 2002*.

**Note—**

Subsection (7) makes it clear that the function of the Commission under this section is an administrative function for the purposes of the provisions concerned. Accordingly, the Commission and its staff, the Commissioner of Police and the Crime Commissioner are required by the subsection to comply with applicable information protection principles, Health Privacy Principles and health privacy codes of practice.

## **28 Functions regarding evidence and information collected**

- (1) The functions of the Commission include the following—
  - (a) to assemble evidence that may be admissible in the prosecution of a person for a criminal offence against the law of the State and to give any such evidence to the Director of Public Prosecutions,
  - (b) to assemble evidence that may be used in—
    - (i) the investigation (whether by the Commission or by any other body) of a misconduct matter, or
    - (ii) deciding whether to take action under section 173 or 181D of the *Police Act 1990*,and to give any such evidence to the Minister, the Commissioner of Police, Crime Commissioner or other appropriate authority in the State,
  - (c) to assemble evidence that may be used in deciding to take disciplinary action against a person (other than a police officer) for a disciplinary infringement under the law of the State and to give any such evidence to the appropriate authority in



the State,

(d) to assemble evidence obtained in the course of investigations by the Commission (being evidence that may be admissible in the prosecution of a person for a criminal offence against or a disciplinary infringement under the law of the Commonwealth or another State or Territory) and give it to the Attorney General, and Minister for the Prevention of Domestic Violence or to the appropriate prosecutorial authority in the jurisdiction concerned.

- (2) Evidence of the kind referred to in subsection (1) may be accompanied by any observations that the Commission thinks appropriate and (in the case of evidence given to the Attorney General, and Minister for the Prevention of Domestic Violence) recommendations as to what action the Commission considers should be taken in relation to the evidence.
- (3) A copy or detailed description of any evidence given to the appropriate prosecutorial authority in another jurisdiction, together with a copy of any accompanying observations, is to be given to the Attorney General, and Minister for the Prevention of Domestic Violence.

**Note—**

The Attorney General, and Minister for the Prevention of Domestic Violence may consent to the Director of Public Prosecutions and certain other officers instituting and conducting prosecutions for Commonwealth offences—see section 24 of the [Director of Public Prosecutions Act 1986](#).

- (4) If the Commission obtains any information in the course of investigations by the Commission relating to the exercise of the functions of another public authority, the Commission may, if it thinks it desirable to do so—
- (a) give the information or a report of the information to the authority or the Minister for the authority, and
- (b) make to the authority or the Minister for the authority such recommendations (if any) relating to the exercise of the functions of the authority as the Commission thinks appropriate.
- (5) A copy of any information or report given to a public authority under subsection (4), together with a copy of any such recommendation, is to be given to the Minister for the authority.
- (6) If the Commission gives any evidence or information to a person under this section on the understanding that the information is confidential, the person is subject to the secrecy provisions of section 180 in relation to the evidence or information.
- (7) In this section—

***prosecutorial authority*** means the following—

- (a) the Director of Public Prosecutions,
- (b) the Director of Public Prosecutions of the Commonwealth,
- (c) the Director of Public Prosecutions of another State or Territory,
- (d) any other authority or person prescribed by the regulations for the purposes of this definition.

## **29 Functions with respect to findings and opinions and making recommendations**

- (1) The Commission may—
  - (a) make findings, and
  - (b) form opinions, on the basis of investigations by the Commission, police investigations or Crime Commission investigations, as to whether officer misconduct or officer maladministration or agency maladministration—
    - (i) has or may have occurred, or
    - (ii) is or may be occurring, or
    - (iii) is or may be about to occur, or
    - (iv) is likely to occur, and
  - (c) form opinions as to—
    - (i) whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or
    - (ii) whether the Commissioner of Police or Crime Commissioner should or should not give consideration to the taking of other action against particular persons, and
  - (d) make recommendations as to whether consideration should or should not be given to the taking of action under Part 9 of the *Police Act 1990* or under the *Crime Commission Act 2012* or other disciplinary action against, particular persons, and
  - (e) make recommendations for the taking of other action that the Commission considers should be taken in relation to the subject-matter or opinions or the results of any such investigations.
- (2) Subsection (1) does not permit the Commission to form an opinion, on the basis of an investigation by the Commission of agency maladministration, that conduct of a particular person is officer maladministration unless the conduct concerned is (or could be) serious maladministration.

- (3) The Commission cannot find that a person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.
- (4) An opinion or finding that a person has engaged, is engaging or is about to engage in—
  - (a) officer misconduct or serious misconduct or officer maladministration or serious maladministration (whether or not specified conduct), or
  - (b) specified conduct (being conduct that constitutes or involves or could constitute or involve officer misconduct or serious misconduct or officer maladministration or serious maladministration),and any recommendation concerning such a person is not a finding or opinion that the person is guilty of or has committed, or is committing or is about to commit, a criminal offence or disciplinary infringement.
- (5) Nothing in this section prevents or affects the exercise of any function by the Commission that the Commission considers appropriate for the purposes of or in the context of Division 2 of Part 9 of the *Police Act 1990*.
- (6) The Commission must not include in a report under Part 11 a finding or opinion that any conduct of a specified person is officer misconduct or officer maladministration unless the conduct is serious misconduct or serious maladministration.
- (7) The Commission is not precluded by subsection (6) from including in any such report a finding or opinion about any conduct of a specified person that may be officer misconduct or officer maladministration if the statement as to the finding or opinion does not describe the conduct as officer misconduct or officer maladministration.

### **30 Disciplinary proceedings—taking action based on Commission’s opinion**

- (1) This section applies if a report under section 132, 135 or 136 contains an opinion, formed on the ground of the Commission’s findings about the conduct of a public official, that the public official has engaged or is engaging, or has attempted or is attempting to engage, in officer misconduct or officer maladministration.
- (2) Disciplinary proceedings in connection with the employment of the public official may be taken by the employer of the public official on the ground of the conduct of the public official on which the opinion was based.
- (3) The person or body determining the disciplinary proceedings—
  - (a) is not required to further investigate whether that conduct occurred but may choose to do so, and
  - (b) may take any disciplinary or other action against the public official of a kind that the person or body may otherwise take in disciplinary proceedings against any

such public official, and

(c) is to give the public official an opportunity to make a submission in relation to any proposed disciplinary or other action.

(4) Any such disciplinary or other action is taken to be action under the law relating to the taking of disciplinary proceedings against the public official and that law (including any right to appeal against or seek a review of the action) applies accordingly.

(5) Evidence given to the Commission by the public official may be admitted and used in disciplinary proceedings against the public official that are authorised by this section (and in any related appeal or review proceedings) despite sections 57 (Self-incrimination) and 74 (Abrogation of privilege as regards answers, documents and other things) or any other law. However, the admission and use of the evidence in those proceedings does not cause it to be admissible against the public official in any other proceedings.

(6) This section applies only to the taking of the following disciplinary proceedings—

(a) proceedings and action taken by the Commissioner of Police with respect to an administrative employee under section 69 or 70 of the *Government Sector Employment Act 2013*,

(b) proceedings and action taken by the Crime Commissioner with respect to a Crime Commission officer under section 69 or 70 of the *Government Sector Employment Act 2013*,

(c) proceedings and action taken by the Commissioner of Police against a police officer under Part 9 of the *Police Act 1990*.

(7) In this section—

**employment** includes—

(a) engagement under a contract for services, and

(b) appointment as a statutory officer.

**evidence given to the Commission** means—

(a) a statement of information, or a document or other thing, produced in response to a notice by the Commission, and

(b) an answer made, or a document or other thing produced, by a person summoned to attend or appearing before the Commission at an examination.

### **31 Application of *Criminal Assets Recovery Act 1990***

(1) The *Criminal Assets Recovery Act 1990* applies to the Commission in the same way as

it applies to the Crime Commission.

- (2) Accordingly, references in that Act to the Crime Commission are taken to include references to the Commission, so that functions exercisable by the Crime Commission may be exercised by either body.
- (3) The Commission may exercise a function under that Act only—
  - (a) after the Commission has consulted with the Crime Commission, or
  - (b) in conformity with an arrangement referred to in section 163 (3),and must consider whether any such function should instead be exercised by the Crime Commission.
- (4) Subsection (3) does not apply if the exercise of the function by the Commission under the *Criminal Assets Recovery Act 1990* relates to an investigation by the Commission concerning Crime Commission officer misconduct.
- (5) It is intended that the Commission will exercise a function under that Act only in connection with matters arising during or out of the Commission's investigations. However, this subsection does not provide any grounds for an appeal against or any other challenge to the exercise by the Commission of any such function.

### **32 Inspection of records and reports**

- (1) The Commission must keep under scrutiny the systems established within the NSW Police Force and the Crime Commission for dealing with misconduct matters. For that purpose, the Commission may request the Commissioner of Police and the Crime Commissioner to provide information about those systems and their operation.
- (2) Without limiting subsection (1), for the purpose of ascertaining whether or not the requirements of this Act and Part 8A of the *Police Act 1990* are being complied with by the Commissioner of Police and other members of the NSW Police Force, the Commission—
  - (a) must inspect the records of the NSW Police Force at least once every 12 months, and
  - (b) may inspect the records of the NSW Police Force at any time.
- (3) Without limiting subsection (1), for the purpose of ascertaining whether or not the requirements of this Act are being complied with by the Crime Commissioner and officers of the Crime Commission, the Commission—
  - (a) must inspect the records of the Crime Commission at least once every 12 months, and
  - (b) may inspect the records of the Crime Commission at any time.

- (4) The Commissioner of Police and the Crime Commissioner must comply with a request under subsection (1).
- (5) The Commission may, at any time, prepare a report on matters arising out of the exercise of the Commission's functions under this section.
- (6) The report may include such comments and recommendations as the Commission thinks fit.
- (7) The Commission is to provide a copy of the report to the Minister and the Commissioner of Police or the Crime Commissioner (as appropriate).
- (8) If the Commission makes a recommendation in a report under this section it may require the Commissioner of Police or Crime Commissioner to advise the Commission whether the Commissioner intends to implement the recommendation and, if not, the reasons for not doing so.
- (9) Information must be provided in accordance with this section despite the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002* but only to the extent that it is relevant to the exercise of a function of the Commission under this section.

## **Part 5 Dealing with misconduct matters**

### **Division 1 Reporting officer misconduct**

#### **33 Duty to notify Commission of possible officer misconduct and serious maladministration**

- (1) This section applies to the following officers—
  - (a) the Ombudsman,
  - (b) the Crime Commissioner,
  - (c) the Commissioner of Police,
  - (d) the ICAC Commissioner,
  - (e) the principal officer of a public authority,
  - (e1) the Children's Guardian,
  - (f) an officer who constitutes a public authority.
- (2) An officer to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern officer misconduct or serious maladministration unless the matter is of a kind that any guideline issued under subsection (5) provides does not need to be reported.

- (3) The report must be in writing.
- (4) However, the Commission—
  - (a) may accept a report that is not in writing if the Commission considers it appropriate to do so, and
  - (b) in that event, must reduce the report to writing as soon as practicable.
- (5) The Commission may issue guidelines as to what matters need or need not be reported.
- (6) A report must be provided in accordance with this section despite any prohibition in, or any requirement of, any Act or law (in particular, the *Privacy and Personal Information Protection Act 1998* and the *Health Records and Information Privacy Act 2002*) but only to the extent that it contains information that is relevant to the officer misconduct or serious maladministration concerned.
- (7) For the purposes of this section, the regulations may prescribe who is the principal officer of a public authority, but in the absence of regulations applying in relation to a particular public authority, the principal officer is the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.

**Note—**

Police officers are also under duties with respect to reporting misconduct—see section 211F of the *Police Act 1990*.

### **34 Referral of other misconduct matters to the Commission**

- (1) Section 33 does not prevent any person to which that section applies or the Minister from referring any misconduct matter of which the person or Minister becomes aware despite the person or Minister not having a duty to report under that section to the Commission.
- (2) Section 33 (6) applies to and in respect of a misconduct matter referred under this section in the same way as it applies to a report under section 33.

## **Division 2 Making complaints about officer misconduct, officer maladministration and agency maladministration**

### **35 Making complaints to Commission**

- (1) Any person (including a public authority) may complain to the Commission about conduct of a police officer, Crime Commission officer or administrative employee that is (or could be) officer misconduct or officer maladministration.
- (2) Any person (including a public authority) may complain to the Commission about

conduct of the Crime Commission or the NSW Police Force that is (or could be) agency maladministration.

- (3) A public official within the meaning of the *Public Interest Disclosures Act 1994* may complain to the Commission about the conduct of a police officer, Crime Commission officer or administrative employee.
- (4) This section does not affect any other right of a person to complain about the conduct of a police officer, Crime Commission officer or administrative employee or the conduct of the Crime Commission or the NSW Police Force.

**Note—**

For example, a complaint about the conduct of a police officer may also be made to the Commissioner of Police under section 124 of the *Police Act 1990*.

### **36 Complaint to be in writing**

- (1) A complaint to the Commission must be in writing.
- (2) However, the Commission—
  - (a) may accept a complaint that is not in writing if the Commission considers it appropriate to do so, and
  - (b) in that event, must reduce the complaint to writing as soon as practicable.
- (3) A complaint may be made by delivering or sending it to the Commission or in any other manner determined by the Commission and publicly notified by the Commission.

### **37 Anonymous complaints**

- (1) It is not necessary for a complainant to be identified in a complaint.
- (2) Any provision of this Act or any misconduct matters management guideline that requires a complainant to be notified of any matter does not apply to or in respect of a complainant who is not identified in the complaint.

### **38 Complaints made by prisoners**

- (1) If a prisoner informs a prison officer that the prisoner wishes to make a complaint, the prison officer—
  - (a) must take all steps necessary to facilitate the making of the complaint, and
  - (b) must immediately send, unopened, any written matter addressed to a police officer (whether by name or by reference to an office held by that officer), the Commissioner of Police or Crime Commissioner (whether by name or by reference to that office) or to the Commission to that addressee.
- (2) In this section—



**prisoner** means any person in lawful detention or custody, and **prison officer** means any person by whom the prisoner is detained, or in whose custody the prisoner is, or who is in charge of the prisoner and who, if a correctional officer within the meaning of the *Crimes (Administration of Sentences) Act 1999*, is authorised by or under that Act to accept correspondence from a prisoner.

**Note—**

Under clause 110 of the *Crimes (Administration of Sentences) Regulation 2014* a prisoner must not send any letter otherwise than through the hands of a nominated officer within the meaning of that Regulation.

**39 Member of Parliament may make complaint on behalf of complainant**

- (1) A complaint may, with the consent in writing of a person, be made on his or her behalf by a member of Parliament.
- (2) A member of Parliament does not become the complainant merely because the member makes a complaint to the Commission on behalf of another person but may be informed, notified, given or sent such advice about progress on or the outcome of a complaint as the Commission considers appropriate.

**40 Commission may request further information from complainant**

- (1) For the purpose of making a decision with respect to a complaint under section 44, the Commission may (without exercising any of its investigation powers under sections 51 and 52) do any one or more of the following—
  - (a) request the complainant to discuss the complaint with the Commission for the purpose of providing further information concerning the complaint,
  - (b) request the complainant to provide further written particulars concerning the complaint within the time specified by the Commission,
  - (c) request the complainant to verify by statutory declaration his or her complaint, or any particulars given by the complainant concerning his or her complaint.
- (2) The Commission may withdraw the request if the complainant objects and the Commission is satisfied that the grounds of the objection are well-founded.
- (3) If the Commission makes a request (and it is not withdrawn), the Commission is to take no further action in connection with the complaint concerned until the request is complied with or until a reasonable time for compliance with the request has elapsed.
- (4) If the request is not complied with within a reasonable time, the Commission may treat the complaint concerned as having been withdrawn.

**41 Commission may request further information from other persons**

- (1) For the purpose of making a decision under section 44 with respect to a complaint

(without exercising any of its investigatory powers), the Commission may request information from persons other than the complainant.

- (2) This section does not authorise the Commission—
  - (a) to investigate the complaint or to collect information for the purposes of the investigation of the complaint or of a report under this Act, or
  - (b) to interview the officer the subject of the complaint, or
  - (c) to require persons to provide information.
- (3) A request made by the Commission under this section is not an investigation of the complaint in relation to which the request is made. However, any information provided in response to such a request may be used in any police investigation, Crime Commission investigation or investigation by the Commission under this Act.

### **Division 3 Dealing with misconduct matters generally**

#### **42 Notice of notifiable misconduct matters to be given to Commission**

- (1) The Commissioner of Police is to give the Commission notice of any notifiable misconduct matter received by the Commissioner of Police or of which the Commissioner of Police becomes aware.
- (2) The Crime Commissioner is to give the Commission notice of any notifiable misconduct matter that is received by the Crime Commissioner or an officer of the Crime Commission or of which the Crime Commissioner or officer becomes aware.
- (3) The notice is to include a copy of (or provide electronic access to a copy of) the complaint or misconduct information concerned.

#### **43 Notice of misconduct matters to be given by Commission**

- (1) As soon as practicable after receiving or becoming aware of a misconduct matter concerning a police officer or administrative employee or the NSW Police Force, the Commission is to give the Commissioner of Police notice of the misconduct matter.
- (2) As soon as practicable after receiving or becoming aware of a misconduct matter concerning a Crime Commission officer or the Crime Commission, the Commission is to give the Crime Commissioner notice of the misconduct matter.
- (3) The notice may include a summary or sufficient details of the misconduct matter to indicate the nature of the misconduct for the information of the Commissioner of Police or Crime Commissioner.
- (4) Nothing in this section requires a copy of a misconduct matter to be referred to the Commissioner of Police or Crime Commissioner if the Commissioner of Police or Crime

Commissioner already has a copy (or a summary or sufficient details) of the misconduct matter.

- (5) The Commission is not required to give notice of a misconduct matter under this section if the Commission is of the opinion that it is not in the public interest to do so.

#### **44 Dealing with misconduct matters**

- (1) As soon as practicable after the Commission receives (or becomes aware of) a misconduct matter, and at any time during the course of the investigation or oversight by the Commission of a misconduct matter, the Commission may decide to do any one or more of the following—
- (a) subject to sections 45 and 46, to investigate, or take over the investigation, of the misconduct matter,
  - (b) subject to section 45, to refer the misconduct matter for police investigation or other action or Crime Commission investigation or other action,
  - (c) to refer the misconduct matter to the Commissioner of Police or the Crime Commissioner for information,
  - (d) if the subject of a police misconduct matter is a member of the NSW Police Force involved in a critical incident, to refer the matter to the Commissioner of Police to be investigated (except as provided by section 113 (6)) under Part 8,
  - (e) to refer the misconduct matter to another body or person under section 162 for investigation or other action or for information,
  - (f) if the misconduct matter is referred for police investigation or Crime Commission investigation, to oversee the police investigation or Crime Commission investigation under Part 7,
  - (g) if the misconduct matter is referred to another person or body under section 162, to oversee any investigation or other action taken by the person or body with respect to the misconduct matter,
  - (h) to attempt to deal with the misconduct matter (being a complaint) by an alternative dispute management process under section 48,
  - (i) to take no further action with respect to the misconduct matter.
- (2) A decision under subsection (1) may be made in respect of the whole or any part of a misconduct matter.
- (3) The Commission is to take into account any misconduct matters management guidelines or recommendation of the Commissioner of Police in deciding how to deal with a misconduct matter concerning a police officer, administrative employee or the

NSW Police Force, or of the Crime Commissioner in deciding how to deal with a misconduct matter concerning a Crime Commission officer or the Crime Commission, but its decision is determinative of the matter.

- (4) Additional information from the complainant and other persons under sections 40 and 41, and any existing information relevant to the misconduct matter to which the Commission can readily obtain access, may be used in deciding how to deal with a misconduct matter.
- (5) The Commission may decide to investigate any matter relating to a misconduct matter under subsection (1)—
  - (a) even though it has referred the misconduct matter or part of the misconduct matter for police investigation or Crime Commission investigation or to another authority under section 162, and
  - (b) before the commencement of a police investigation or Crime Commission investigation, during the progress of a police investigation or Crime Commission investigation or after a police investigation or Crime Commission investigation of the misconduct matter.
- (6) The Commission may notify the Commissioner of Police or Crime Commissioner of any decision the Commission makes to investigate a misconduct matter under this section during a police investigation or Crime Commission investigation of the misconduct matter.
- (7) On being so notified, the Commissioner of Police or Crime Commissioner is to discontinue the police investigation or Crime Commission investigation, respectively.
- (8) If the Commission decides to take no further action with respect to a misconduct matter, the Commission must notify the complainant of the decision and the reasons for it.
- (9) Except as provided by section 113 (6), the Commission must postpone the making of a decision under this section about whether it should investigate a police misconduct matter if the subject of the misconduct matter is the conduct of a police officer in relation to a critical incident until the conclusion of any critical incident investigation (within the meaning of Part 8) of the incident.
- (10) The making of a decision under this section is not an investigation of the misconduct matter to which the decision relates.
- (11) The Commissioner of Police or Crime Commissioner may investigate or otherwise deal with any notifiable misconduct matter pending the making of a decision by the Commission under this section.

#### **45 Factors affecting decision to investigate misconduct matters and referral for police or**

### **Crime Commission investigation**

- (1) In deciding whether any misconduct matter should be, or does not need to be, investigated by the Commission or referred for police investigation or Crime Commission investigation, the Commission may have regard to such matters as the Commission thinks fit, including whether, in the Commission's opinion—
  - (a) action has been, is being or will be taken to remedy the subject-matter of the misconduct matter without the need for an investigation by the Commission or any other person or body, or
  - (b) the misconduct matter is frivolous, vexatious or not made in good faith, or
  - (c) the subject-matter of the misconduct matter is trivial, or
  - (d) the relevant conduct occurred too long ago to justify investigation, or
  - (e) there is or was available an alternative and satisfactory means of redress in relation to the relevant conduct, or
  - (f) the complainant does not or could not have an interest, or a sufficient interest, in the conduct complained of, or
  - (g) civil, criminal or disciplinary proceedings, or a coroner's inquest, relating to the subject-matter of the misconduct matter are pending or reasonably in contemplation.
- (2) The Commission may only decide that the Commission is to investigate a misconduct matter if—
  - (a) the conduct is of a kind described in section 51, and
  - (b) in the case of a decision to investigate by an examination, the Commission has decided that the conduct concerned is (or could be) conduct that falls within the description of serious misconduct or serious maladministration that should be investigated and that an examination should be conducted.

#### **Note—**

See section 19 (2).

- (3) The Commission may decide to conduct an investigation into agency maladministration (or refer a misconduct matter concerning agency maladministration for police investigation or Crime Commission investigation) even though no particular police officer, administrative employee, Crime Commission officer or other person has been implicated and even though no officer misconduct or officer maladministration is suspected.

### **46 Factors affecting decision to investigate serious misconduct or serious**

### **maladministration**

The factors that the Commission may take into account in deciding whether the Commission is to investigate conduct it has decided falls within (or could fall within) the description of serious misconduct or serious maladministration are as follows—

- (a) the apparent level of criminality or systemic nature of the conduct and the Commission's responsibility to direct the Commission's attention to serious matters affecting the integrity of the NSW Police Force and Crime Commission,
- (b) the primary responsibility of the NSW Police Force to investigate and prevent officer misconduct, officer maladministration and agency maladministration within the NSW Police Force,
- (c) the primary responsibility of the Crime Commission to investigate and prevent officer misconduct, officer maladministration and agency maladministration within the Crime Commission,
- (d) the availability of the Commission or any other public authority or official with the responsibility, jurisdiction or power to investigate conduct of the kind concerned,
- (e) if the conduct is related to conduct that the Commission is already investigating, the relationship to any other on-going investigation of the Commission,
- (f) the complexity of the matter,
- (g) the number and seniority of police officers, administrative employees or Crime Commission officers involved.

#### **47 Referral of misconduct matters for police or Crime Commission investigation**

- (1) As soon as practicable after deciding that a misconduct matter should be referred for police investigation, the Commission must refer the misconduct matter to the Commissioner of Police.
- (2) As soon as practicable after deciding that a misconduct matter should be referred for Crime Commission investigation, the Commission must refer the misconduct matter to the Crime Commissioner.
- (3) In referring a misconduct matter or part of a misconduct matter to the Commissioner of Police for police investigation or the Crime Commissioner for Crime Commission investigation, the Commission may recommend—
  - (a) matters that need to be examined or taken into consideration by the police officer or police officers or Crime Commissioner officer or Crime Commission officers investigating the misconduct matter, and
  - (b) the time within which the investigation should be concluded.

- (4) Referral of a misconduct matter for police investigation or Crime Commission investigation does not prevent the Commission from subsequently deciding to investigate or take other action with respect to the matter under section 44.

#### **48 Dealing with complaint by alternative dispute management**

- (1) The Commission may decide to attempt to deal with a complaint by mediation, conciliation or any other alternative dispute management process for the purpose of resolving the complaint.
- (2) Any statement or admission made in the course of the process and any document prepared for the purposes of it is not admissible in any subsequent investigation (including an examination) under this Act or in any other legal proceeding (unless the person who said or admitted the thing, or to whom the document relates, consents to its admission).
- (3) If an attempt to deal with a complaint by a process under this section is unsuccessful, the conciliation is to be treated as if it had not taken place. However, any member of the Commission or Assistant Commissioner who assisted in the process is excluded from participating as an investigating officer in any investigation of the complaint concerned.
- (4) Subsection (3) does not prevent a member of the Commission who assisted in a process under this section from participating in making any decision under section 19 (2).
- (5) The regulations may make provision for or with respect to the process for dealing with complaints under this section.

#### **49 Registration of misconduct matters**

The following must be registered in the misconduct matters information system—

- (a) information about all police complaints, administrative employee complaints and agency complaints about the NSW Police Force received by the Commission,
- (b) such information about misconduct information as is required to be registered in the system by a misconduct matters management guideline.

#### **50 Action on misconduct matter not affected by failure to comply with Part**

Action taken with respect to a misconduct matter is not to be called into question in any legal proceedings merely because of any failure to comply with the requirements of this Part with respect to the referral or notification of the misconduct matter.

## **Part 6 Investigation powers**

### **Division 1 Investigation powers generally**

#### **51 Exercise of investigation powers**

- (1) The Commission may exercise its investigation powers in respect of conduct—
- (a) if the conduct concerned involves a police officer, administrative employee or Crime Commission officer and the Commission has decided that the conduct concerned is (or could be) serious misconduct or officer maladministration that is serious maladministration and should be investigated, or

**Note—**

See section 19 (2) in relation to the making of a decision under this provision.

- (b) if the conduct concerned involves the Commissioner of Police or a Deputy Commissioner of Police and is (or could be) police misconduct or officer maladministration, or
  - (c) if the conduct concerned involves the Crime Commissioner or an Assistant Commissioner of the Crime Commission and is (or could be) Crime Commission officer misconduct or officer maladministration, or
  - (d) if the conduct concerned is (or could be) agency maladministration, or
  - (e) if both Houses of Parliament refer the conduct concerned to the Commission for investigation under section 196.
- (2) The investigation powers may be exercised—
- (a) on any complaint made or referred to the Commission under this or any other Act, or
  - (b) on the Commission's own initiative on the basis of misconduct information provided to it in a report or of which it otherwise becomes aware.
- (3) The power to investigate conduct under this section includes the power—
- (a) to investigate conduct that could be, but is not, the subject of a complaint, and
  - (b) to investigate the actions of another person or body in relation to the conduct concerned and any related issues, and
  - (c) to refer the matter for investigation or other action under section 162.
- (4) Without limiting subsection (3), if the misconduct matter or conduct is (or could be) indicative of a systemic problem involving the NSW Police Force generally, or a particular area of the NSW Police Force, and the Commission considers it in the public



interest to do so, the investigation by the Commission may extend beyond any police officer or administrative employee to whom the misconduct matter or conduct relates—

(a) to the NSW Police Force generally, or that particular area of the NSW Police Force, and

(b) to other police officers and administrative employees.

(5) Without limiting subsection (3), if the misconduct matter or conduct is (or could be) indicative of a systemic problem involving the Crime Commission generally, or a particular area of the Crime Commission, and the Commission considers it in the public interest to do so, the investigation by the Commission may extend beyond any Crime Commission officer to whom the misconduct matter or conduct relates—

(a) to the Crime Commission generally, or that particular area of the Crime Commission, and

(b) to other Crime Commission officers.

(6) For the purposes of subsection (1), conduct that is (or could be) indicative of both officer misconduct or officer maladministration and agency maladministration is to be treated as officer misconduct or officer maladministration.

## **52 Preliminary investigation**

(1) An investigation power the Commission decides to exercise under section 51 may be in the nature of a preliminary investigation.

(2) A preliminary investigation can be conducted, for example, for the purpose of—

(a) assisting the Commission to discover or identify conduct that might be made the subject of a more complete investigation, or

(b) assisting the Commission to decide whether to make particular conduct the subject of a more complete investigation, or

(c) assisting the Commission in making a decision under section 61 with respect to the holding of an examination with respect to conduct that is (or could be) serious misconduct.

## **53 Discontinuance or conclusion of investigation**

(1) The Commission may discontinue or conclude an investigation at any time.

(2) In deciding to discontinue or conclude an investigation with respect to a misconduct matter, the Commission may have regard to such matters as it thinks fit, including the matters referred to in sections 45 and 46.

- (3) Where the Commission discontinues an investigation of police misconduct, the Commission must inform the complainant and the Commissioner of Police in writing of the decision and the reasons for the decision.

## **Division 2 Powers to obtain information, documents and other things**

### **54 Power to obtain information**

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

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

#### **Note—**

It is an offence to procure or cause a person to furnish false or misleading information in purported compliance with a notice under this section—see section 153.

### **55 Power to obtain documents or other things**

- (1) For the purposes of an investigation, the Commission may, by notice in writing served on a person (whether or not a public authority or public official), require the person—
  - (a) to attend, at a time and place specified in the notice, before a person (being a Commissioner, an Assistant Commissioner or any other officer of the Commission) specified in the notice, and
  - (b) to produce at that time and place to the person so specified a document or other thing specified in the notice.

- (2) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the person on whom it was imposed and may, but need not, specify the person or class of persons who may so act.
- (3) A person must not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

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

## **56 Abrogation of privileges**

- (1) This section applies where, under section 54 or 55, the Commission requires any person to produce—
  - (a) any statement of information, or
  - (b) any document or other thing.
- (2) The Commission must set aside the requirement if it appears to the Commission that any person has a ground of privilege under which, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commission that the person consents to compliance with the requirement.
- (3) The person must, however, comply with the requirement despite—
  - (a) any rule that in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest, or
  - (b) any privilege of a public authority or public official in that capacity that the authority or official could have claimed in a court of law, or
  - (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official or a former public authority or public official.

## **57 Self-incrimination**

- (1) This section applies if because of section 56 (3) any person (other than a body corporate) must comply with a requirement under section 54 or 55 to produce—
  - (a) any statement of information, or
  - (b) any document or other thing.
- (2) If the statement, document or other thing tends to incriminate the person and the person objects to production at the time the person is required to produce it, neither the fact of the requirement nor the statement, document or thing itself (if produced) may be used in any proceedings against the person (except proceedings for an offence against this Act, proceedings for contempt under this Act or as provided by subsections (3), (4) and (5)). This subsection extends to any further information,

document or other thing obtained as a direct or indirect consequence of the statement, document or other thing produced.

- (3) They may however be used for the purposes of the investigation concerned, despite any such objection.
- (4) A statement, document or other thing may be used in deciding whether to—
  - (a) make an order under section 173 or 181D of the *Police Act 1990* (and is admissible in any proceedings under Division 1A or 1C of Part 9 of that Act), and
  - (b) make an order under section 183A of the *Police Act 1990* or any proceedings for the purposes of Division 2A of Part 9 of that Act with respect to such an order, and
  - (c) make an order in any disciplinary proceedings, and
  - (d) without limiting paragraph (c), take action under section 69 or 70 of the *Government Sector Employment Act 2013*.
- (5) Nothing in this section makes inadmissible—
  - (a) any statement, document or other thing in proceedings for an offence against this Act or in proceedings for contempt under this Act, or
  - (b) any statement, document or other thing in any civil or criminal proceedings if the witness does not object to making the statement or producing the document or other thing, or
  - (c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.

## **58 Power to enter public premises**

- (1) For the purposes of an investigation, a Commissioner or an officer of the Commission authorised in writing by the Commission may, at any time—
  - (a) enter and inspect any premises occupied or used by a public authority or public official in that capacity, and
  - (b) inspect any document or other thing in or on the premises, and
  - (c) take copies of any document in or on the premises.
- (2) The public authority or public official must make available to the Commissioner or authorised officer such facilities as are necessary to enable the powers conferred by this section to be exercised.
- (3) The powers conferred by this section must not be exercised if it appears to the Commissioner or authorised officer that any person has a ground of privilege under

which, in proceedings in a court of law, the person might resist inspection of the premises or production of the document or other thing and it does not appear to the Commissioner or authorised officer that the person consents to the inspection or production.

- (4) The powers may, however, be exercised despite—
- (a) any rule of law that, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or other thing on grounds of public interest, or
  - (b) any privilege of a public authority or public official in that capacity that the authority or official could have claimed in a court of law, or
  - (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

## **59 Injunctions**

- (1) The Supreme Court may, on application made by the Commission, grant an injunction restraining any conduct in which a person (whether or not a public authority or public official) is engaging or in which such a person might engage, if the conduct is the subject of, or affects or could affect the subject of, an investigation or proposed investigation.
- (2) The Supreme Court is not to grant an injunction under this section unless it is of the opinion that—
  - (a) the conduct sought to be restrained is likely to impede the conduct of the investigation or proposed investigation, or
  - (b) it is necessary to restrain the conduct in order to prevent irreparable harm being done because of officer misconduct or serious maladministration or suspected officer misconduct or serious maladministration.
- (3) The Commission is not to be required, as a condition for the granting of an injunction under this section, to give any undertakings as to damages.

## **60 Powers exercisable whether or not examinations being held**

Powers may be exercised under this Part (other than Divisions 3, 4 and 9) in relation to an investigation under this Act whether or not an examination is being held for the purposes of the investigation.

## **Division 3 Examinations**

### **61 When may an examination be held**

The Commission may hold an examination under this Division, for the following

purposes—

- (a) an investigation of conduct that the Commission has decided is (or could be) serious misconduct or serious maladministration,
- (b) investigation of conduct referred to it by Parliament under section 196.

**Note—**

See section 19 (2) in relation to the making of a decision under this provision.

## **62 Examinations**

- (1) An examination must be held by the Chief Commissioner, by the Commissioner for Integrity or an Assistant Commissioner, as determined by the Chief Commissioner (the **examining Commissioner**).
- (2) At an examination, the examining Commissioner must announce the general scope and purpose of the examination.
- (3) A person appearing at an examination is entitled to be informed of the general scope and purpose of the examination, unless the examining Commissioner is of the opinion that this would seriously prejudice the investigation concerned.

## **63 Public and private examinations**

- (1) An examination (or part of an examination) may, subject to subsection (2), be held in public or in private.
- (2) An examination (or part of an examination) may only be held in public if the Commission decides that it is appropriate.

**Note—**

See section 19 (2) (c) in relation to the making of a decision under this provision.

- (3) Despite the Commission deciding to hold an examination (or part of an examination) in public, the examining Commissioner may decide to hear closing submissions or any other part of a hearing in private.
- (4) Subsection (3) extends to a closing submission by a person appearing before the examining Commissioner or an Australian legal practitioner representing such a person, as well as to a closing submission by an Australian legal practitioner assisting the Commission as counsel.
- (5) Without limiting the factors that the Commission may take into account in determining whether or not to hold an examination (or part of an examination) in public, the Commission is to consider the following—
  - (a) the benefit of exposing to the public, and making it aware of, serious misconduct,

- (b) the seriousness of the allegation or misconduct matter being investigated,
  - (c) any risk of undue prejudice to a person's reputation (including by not holding the examination in public),
  - (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned,
  - (e) whether holding the examination (or part of the examination) in public may encourage a person with information relevant to the investigation concerned to appear before the examining Commissioner or to otherwise assist the Commission's investigation.
- (6) The examining Commissioner may give directions as to the persons who may be present at an examination when it is being held in private. A person must not be present at an examination in contravention of any such direction.

**Note—**

It is an offence to be present at an examination in contravention of a direction—see section 149.

#### **64 Counsel assisting**

- (1) The Commission may appoint an Australian legal practitioner who is not a police officer or former police officer to assist the examining Commissioner at an examination.
- (2) An Australian legal practitioner appointed by the Commission to assist the examining Commissioner at an examination may appear before the examining Commissioner.

#### **65 Right of appearance of affected person**

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

#### **66 Legal representation**

- (1) The examining Commissioner may, in relation to an examination, authorise—
  - (a) a person giving evidence at the hearing, or
  - (b) a person referred to in section 65,to be represented by an Australian legal practitioner at the hearing or a specified part of the examination.
- (2) The examining Commissioner is required to give a reasonable opportunity for a person giving evidence at the examination to be legally represented.

## **67 Groups and unincorporated associations**

- (1) Groups and unincorporated associations may be authorised to appear at an examination or authorised or required to give evidence at an examination.
- (2) Accordingly, references in sections 65 and 66 to a person extend for this purpose to a group or unincorporated association.
- (3) However, this section does not affect the application in any other context of the principle that a reference to a word in the singular form includes a reference to the word in the plural form.

## **68 Examination and cross-examination of witnesses**

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

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

- (1) An examining Commissioner may issue a summons to compel a person to appear before the examining Commissioner at an examination at a time and place named in the summons—
  - (a) to give evidence, or
  - (b) to produce such documents or other things (if any) as are referred to in the summons,or both.
- (2) The examining Commissioner may require a person appearing at the examination to produce a document or other thing.
- (3) The examining Commissioner may, at a hearing, take evidence on oath or affirmation and for that purpose—
  - (a) the examining Commissioner may require a person appearing at the examination to give evidence either to take an oath or make an affirmation in a form approved by the examining Commissioner, and



- (b) the examining Commissioner, or a person authorised for the purpose by the examining Commissioner, may administer an oath or affirmation to a person so appearing at the hearing.
- (4) A witness who has been summoned to attend before an examining Commissioner must appear and report himself or herself from day to day unless the witness is excused from attendance or until the witness is released from further attendance by the examining Commissioner.
- (5) A person who, without being so excused or released, fails to appear and report is taken to have failed to appear before the examining Commissioner in obedience to the summons.
- (6) A Judge or Magistrate may, on the application of the Commission, issue any summons that the examining Commissioner is authorised to issue under this section.
- (7) The purpose of subsection (6) is to enable the summons to be given the character of a summons by a judicial officer, for the purposes of the *Service and Execution of Process Act 1992* of the Commonwealth and any other relevant law.

## **70 Evidence and procedure**

- (1) In the exercise of an examining Commissioner's functions under this Part, the examining Commissioner is not bound by the rules or practice of evidence and can inform himself or herself on any matter in such manner as the examining Commissioner considers appropriate.
- (2) The examining Commissioner is required to exercise the examining Commissioner's functions with as little formality and technicality as is possible, and, in particular, the examining Commissioner is required to accept written submissions as far as is reasonably possible and examinations are to be conducted with as little emphasis on an adversarial approach as is possible.
- (3) Despite subsection (1), section 127 (Religious confessions) of the *Evidence Act 1995* applies to any examination before an examining Commissioner.
- (4) A requirement under this Part that a person appear (or be brought or be present) before an examining Commissioner is taken to be satisfied if the person appears before the examining Commissioner by way of audio visual link.
- (5) Regulations may be made for or with respect to the use of audio visual links in proceedings before an examining Commissioner (including the taking of an oath or affirmation by such means).

## **Division 4 Attendance before examining Commissioner**

### **71 Arrest of witness**

- (1) If a person served with a summons to attend an examination as a witness fails to attend in answer to the summons, the examining Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness.
- (2) The examining Commissioner may issue a warrant for the arrest of a person whose evidence is desired and is necessary and relevant to an investigation, if the examining Commissioner is satisfied by evidence on oath or affirmation that it is probable that the person—
  - (a) will not attend before the examination to give evidence without being compelled to do so, or
  - (b) is about to or is making preparations to leave the State and the person's evidence will not be obtained by the examining Commissioner if the person departs.
- (3) The examining Commissioner is authorised to administer an oath or affirmation for the purposes of subsection (2).
- (4) A warrant may be issued without or before the issue of a summons to the person whose evidence is desired.
- (5) A warrant may be issued after the issue of a summons to the person whose evidence is desired, even though the time named in the summons for the person to attend has not yet passed.
- (6) A warrant under this section authorises the arrest of the witness and his or her being promptly brought before the examining Commissioner and detained in a correctional centre or elsewhere for that purpose until released by order of the examining Commissioner (a **release order**).
- (7) A warrant issued under this section may be executed by any police officer, or by any person to whom it is addressed, and the person executing it may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.
- (8) The issue of a warrant or the arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with a summons.

### **72 Conditional release of witness**

- (1) The release of a witness under a release order may (but need not) be made subject to one or more of the following conditions (or to any other conditions)—

- (a) that the witness appear and report himself or herself before the examining Commissioner in accordance with the terms of the order unless excused from attendance or until released from further attendance by the examining Commissioner presiding at the relevant examination,
- (b) conditions for the purpose of ensuring the further attendance of the witness before the examining Commissioner (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 examining Commissioner).

**Note—**

It is an offence to fail, without reasonable excuse, to comply with a condition of a release order—see section 150 (3).

- (2) From time to time, the examining Commissioner may by order amend, revoke or add to those conditions.

**73 Review by Supreme Court**

- (1) A witness who has not been released by a release order or whose release 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 examining Commissioner not to release the witness or any condition imposed by the examining Commissioner on the release of the witness.
- (3) The Supreme Court may also or instead make any order that the examining Commissioner may make in relation to the detention or release of the witness (including making such an order if the examining Commissioner has not made any decision within a reasonable time on the release of the witness).
- (4) An order under subsection (3) is taken to be an order of the examining Commissioner.

**74 Abrogation of privilege as regards answers, documents and other things**

- (1) A witness summoned to attend or appearing at an examination is not entitled to refuse—
  - (a) to be sworn or to make an affirmation, or
  - (b) to answer any question relevant to an investigation put to the witness by the examining Commissioner, or
  - (c) to produce any document or other thing in the witness's custody or control that the witness is required by the summons or by the examining Commissioner to

produce.

- (2) The witness is not excused from answering any question or producing any document or other thing at an examination on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground.
- (3) If the answer made or document or other thing produced might in fact tend to incriminate the witness and the witness objects to answering the question or the production at the time of answering or producing the document or other thing, neither the answer nor the document or thing itself (if produced) may be used in any proceedings against the witness except—
  - (a) disciplinary proceedings, or
  - (b) proceedings for an offence against this Act, or
  - (c) proceedings for contempt under this Act, or
  - (d) as provided by subsections (4), (5) and (6).

This subsection extends to any further information, document or other thing obtained as a direct or indirect consequence of the answer made or document or other thing produced.

- (4) They may however be used for the purposes of the investigation concerned, despite any such objection.
- (5) An answer, document or thing may be used—
  - (a) in deciding whether to make an order under section 173 or 181D of the *Police Act 1990* (and is admissible in any proceedings under Division 1A or 1C of Part 9 of that Act), and
  - (b) in deciding whether to make an order under section 183A of the *Police Act 1990* (and is admissible in any proceedings under Division 2A of Part 9 of that Act with respect to such an order), and
  - (c) in deciding whether to take action under section 69 or 70 of the *Government Sector Employment Act 2013*, and
  - (d) for the purposes of the Director of Public Prosecutions providing advice about the commencement of proceedings against particular persons for criminal offences against laws of the State.
- (6) Nothing in this section makes inadmissible—
  - (a) any statement, document or other thing in proceedings for an offence against this

Act or in proceedings for contempt under this Act, or

- (b) any statement, document or other thing in any civil or criminal proceedings if the witness does not object to making the statement or producing the document or other thing, or
- (c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.

(7) If—

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

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

#### **75 Declaration as to objection by witness**

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

#### **76 Reimbursement of expenses of witnesses**

A witness appearing at an examination is to be paid, out of money provided by Parliament, in respect of the expenses of the witness's attendance an amount ascertained in accordance with the scale prescribed by the regulations for the purposes of this section or, if there is no such prescribed scale, such amount as the Commission determines.

#### **77 Legal and financial assistance for witness**

- (1) A witness who is appearing or is about to appear or who has appeared at an examination may apply to the Attorney General, and Minister for the Prevention of Domestic Violence for legal or financial assistance.
- (2) The Attorney General, and Minister for the Prevention of Domestic Violence may approve the provision of legal or financial assistance to the applicant if of the opinion that this is appropriate, having regard to any one or more of the following—

- (a) the prospect of hardship to the witness if assistance is declined,
  - (b) the significance of the evidence that the witness is giving, appears likely to give or has given,
  - (c) any other matter relating to the public interest.
- (3) On giving the approval, the Attorney General, and Minister for the Prevention of Domestic Violence may authorise the provision to the witness of legal or financial assistance determined by the Attorney General, and Minister for the Prevention of Domestic Violence in respect of the witness's appearance at the examination. The assistance is to be provided out of money provided by Parliament for the purpose.
- (4) The assistance may be provided unconditionally or subject to conditions determined by the Attorney General, and Minister for the Prevention of Domestic Violence.
- (5) The Attorney General, and Minister for the Prevention of Domestic Violence may delegate one or more of his or her functions under this section to the Secretary, a Deputy Secretary or the General Counsel of the Department of Communities and Justice.

#### **78 Appearance of inmate at examination**

- (1) If the examining Commissioner requires an inmate of a correctional centre to appear before the examining Commissioner at an examination, the examining Commissioner may, by order in writing served on the general manager of the correctional centre, 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 officer**, **general manager** of a correctional centre and **inmate** have the same meanings as in the [Crimes \(Administration of Sentences\) Act 1999](#).

## Division 5 Search warrants

### 79 Issue of search warrant

- (1) **Power of authorised officer to issue warrant** An authorised officer to whom an application is made under subsection (4) may issue a search warrant if satisfied that there are reasonable grounds for doing so.
- (2) **Power of Commissioner to issue warrant** A Commissioner, on application made to the Commissioner under subsection (4), may issue a search warrant if the Commission has decided a search warrant should be issued and that there are reasonable grounds for the issue.

**Note—**

See section 19 (2) (d) in relation to the making of a decision under this provision.

- (3) **Preference for issue by authorised officer** Search warrants should, as far as practicable, be issued by authorised officers, but nothing in this subsection affects the discretion of a Commissioner to issue them.
- (4) **Application for warrant** An authorised person may apply to an authorised officer or a Commissioner for a search warrant if the person has reasonable grounds for believing that there is in or on any premises a document or other thing connected with any matter that is being investigated under this Act or that such a document or other thing may, within the next 72 hours, be brought into or onto the premises.
- (5) **Definition** In this section—  
  
***authorised person*** means an officer of the Commission and, in relation to an application to an authorised officer for a search warrant, includes a Commissioner.

### 80 Authority conferred by search warrant

- (1) A search warrant authorises a police officer, or Commission investigator, named in the warrant—
  - (a) to enter the premises specified in the warrant, and
  - (b) to search the premises for documents or other things connected with any matter that is being investigated under this Part, and
  - (c) to seize any such documents or other things found in or on the premises and deliver them to the Commission.
- (2) A police officer, or a Commission investigator, named in and executing a search warrant may search a person found in or on the premises whom the police officer or Commission investigator reasonably suspects of having a document or other thing mentioned in the warrant.

## 81 Seizure of other documents and other things

- (1) **Seizure** If, in the course of searching, in accordance with the terms of a search warrant, for documents or other things—
  - (a) the person executing the warrant finds a document or other thing that the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an indictable offence against a law of the Commonwealth or a State or Territory, and
  - (b) the person executing the warrant believes on reasonable grounds that it is necessary to seize the document or other thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence,

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

- (2) **Disposal of seized property** Part 17 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to and in respect of a document or other thing seized pursuant to a search warrant under this Act as if—
  - (a) a reference in that Part to property seized under that Act were a reference to the document or other thing seized pursuant to the search warrant under this Act, and
  - (b) the document or other thing were property to which Division 2 of that Part applies, and
  - (c) a reference to the exercise by a police officer of a power in respect of such property under that Part were a reference to the exercise by a Commissioner of such a power under this Part.

## 82 Application of search warrant and other provisions

- (1) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to a search warrant issued under this Act.
- (2) Division 4 of Part 5 of the *Law Enforcement (Powers and Responsibilities) Act 2002* so applies as if references in that Division to an eligible issuing officer to whom an application for a search warrant is made or by whom a search warrant is issued included (where relevant) references to a Commissioner, where such an application is made to a Commissioner or a search warrant is issued by a Commissioner.
- (3) Part 15 of the *Law Enforcement (Powers and Responsibilities) Act 2002* applies to the exercise of powers under this Part of a kind described in section 201 of that Act by an authorised officer as if any reference to a police officer in that Part were a reference to the authorised officer.



### **83 Obstruction of person executing search warrant**

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

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

## **Division 6 Surveillance device warrants**

### **84 Surveillance devices**

A Commissioner or other officer of the Commission may, for the purposes of this Part, seek the issue of a warrant under the *Surveillance Devices Act 2007*.

## **Division 7 Protection of witnesses and evidence**

### **85 Protection of witnesses and persons assisting Commission**

- (1) **Arrangements for protection** If it appears to a Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary—
  - (a) to protect the safety of any such person, or
  - (b) to protect any such person from intimidation or harassment.
- (2) **Directions** Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public official—
  - (a) to provide any protection referred to in subsection (1), or
  - (b) to provide personnel or facilities or both to assist in providing that protection, or
  - (c) to otherwise assist in the provision of that protection.
- (3) **Duty to comply with directions** The Commissioner of Police, or public authority or public official concerned, is under a duty to comply with any such direction as far as reasonably possible.
- (4) **Orders** Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (2).
- (5) **Offence** A person who contravenes an order applying to the person under subsection (4) without reasonable excuse is guilty of an indictable offence.

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

- (6) **Witness Protection Act not affected** Nothing in this section affects the *Witness Protection Act 1995*.

## 86 Indemnities and undertakings

- (1) The Commission may recommend to the Attorney General, and Minister for the Prevention of Domestic Violence 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, and Minister for the Prevention of Domestic Violence that a person be given (under section 33 of the *Criminal Procedure Act 1986*) an undertaking that the following will not be used in evidence against the person—
  - (a) an answer, statement or disclosure in proceedings before the Commission,
  - (b) the fact of a disclosure or production of a document in proceedings before the Commission.
- (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 an examination under this Part or any other investigative activity involving an officer of the Commission.

## Division 8 Special powers and weapons

### 87 Definitions

In this Division—

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

**seconded police officer** means a person referred to in section 21 (3) (b).

### 88 Commission investigator who is seconded police officer or approved former police officer to have all powers of NSW police officer

- (1) A Commission investigator who is a seconded police officer or an approved former police officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Act 1990* has and may exercise under any law of the State (including the common law and this Act).

- (2) Those functions extend to functions conferred after the commencement of this section.
- (3) A Commission investigator has and may exercise those functions by virtue of this section only when acting in the person's capacity as an officer of the Commission.
- (4) This section does not operate to subject a Commission investigator to the control and direction of the Commissioner of Police or any other police officer when acting in the person's capacity as an officer of the Commission.
- (5) A complaint about the conduct of a Commission investigator when exercising the functions of a police officer may not be made under Part 8A of the *Police Act 1990*, but may be made to the Inspector.
- (6) Misconduct information about the conduct of a Commission investigator when exercising the functions of a police officer must be referred to the Inspector.

## 89 Firearms and other police equipment

- (1) Commission investigators and Commission surveillance officers who are seconded police officers, approved former police officers or appropriately trained officers are exempt from the requirement made by the *Firearms Act 1996* to be authorised by a licence or permit to possess or use semi-automatic pistols (or to possess ammunition for any such pistol), but only when acting in their capacity as officers of the Commission.
- (2) Commission investigators and Commission surveillance officers who are seconded police officers, approved former police officers or appropriately trained officers are exempt from the requirement under the *Weapons Prohibition Act 1998* to be authorised by a permit to possess or use anti-personnel spray, batons, magazines for semi-automatic pistols, handcuffs and body armour vests, but only when acting in their capacity as officers of the Commission.
- (3) An officer is an **appropriately trained officer** if the Commission certifies in writing that the officer is an appropriately trained officer for the purposes of this section.

## Division 9 Contempt

### 90 Definitions

In this Division—

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

**witness summons** means a summons issued by an examining Commissioner under section 69.

## 91 Contempt

- (1) A person who has been served with a witness summons is guilty of contempt of the Commission if the person without reasonable excuse—
  - (a) fails to attend an examination as required by the summons, or
  - (b) having been released under a release order on condition that the person appear and report for an examination, fails so to appear and report, or
  - (c) fails to produce any document or other thing in the person's custody or control that the person is required by the summons to produce, or
  - (d) when called or examined as a witness at an examination, refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question put to the person by a Commissioner.
  
- (2) A person is guilty of contempt of the Commission if the person without reasonable excuse during an examination—
  - (a) wilfully threatens or insults—
    - (i) a Commissioner, Assistant Commissioner or other officer of the Commission, or
    - (ii) an Australian legal practitioner appointed to assist the examining Commissioner as counsel, or
    - (iii) any witness or person summoned to attend before the examining Commissioner, or
    - (iv) an Australian legal practitioner or other person authorised to appear before the examining Commissioner, or
  - (b) misbehaves himself or herself, or
  - (c) interrupts the proceedings, or
  - (d) obstructs or attempts to obstruct the examining Commissioner, or
  - (e) does any other thing that, if the Commission were a court of law having power to commit for contempt, would be contempt of that court.
  
- (3) A person (other than an officer of the Commission) is guilty of contempt of the Commission if the person without reasonable excuse discloses, or permits or allows to be disclosed, any evidence given at an examination held in private or any of the contents of a document produced at an examination held in private, except to an officer of the Commission or as permitted by the examining Commissioner or by the regulations.

- (4) A person is guilty of contempt of the Commission if the person without reasonable excuse discloses, or permits or allows to be disclosed, any evidence given before an examining Commissioner or any of the contents of a document produced at an examination which the Commissioner has ordered not to be disclosed.
- (5) Despite subsections (3) and (4), a person is not guilty of contempt of the Commission if the person discloses evidence referred to in those subsections to a registered medical practitioner or registered psychologist for the purposes of that health practitioner providing medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person who has given or may be about to give evidence before an examining Commissioner.
- (6) In this section—  
**disclose** evidence has the meaning it has in Part 14.

## 92 Punishment of contempt

- (1) A contempt of the Commission may be punished in accordance with this section.
- (2) A Commissioner may present to the Supreme Court a certificate (in this Division called a **contempt of the Commission certificate**) in which the Commissioner sets out the facts that constitute the alleged contempt.
- (3) A contempt of the Commission certificate is prima facie evidence of the matters certified.
- (4) If a Commissioner presents a contempt of the Commission certificate to the Supreme Court—
  - (a) the Supreme Court is required without delay to inquire into the alleged contempt, and
  - (b) after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt and any statement that may be offered in defence, the Supreme Court (if satisfied that the person is guilty of the contempt) may punish or take steps for the punishment of the person in the same way and to the same extent as if the person had committed that contempt in or in relation to proceedings in the Supreme Court, and
  - (c) the provisions of the *Supreme Court Act 1970* and the rules of court of the Supreme Court, with any necessary adaptations, apply and extend accordingly.
- (5) A contemnor is not excused from attendance on the ground that failure to attend as a witness as required by a summons (or failure to appear and report as a witness in accordance with a condition of release) has made, or might make, the contemnor liable to be punished for contempt.

### **93 General provisions regarding contempt**

- (1) In the case of any alleged contempt of the Commission, a Commissioner may summon the contemnor to appear before the Commissioner at a time and place named in the summons to show cause why the contemnor should not be dealt with under section 92 for the contempt.
- (2) The summons is to set out the details of the alleged contempt.
- (3) If the contemnor fails to attend before the Commissioner as required by the summons, and no reasonable excuse to the satisfaction of the Commissioner is offered for the failure, the Commissioner may, on proof of the service of the summons, issue a warrant to arrest the contemnor and bring the contemnor before the Commissioner to show cause why the contemnor should not be dealt with under section 92 for the contempt.
- (4) If a contempt of the Commission is committed in the face or hearing of the Commissioner, a summons need not be issued against the contemnor, but the contemnor may—
  - (a) be taken into custody in a correctional centre or elsewhere then and there by a member of the NSW Police Force or by an officer of the Commission authorised for that purpose by the Commissioner, and
  - (b) be called on to show cause why the contemnor should not be dealt with under section 92 for the contempt.
- (5) The Chief Commissioner may issue a warrant to arrest the contemnor while the contemnor (whether or not already in custody under this section) is before the Chief Commissioner and to bring the contemnor before the Supreme Court as soon as practicable.
- (6) The warrant is sufficient authority to detain the contemnor in a correctional centre or elsewhere, pending the contemnor's being brought before the Supreme Court.
- (7) The warrant is to be accompanied by either the contempt of the Commission certificate or a written statement setting out the details of the alleged contempt.
- (8) The Commissioner may revoke the warrant at any time before the contemnor is brought before the Supreme Court.
- (9) When the contemnor is brought before the Supreme Court, the Court may, pending determination of the matter, direct that the contemnor be kept in such custody as the Court may determine or direct that the contemnor be released.

### **94 Conditional release of contemnor**

- (1) A Commissioner may by order release a contemnor detained under section 93 at any

time before the contemnor is brought before the Supreme Court.

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

**Note—**

It is an offence to fail, without reasonable excuse, to comply with a condition of a release order—see section 150 (3).

**95 Review by Supreme Court**

- (1) A contemnor who has not been released by the Commissioner under section 94 or whose release under that section is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the contemnor 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 contemnor or any condition imposed by the Commissioner on the release of the contemnor.
- (3) The Supreme Court may also or instead make any order that a Commissioner may make in relation to the detention or release of the contemnor (including making such an order if the Commissioner has not made any decision within a reasonable time on the release of the contemnor).
- (4) An order under subsection (3) is taken to be an order of the Commissioner.

**96 Act or omission that is both an offence and contempt**

- (1) An act or omission may be punished as a contempt of the Commission even though it could be punished as an offence.
- (2) An act or omission may be punished as an offence even though it could be punished as a contempt of the Commission.

- (3) If an act or omission constitutes both an offence and a contempt of the Commission, the contemnor is not liable to be punished twice.

## **Division 10 Miscellaneous**

### **97 Investigation when other proceedings on foot**

- (1) The Commission may commence or continue to investigate a matter despite the fact that proceedings (whether civil or criminal) are on foot, or are commenced, in or before any court, tribunal, coroner, Magistrate or other person that relate to, or are otherwise connected with, the subject-matter of the investigation.
- (2) If the Commission becomes aware that such proceedings are on foot, or have been commenced, the Commission must take all reasonable steps to ensure that the conduct of the investigation does not prejudice those proceedings.

## **Part 7 Oversight of police and Crime Commission investigations**

### **98 Application of Part**

- (1) This Part applies only to or in respect of a police investigation or Crime Commission investigation of a misconduct matter that is of a kind that, under misconduct matters management guidelines, should be subject to oversight by the Commission.
- (2) A misconduct matter, to the extent that it is investigated under Part 6, cannot be dealt with under this Part, except as directed by the Commission either generally or in any particular case or as directed by the regulations.
- (3) This Part does not apply to the investigation of a critical incident.

### **99 Decision of Commissioner of Police as to investigation of notifiable misconduct matter relating to police misconduct or officer maladministration or agency maladministration**

- (1) This section applies to and in respect of a decision made by the Commissioner of Police under section 131 of the *Police Act 1990* with respect to a notifiable misconduct matter relating to police misconduct or officer maladministration or agency maladministration.
- (2) If the Commission agrees with the Commissioner of Police's decision to investigate or otherwise deal with the misconduct matter—
  - (a) the Commission must notify the Commissioner of Police, and
  - (b) the Commissioner of Police must notify the complainant of the decision, and
  - (c) the Commissioner of Police must cause the misconduct matter to be investigated or otherwise dealt with and may, if of the opinion that it is appropriate to do so, notify the police officer whose conduct is the subject of the misconduct matter of



the decision.

- (3) If the Commission either disagrees with the Commissioner of Police's decision not to investigate the misconduct matter or considers that the misconduct matter should be investigated by the Commission under Part 6—
  - (a) the Commission must notify the Commissioner of Police and the complainant of that fact, and
  - (b) the Commissioner of Police must cause the misconduct matter to be investigated under the *Police Act 1990* or the Commission may investigate it under Part 6.
- (4) If the Commission and the Commissioner of Police are unable to reach agreement, the Commission's opinion is determinative of the matter.

**100 Decision of Crime Commissioner as to investigation of notifiable misconduct matter relating to Crime Commission officer misconduct, officer maladministration or agency maladministration**

- (1) This section applies to and in respect of a decision made by the Crime Commissioner under section 11A of the *Crime Commission Act 2012* with respect to a notifiable misconduct matter relating to Crime Commission officer misconduct, officer maladministration or agency maladministration.
- (2) If the Commission agrees with the Crime Commissioner's decision to investigate or otherwise deal with the misconduct matter—
  - (a) the Commission must notify the Crime Commissioner, and
  - (b) the Crime Commissioner must notify the complainant of the decision, and
  - (c) the Crime Commissioner must cause the misconduct matter to be investigated or otherwise dealt with and may, if of the opinion that it is appropriate to do so, notify the Crime Commission officer whose conduct is the subject of the misconduct matter of the decision.
- (3) If the Commission either disagrees with the Crime Commissioner's decision not to investigate the misconduct matter or considers that the misconduct matter should be investigated by the Commission under Part 6—
  - (a) the Commission must notify the Crime Commissioner and the complainant of that fact, and
  - (b) the Crime Commissioner must cause the misconduct matter to be investigated or the Commission may investigate it under Part 6.
- (4) If the Commission and the Crime Commissioner are unable to reach agreement, the Commission's opinion is determinative of the matter.

### **101 Commission may monitor investigation**

- (1) The Commission may monitor the carrying out of a police investigation or Crime Commission investigation if of the opinion that it is in the public interest to do so.
- (2) For the purpose of the Commission monitoring a police investigation, a Commissioner or another officer of the Commission authorised in writing by a Commissioner may—
  - (a) be present as an observer during interviews conducted by police officers for the purposes of the police investigation, and
  - (b) confer with those police officers about the conduct of the investigation, and
  - (c) request the nominated contact for the purposes of the investigation to provide reports on the progress of the investigation.
- (3) The Commissioner of Police, and any other police officers involved in conducting a police investigation, are to comply with any arrangements described in misconduct matters management guidelines as to the monitoring of the investigation or of investigations generally.
- (4) For the purpose of the Commission monitoring a Crime Commission investigation, a Commissioner or another officer of the Commission authorised in writing by a Commissioner may—
  - (a) be present as an observer during interviews conducted by Crime Commission officers for the purposes of the Crime Commission investigation, and
  - (b) confer with those Crime Commission officers about the conduct of the investigation, and
  - (c) request the nominated contact for the purposes of the investigation to provide reports on the progress of the investigation.
- (5) The Crime Commissioner, and any other Crime Commission officers involved in conducting a Crime Commission investigation, are to comply with any arrangements described in misconduct matters management guidelines as to the monitoring of the investigation or of investigations generally.

### **102 Commission may request information concerning misconduct matter**

- (1) For the purpose of determining whether a misconduct matter concerning a police officer, administrative employee or the NSW Police Force is being or has been properly dealt with, the Commissioner of Police must, at the request of the Commission, provide the Commission with the following—
  - (a) an explanation of the policies, procedures and practices of the NSW Police Force relevant to the conduct complained of,

- (b) such documentary and other information (including records of interviews) as the Commission requests with respect to any inquiries made by the Commissioner of Police or other police officers or administrative employees into the misconduct matter,
  - (c) to the extent to which the Commissioner of Police is able to do so, any explanation, comment or information sought by the Commission in connection with the misconduct matter.
- (2) For the purpose of determining whether a misconduct matter concerning a Crime Commission officer or the Crime Commission is being or has been properly dealt with, the Crime Commissioner must, at the request of the Commission, provide the Commission with the following—
- (a) an explanation of the policies, procedures and practices of the Crime Commission relevant to the conduct complained of,
  - (b) such documentary and other information (including records of interviews) as the Commission requests with respect to any inquiries made by the Crime Commissioner or other Crime Commission officers into the misconduct matter,
  - (c) to the extent to which the Crime Commissioner is able to do so, any explanation, comment or information sought by the Commission in connection with the misconduct matter.
- (3) The Commission may withdraw the request if the Commissioner of Police or Crime Commissioner objects to providing what has been requested and the Commission is satisfied that the grounds of the objection are well-founded.
- (4) Instead of making such a request, the Commission may, in accordance with any relevant misconduct matters management guidelines, seek information from other police officers.

**103 Commission may request information concerning investigation of misconduct matter**

- (1) If the Commission is satisfied that a police investigation or Crime Commission investigation in relation to a misconduct matter is not being conducted in a timely manner, the Commission may request the Commissioner of Police or Crime Commissioner, respectively, to provide the Commission with information as to the investigation of the misconduct matter.
- (2) On receiving such a request, the Commissioner of Police or Crime Commissioner must provide the Commission with information that demonstrates that the misconduct matter is being investigated, or explains why the misconduct matter is not being investigated, in a timely manner.

**104 Commission may request further investigation of misconduct matter**

- (1) If the Commission is not satisfied that a misconduct matter has been properly investigated by the Commissioner of Police, the Commission may request the Commissioner of Police to cause a further police investigation to be conducted, specifying what are, in the Commission's opinion, the deficiencies in the earlier police investigation.
- (2) If the Commission makes such a request, the Commissioner of Police—
  - (a) may, but is not obliged to, cause a further police investigation to be conducted, and
  - (b) in either case, must notify the Commission of the Commissioner of Police's decision on the request and (if the decision is not to cause a further investigation to be conducted) of the Commissioner of Police's reasons for the decision.
- (3) If the Commission is not satisfied that a misconduct matter has been properly investigated by the Crime Commissioner, the Commission may request the Crime Commissioner to cause a further Crime Commission investigation to be conducted, specifying what are, in the Commission's opinion, the deficiencies in the earlier Crime Commission investigation.
- (4) If the Commission makes such a request, the Crime Commissioner—
  - (a) may, but is not obliged to, cause a further Crime Commission investigation to be conducted, and
  - (b) in either case, must notify the Commission of the Crime Commissioner's decision on the request and (if the decision is not to cause a further investigation to be conducted) of the Crime Commissioner's reasons for the decision.
- (5) This Part applies to and in respect of a further investigation under this section in the same way as it applies to and in respect of the earlier investigation.

**105 Commission may request review of decision on action to be taken on misconduct matter**

- (1) If the Commission is not satisfied with the Commissioner of Police's decision concerning any action to be taken as a result of a police investigation (including a decision to take disciplinary action or to take no further action), the Commission may request the Commissioner of Police to review the decision.
- (2) If the Commission is not satisfied with the Crime Commissioner's decision concerning any action to be taken as a result of a Crime Commission investigation (including a decision to take disciplinary action or to take no further action), the Commission may request the Crime Commissioner to review the decision.

- (3) If the Commission makes such a request, the Commissioner of Police or Crime Commissioner—
- (a) may, but is not obliged to, change the decision, and
  - (b) in either case, must notify the Commission of the Commissioner of Police's or Crime Commissioner's decision on the request and (if the decision is not to change the decision under review) of the Commissioner's reasons for the decision.

**Note—**

The Commission may make a report in relation to the matter—see sections 134 (Commission may report on Commissioner of Police's or Crime Commissioner's decision on Commission's request) and 138 (Special reports of Commission).

### **106 Discontinuance of oversight**

The Commission may at any time during the course of a police investigation or Crime Commission investigation decide to discontinue the Commission's oversight of the investigation.

### **107 Exercise of oversight powers**

- (1) In exercising its oversight functions for the purposes of this Part, the Commission does not have a power of control, supervision or direction, and any such oversight is to be achieved by agreement. However, it is the duty of members of the NSW Police Force and Crime Commission officers to co-operate with the Commission in the exercise of its oversight functions and any other functions of the Commission.
- (2) However, nothing in subsection (1)—
- (a) affects the capacity of the Commission to exercise any of the Commission's functions under this Part, or
  - (b) provides a ground for any appeal or other legal or administrative challenge to the exercise by the Commission of any of those functions.

## **Part 8 Oversight of critical incident investigations**

### **108 Interpretation**

- (1) In this Part—

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

**critical incident** means an incident declared to be a critical incident under section 111.

**critical incident guidelines**—see section 109.

**defensive equipment** means equipment (such as a Taser gun, capsicum spray, baton or handcuffs) issued to a member of the NSW Police Force for the purpose of exercising the functions of a police officer.

**investigation cessation notice**—see section 112 (3).

**investigatory powers**, in relation to a crime scene, means powers referred to in section 95 (1) (e), (g), (h), (l) and (m) of the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#).

**monitoring powers**—see section 114.

**nominated contact**, in relation to the investigation of a critical incident, means the senior critical incident investigator or a member of the NSW Police Force nominated by the senior critical incident investigator as the nominated contact.

**police operation** means any activity engaged in by a police officer while exercising the functions of a police officer other than an activity for the purpose of a search and rescue operation.

**police vehicle** means a vehicle used or operated for the purpose of police operations.

**senior critical incident investigator** means the police officer in charge of the investigation of a critical incident.

**serious injury** to a person means an injury that threatens or is likely to threaten the life of the person or that results, or is likely to result, in the person sustaining permanent and significant physical impairment or disfigurement and includes the infliction of a grievous bodily disease on the person or the destruction of the foetus of a pregnant woman.

**vehicle** means a motor vehicle, trailer or other registrable vehicle within the meaning of the [Road Transport Act 2013](#) and includes an aircraft or vessel.

- (2) Subject to the regulations, a reference in this Part to the **conclusion of a critical incident investigation** is a reference to the final report of the police officers investigating a critical incident given after the conclusion of all criminal or coronial proceedings arising out of the critical incident.
- (3) A reference in this Part to a **person in custody** is a reference to a person who has been detained by, or is otherwise in the custody of, a police officer, including being placed under arrest or being apprehended or being taken to or from a mental health facility under the [Mental Health Act 2007](#) or to or from a hospital or other medical facility.

## 109 Critical incident guidelines

- (1) The Commissioner of Police may, from time to time, issue guidelines with respect to

the investigation of critical incidents and reporting on the outcomes of such investigations.

- (2) The Commissioner of Police may at any time vary or replace the guidelines issued under subsection (1).

### **110 Features of critical incident**

The features of a critical incident are—

- (a) it is an incident involving a police officer or other member of the NSW Police Force that results in the death of, or serious injury to, a person (including another police officer), and
- (b) the death or serious injury—
- (i) arises from a discharge of a firearm by the member involved, or
  - (ii) arises from the use or operation of defensive equipment by the member involved, or
  - (iii) arises from the application of physical force by the member involved while exercising any function as a police officer, or
  - (iv) arises from the use of a police vehicle by the member involved (including its use as a passenger), or
  - (v) arises while the person is in custody or while escaping or attempting to escape from custody, or
  - (vi) appears to be likely to have resulted from any police operation.

### **111 Declaration of critical incident**

- (1) The Commissioner of Police may (verbally or in writing) declare an incident to be a critical incident for the purposes of this Part if—
- (a) the Commissioner of Police becomes aware that an incident involving a member of the NSW Police Force has occurred that exhibits the features of a critical incident set out in section 110, or
  - (b) the Commissioner of Police has other grounds for considering it is in the public interest to do so.

#### **Note—**

The Commissioner of Police may delegate any of the Commissioner's functions under this Part to another member of the NSW Police Force—see section 31 of the [Police Act 1990](#).

- (2) Without limiting subsection (1) (b), the Commissioner of Police may declare an

incident involving the death as a result of the homicide (not including suicide) of a police officer by another police officer or any other person (whether or not resulting from, or occurring in the course of, a police operation) to be a critical incident.

- (3) A critical incident declaration takes effect on its making.
- (4) The Commissioner of Police may (verbally or in writing) revoke a critical incident declaration at any time.

### **112 Duty to notify Commission of declaration of critical incident**

- (1) The Commissioner of Police must ensure that the Commission is given notice of the making of a critical incident declaration immediately after it is made.
- (2) The notice is to include enough information about the critical incident concerned for the Commission to make an initial assessment as to whether or not the investigation of the critical incident should be overseen by the Commission or whether further information is required before a decision with respect to oversight can be made.
- (3) The Commissioner of Police must ensure that the Commission is given notice in writing if it is decided to revoke a critical incident declaration or to otherwise cease the investigation of a critical incident and the reasons for the revocation or cessation (an ***investigation cessation notice***).
- (4) Protocols and memoranda of understanding may be entered into by the Commissioner of Police and the Commission regarding the giving of notice and provision of information under this section.

### **113 Critical incident investigations**

- (1) The Commissioner of Police is to ensure that the actions of members of the Police Force involved in a critical incident at the time of, and leading to, the critical incident are fully and properly investigated by the NSW Police Force.
- (2) Without limiting subsection (1), the investigation of a critical incident is to include an examination and report to each appropriate authority on any of the following that is applicable—
  - (a) the lawfulness and reasonableness of the actions of the members of the Police Force involved in the critical incident,
  - (b) the extent to which those members complied with relevant legislation and policies, practices and procedures of the NSW Police Force,
  - (c) any complaint about the conduct of those members that has been referred to the senior critical incident investigator,
  - (d) any evidence of officer misconduct by those members,



- (e) the need (if any) for changes to relevant policies, practices and procedures of the NSW Police Force,
  - (f) any systemic, safety or procedural issues arising from the actions of those members.
- (3) The investigation is to be carried out so far as is practicable and operationally appropriate in conformity with the critical incident guidelines.
  - (4) However the critical incident guidelines are not mandatory and a departure from the guidelines does not in itself affect or invalidate an investigation.
  - (5) Despite subsection (2) (c) and (d), the Commissioner of Police may, if the Commissioner considers it appropriate to do so, refer a complaint about a member of the NSW Police Force involved in a particular critical incident to the Commission with a recommendation that it investigate the complaint or investigate it concurrently with the investigation of it as part of the critical incident investigation being carried out by the NSW Police Force.
  - (6) The Commission may decide to investigate a complaint referred to it under subsection (5) despite section 44 (9).
  - (7) In this section—  
***appropriate authority*** means the following—
    - (a) for any investigation of a critical incident—the Commissioner of Police,
    - (b) for any investigation of a critical incident monitored by the Commission—the Commission,
    - (c) for any investigation of a critical incident involving the death of a person—the coroner.

#### **114 Commission may monitor conduct of critical incident investigation**

- (1) The Commission may monitor the conduct of a critical incident investigation if the Commission decides that it is in the public interest to do so.
- (2) The Commission must notify the Commissioner of Police as soon as practicable after the Commission decides that the Commission is to monitor the conduct of a critical incident investigation.
- (3) For the purpose of the Commission monitoring a critical incident investigation, a Commissioner or other officer of the Commission authorised in writing by a Commissioner may (subject to section 115) do all or any of the following—
  - (a) attend a place where a critical incident occurred (including a place where a crime scene has been established) for the purpose of observing the exercise by police

officers of any investigatory powers at or in relation to the place,

**Note—**

See section 115 (5).

- (b) be given access without unreasonable delay to transcripts or any recordings of interviews of witnesses of a critical incident conducted by police officers for the purposes of the investigation,
- (c) with the consent of the person being interviewed and the senior critical incident investigator, be present as an observer during an interview conducted by police officers for the purposes of the investigation or view such an interview by audio visual link,
- (d) require the nominated contact for the critical incident to provide, within the period specified by the Commission, access to documents obtained or prepared by police officers for the purposes of the investigation (including any report about the conduct of the investigation and progress on it).

**Note—**

Section 21 of the [Interpretation Act 1987](#) provides that—

**document** means any record of information, and includes—

- (a) anything on which there is writing, or
  - (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them, or
  - (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else, or
  - (d) a map, plan, drawing or photograph.
- (4) Access may be provided under subsection (3) (b) and (d) by any electronic means that enables the transcript, recording or document to be viewed and copies made of, or extracts taken from, it.
  - (5) The Commission may cease to monitor the conduct of an investigation of a critical incident at any time.
  - (6) The Commission must cease to monitor the conduct of an investigation of a critical incident if the Commission receives an investigation cessation notice.
  - (7) The Commission is to give the senior critical incident investigator notice (verbally or in writing) if it ceases to monitor the conduct of an investigation of a critical incident.

**Note—**

Under Part 7, the Commission may monitor an on-going police investigation under Part 8A of the [Police Act 1990](#) of an incident that ceases to be a critical incident if the on-going investigation relates to police misconduct.

### **115 Monitoring critical incident investigations**

- (1) It is the duty of the Commissioner of Police and police officers involved in investigating a critical incident under section 113, and the Commission in monitoring an investigation under section 114, to work co-operatively in the exercise of their respective functions to ensure the critical incident is investigated in a competent, thorough and objective manner.
- (2) The Commissioner of Police and any police officers involved in investigating a critical incident—
  - (a) must comply with any arrangements agreed between the Commissioner of Police and the Commission in relation to the investigation, and
  - (b) must co-operate with the Commission by providing it with such reasonable support and assistance as is necessary for it to carry out its monitoring function.
- (3) The Commission must exercise its monitoring function—
  - (a) in accordance with any arrangements agreed between the Commission and the Commissioner of Police as to the manner in which that function is to be exercised, and
  - (b) if the investigation involves a coronial investigation scene within the meaning of Chapter 5 of the *Coroners Act 2009*, any directions of the coroner.
- (4) The Commission cannot control, supervise, direct or interfere with the carrying out by the police officers of their function of investigating a critical incident.
- (5) In particular, and without limiting subsection (4), a Commissioner or other officer of the Commission attending the place where a critical incident occurred under section 114 (3) (a) must not interfere with the carrying out of the functions of police officers at that place and must comply with any reasonable direction concerning the preservation of the integrity of a crime scene at that place given by the nominated contact or a person authorised to give such a direction by the nominated contact.
- (6) All communication between the Commission in the exercise of its monitoring function and police officers investigating a critical incident must be made through the nominated contact for that critical incident.
- (7) In determining the arrangements referred to in subsections (2) and (3), the Commission and the Commissioner of Police are to consult with the coroner and take into account any recommendations made by the coroner.
- (8) If any arrangement referred to in subsection (3) is inconsistent with any direction of the coroner referred to in that subsection, the direction of the coroner is (to the extent of the inconsistency) to apply for the purposes of that subsection.

### **116 Advice during course of critical incident investigation**

A Commissioner overseeing the investigation of a critical incident may, at any time during the course of the investigation, advise the Commissioner of Police, the nominated contact for the investigation or the coroner that the Commissioner considers that the investigation or an aspect of the investigation—

- (a) is not being conducted in accordance with section 113 (2), or
- (b) is not being conducted in a competent, thorough or objective manner, or
- (c) if it involves a coronial investigation scene within the meaning of Chapter 5 of the [Coroners Act 2009](#), does not accord with any direction of the coroner under section 51 of that Act.

### **117 Advice concerning critical incident investigation**

- (1) The Commission is to give the Commissioner of Police (and, if the critical incident concerned involved the death of a person, the coroner) the following advice in relation to the investigation of a critical incident monitored by the Commission—
  - (a) advice confirming that it considers the investigation was fully and properly conducted, or
  - (b) if it considers any aspect of the investigation was inappropriate, advice of its concerns.
- (2) The advice may, if considered appropriate by the Commission, be given before the conclusion of the critical incident investigation.
- (3) The Commission may, without limiting subsection (1) (b), advise that—
  - (a) an aspect of the conduct of the investigation was not in accordance with section 113 (2) or a direction of the coroner with respect to a coronial investigation scene, or
  - (b) conduct of a police officer involved in the investigation may be police misconduct that may or will be investigated by the Commission under this Act or that it recommends the Commissioner of Police investigate under the [Police Act 1990](#).
- (4) Before including in an advice under this section any comment about a person that the Commission considers is adverse, the Commission must, so far as practicable—
  - (a) inform that person of the substance of the grounds of the adverse comment, and
  - (b) give the person an opportunity to make submissions.
- (5) Before including in an advice under this section any comment about the NSW Police Force that the Commission considers is adverse, the Commission must, so far as

practicable—

- (a) inform the Commissioner of Police of the substance of the grounds of the adverse comment, and
  - (b) give the Commissioner of Police an opportunity to make submissions.
- (6) If the Commission makes a recommendation to the Commissioner of Police, the Commission may require the Commissioner of Police to provide to the Commission, within a reasonable time specified by the Commission, advice as to whether the Commissioner of Police intends to implement the recommendation and, if not, the reasons for not doing so.

**Note—**

See section 179 (Commission not to disclose critical police or Crime Commission information) in relation to disclosure by the Commission of critical police information.

- (7) The advice may include recommendations as to changes that the Commissioner of Police might implement with respect to the critical incident guidelines.
- (8) The Commission may make public any advice it has given under this section at any time after the conclusion of a critical incident investigation.
- (9) The Commission may defer publishing an advice if it is satisfied that it is desirable to do so in the public interest.

**118 Interaction with relatives, witnesses and others**

The senior critical incident investigator (or a person nominated by the senior critical incident investigator) must—

- (a) inform a parent, guardian or relative (a **family member**) of a person who suffered serious injury or was killed as a result of a critical incident or a person being interviewed by a police officer in connection with the critical incident that the Commission is carrying out monitoring powers in relation to the incident, and
- (b) inform family members of procedures relating to the making of complaints about alleged police misconduct.

**119 Complaints relating to investigation of critical incidents**

- (1) Any person may complain to the Inspector (verbally or in writing) under Part 9 about any conduct of a Commissioner, Assistant Commissioner or other officer of the Commission in overseeing the conduct of the investigation of a critical incident that is or could be officer misconduct or officer maladministration and the Inspector may deal with the matter under that Part.
- (2) Any person may complain to the Commission under Part 5 about the conduct in general of an investigation by the NSW Police Force of a critical incident or of a police

officer conducting such an investigation that is or could be agency maladministration, officer misconduct or officer maladministration.

- (3) The Commission must give notice of a complaint about a police officer conducting the investigation of a critical incident to the Commissioner of Police immediately after it is received and must take into account any recommendation of the Commissioner of Police in deciding whether to refer the matter to the Commissioner of Police for police investigation or to itself investigate the complaint under this Act.

**Note—**

Under section 44 (9) the Commission must postpone making a decision about a police misconduct matter if the subject of the misconduct matter is the conduct of a police officer who was involved in a critical incident that is the subject of an investigation until the conclusion of any critical incident investigation of the incident.

## **Part 9 Inspector of Commission**

### **120 Inspector of the Law Enforcement Conduct Commission**

- (1) The Governor may appoint an Inspector of the Law Enforcement Conduct Commission.
- (2) Schedule 2 contains provisions relating to the Inspector.

### **121 Assistant Inspector**

- (1) The Governor may, with the concurrence of the Inspector, appoint an Assistant Inspector of the Law Enforcement Conduct Commission.
- (2) An Assistant Inspector may, to the extent to which he or she is directed by the Inspector to do so, exercise any function of the Inspector and for that purpose is taken to be the Inspector.
- (3) Schedule 2 contains provisions relating to the Assistant Inspector.

### **122 Functions of Inspector**

- (1) The Inspector has the functions conferred or imposed on the Inspector by or under this or any other Act.

**Note—**

Functions conferred on the Inspector under other Acts include the functions of an inspecting officer under the [Telecommunications \(Interception and Access\) \(New South Wales\) Act 1987](#) and of the Inspector under the [Surveillance Devices Act 2007](#) and the [Law Enforcement \(Controlled Operations\) Act 1997](#).

- (2) 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) conduct amounting to agency maladministration on the part of the Commission and conduct amounting to officer

misconduct or officer maladministration on the part of officers of the Commission, whether or not the subject of a complaint (**Commission misconduct matters**), and

(c) to assess the effectiveness and appropriateness of the policies and procedures of the Commission relating to the legality or propriety of its activities.

(3) For the purposes of this section—

**agency maladministration**, in relation to the Commission, has the same meaning as it has in relation to the NSW Police Force or the Crime Commission and includes (without limitation) unreasonable delay in the conduct of an investigation and unreasonable invasion of privacy.

**officer maladministration**, in relation to an officer of the Commission, has the same meaning as it has in relation to officer maladministration by a Crime Commission officer.

**officer misconduct**, in relation to an officer of the Commission, has the same meaning as it has in relation to Crime Commission officer misconduct.

### 123 Exercise of functions by Inspector

(1) The functions of the Inspector may be exercised as follows—

(a) on the Inspector's own initiative,

(b) at the request of the Minister,

(c) in response to a complaint made to the Inspector or misconduct information of which the Inspector becomes aware,

(d) in response to a reference by the Joint Committee or by the Ombudsman, the ICAC, the Crime Commission or any other government agency or member of a government agency.

(2) The Inspector is not subject to the Commission in any respect.

(3) In this section, a reference to a **government agency** extends to an agency of the Commonwealth or another State or Territory.

### 124 Powers of Inspector

(1) The Inspector may do any of the following—

(a) investigate any aspect of the Commission's operations or any conduct of officers of the Commission,

(b) require officers of the Commission to supply information or produce documents or

- other things about any matter, or any kind of matter, relating to the Commission's operations or any conduct of officers of the Commission,
- (c) 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,
  - (d) investigate and assess Commission misconduct matters,
  - (e) refer matters relating to the Commission or officers of the Commission to other agencies for consideration or action,
  - (f) recommend disciplinary action or criminal prosecution against officers of the Commission.
- (2) The Inspector is entitled to full access to the records of the Commission and to take or have copies made of any of them.
  - (3) A referral of a matter under this section to another agency for consideration or action must specify in writing the terms of the referral.
  - (4) Without affecting the power of the Inspector to make a report under Part 11, 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 or an officer of the Commission, a person who made a complaint or any other affected person.
  - (5) If the Inspector makes a recommendation to the Commission, the Inspector may require the Commission to provide to the Inspector, within a reasonable time specified by the Inspector, advice as to whether it intends to implement the recommendation and, if not, the reasons for not doing so.
  - (6) If the Inspector is not satisfied that the Commission has duly and properly taken action in connection with a report or recommendation made to the Commission by the Inspector, the Inspector must inform the Commission of the grounds of the Inspector's dissatisfaction and must give the Commission an opportunity to comment within a specified time.
  - (7) If, after considering any comments received from the Commission within the specified time, the Inspector is still not satisfied, the Inspector may submit a report to the Minister setting out the recommendation concerned and the grounds of dissatisfaction, together with any comments from the Commission and the Inspector.



### 125 Complaints by public officials

- (1) A public official within the meaning of the *Public Interest Disclosures Act 1994* may complain to the Inspector (orally or in writing) about the conduct of the Commission, an officer of the Commission or an officer of the Inspector.
- (2) The Inspector must reduce a complaint that is made to the Inspector orally to writing as soon as practicable after it is made.
- (3) In this section—

**conduct** includes conduct by way of action or inaction or alleged action or inaction.

### 126 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, out of money provided by Parliament, in respect of the expenses of the witness's attendance an amount ascertained in accordance with the scale prescribed by the regulations for the purposes of this section or, if there is no such prescribed scale, such amount as the Inspector determines.

### 127 Incidental powers

- (1) The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions. Any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this section.
- (2) Section 40 of the *Surveillance Devices Act 2007* does not apply to the use, publication or communication of protected information within the meaning of that Act in relation to the exercise of the Inspector's functions under section 122 in relation to the Commission.

### 128 Staff of Inspector

- (1) Persons may be employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Inspector to exercise his or her functions. The persons so employed are to be employed in a separate Public Service agency and may (together with the persons referred to in subsection (4)) be referred to as members of

staff of the Inspector.

**Note—**

Section 47A of the *Constitution Act 1902* precludes the Inspector from employing staff.

- (2) Persons employed in the Public Service under the *Government Sector Employment Act 2013* to enable the Inspector to exercise his or her functions are subject to the control and direction of the Inspector.
- (3) Subsection (2) does not affect the exercise of the functions under the *Government Sector Employment Act 2013* of the head of the Public Service agency in which those persons are employed. The head of that agency may delegate those functions under that Act to the Inspector.
- (4) The Inspector may—
  - (a) arrange for the use of the services of any staff or facilities of the Commission, a Public Service agency or a local or public authority, or
  - (b) arrange for the use of the services of 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), or
  - (c) engage persons as consultants to the Inspector or to perform services for the Inspector.
- (5) Police officers and former police officers cannot be appointed to, employed or engaged by, or seconded to the service of, the Inspector and arrangements cannot be made under subsection (4) for the use of their services.
- (6) Such provisions of this Act as are prescribed by the regulations apply to persons referred to in subsections (1)–(4) in the same way as they apply to staff of the Commission, with any necessary adaptations and with such modifications as are prescribed.

**128A Delegation**

Subject to any other Act, the Inspector may delegate to a member of staff of the Inspector any of the Inspector's functions under this or any other Act other than—

- (a) this power of delegation, and
- (b) the Inspector's reporting functions.

**129 Former officers of the Commission**

- (1) For the avoidance of doubt, conduct may be dealt with, or continue to be dealt with, by the Inspector under this Act even though any officer of the Commission involved has ceased to be an officer of the Commission.

- (2) Accordingly, references in this Act to an officer of the Commission extend, where appropriate, to include a former officer of the Commission.
- (3) Without limiting subsection (2), appropriate references to which that subsection applies include references in provisions of this Act that concern—
  - (a) misconduct matters concerning, or investigating or otherwise dealing with, the conduct of an officer of the Commission, or
  - (b) obtaining information, documents or other things from, or requiring answers or evidence to be given or produced by, an officer of the Commission (whether in connection with the officer's own conduct or the conduct of another officer of the Commission).

## Part 10 Parliamentary Joint Committee

### 130 Definition

In this Act—

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

### 131 Functions

- (1) The Joint Committee has the following functions under this Act—
  - (a) to monitor and review the exercise by the Commission and the Inspector of their functions under this or any other Act,
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter relating to the Commission 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 report to both Houses of Parliament any changes which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission and the Inspector,
  - (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this Part authorises the Joint Committee—

- (a) to investigate a matter relating to particular conduct, or
  - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular misconduct matter or particular conduct, or
  - (c) to reconsider the findings, opinions formed, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or a particular misconduct matter, or
  - (d) to exercise any function referred to in subsection (1) in relation to the Inspector's functions under the *Telecommunications (Interception and Access) (New South Wales) Act 1987*.
- (3) The provisions of Part 4A of the *Ombudsman Act 1974* apply in relation to the Joint Committee's functions under this Act in the same way as they apply in relation to the Joint Committee's functions under that Act.

**Note—**

See also clause 10 of Schedule 1 and clause 12 of Schedule 2.

## **Part 11 Reports**

### **Division 1 Reports by Commission**

#### **Subdivision 1 Examinations of serious misconduct and serious maladministration**

##### **132 Reports on examinations**

- (1) **Report where investigation** The Commission may prepare reports in relation to any matter that has been or is the subject of investigation under Part 6.
- (2) **Report where public hearing** The Commission must prepare reports in relation to any matter that has been or is the subject of an examination by way of public hearing under Division 3 of Part 6.
- (3) **Report to be furnished to Presiding Officer** The Commission is to furnish reports prepared under this section to the Presiding Officer of each House of Parliament.
- (4) **Timing of report** A report required under this section is to be furnished as soon as possible after the Commission has concluded the Commission's involvement in the matter.
- (5) **Deferral** The Commission may defer making a report under this section if it is satisfied that it is desirable to do so in the public interest.

### 133 Content of reports to Parliament

- (1) The Commission is authorised to include in a report under section 132—
  - (a) statements as to any of the findings, opinions and recommendations of the Commission, and
  - (b) statements as to the Commission's reasons for any of the Commission's findings, opinions and recommendations.
- (2) The report must include, in respect of each affected person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following—
  - (a) obtaining the advice of the Director of Public Prosecutions with respect to the prosecution of the person for a specified criminal offence,
  - (b) the taking of action against the person for a specified disciplinary infringement,
  - (c) the taking of action (including the making of an order under section 181D of the *Police Act 1990*) against the person as a police officer on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the police officer,
  - (d) the taking of reviewable action within the meaning of section 173 of the *Police Act 1990* against the person as a police officer,
  - (e) the taking of action against the person as a Crime Commission officer or an administrative employee on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the Crime Commission officer or administrative employee.

**Note—**

See section 29 (4) in relation to the Commission's opinion.

- (3) An **affected person** is a person against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation (including examination) concerned.
- (4) Subsection (2) does not limit the kind of statement that a report can contain concerning any affected person and does not prevent a report from containing a statement described in that subsection in respect of any other person.

### Subdivision 2 Investigations of officer misconduct and maladministration and agency maladministration

#### 134 Commission may report on Commissioner of Police's or Crime Commissioner's

**decision on Commission's request**

- (1) Instead of or in addition to a request made under section 103, 104 or 105 in relation to a police investigation or decision or Crime Commission investigation or decision, the Commission may prepare a report on the police investigation or decision or Crime Commission investigation or decision.
- (2) The report may include such comments and recommendations as the Commission considers appropriate.
- (3) The Commission is to provide a copy of the report to each of the following—
  - (a) the complainant,
  - (b) the Minister,
  - (c) in the case of a police investigation or decision, the Commissioner of Police,
  - (d) in the case of a Crime Commission investigation or decision, the Crime Commissioner.
- (4) The Commissioner of Police or Crime Commissioner is then to provide a copy of the report to the police officer or administrative employee or Crime Commission officer, respectively, whose conduct was the subject of the misconduct matter unless the Commission, in providing a copy of the report under subsection (3), has advised that it would be inappropriate to do so.

**135 Report following Commission's investigation of misconduct matter relating to police**

- (1) The Commission must prepare a report at the conclusion of an investigation of a misconduct matter (or any related issues) relating to the NSW Police Force or a police officer or an administrative employee under Part 6 unless a report in relation to the investigation is to be prepared and furnished under section 132.
- (2) The report may include such comments and recommendations relating to the investigation as the Commission considers appropriate.
- (3) The Commission is to provide a copy of the report to the complainant, to the Minister administering the *Police Act 1990* and to the Commissioner of Police.
- (4) The Commissioner of Police is then to provide a copy of the report (if applicable) to the police officer or administrative employee whose conduct was the subject of the misconduct matter unless the Commission, in providing a copy of the report under subsection (3), has advised that it would be inappropriate to do so.

**136 Report following Commission's investigation of misconduct matter relating to Crime Commission officer**

- (1) The Commission must prepare a report at the conclusion of an investigation of a

misconduct matter (or any related issues) relating to the Crime Commission or a Crime Commission officer under Part 6 unless a report in relation to the investigation is to be prepared and furnished under section 132.

- (2) The report may include such comments and recommendations relating to the investigation as the Commission considers appropriate.
- (3) The Commission is to provide a copy of the report to the complainant, to the Minister administering the *Crime Commission Act 2012* and to the Crime Commissioner.
- (4) The Crime Commissioner is then to provide a copy of the report (if applicable) to the Crime Commission officer whose conduct was the subject of the misconduct matter unless the Commission, in providing a copy of the report under subsection (3), has advised that it would be inappropriate to do so.

### **137 Reports concerning proposed police appointments**

- (1) The Commission may include in a report under section 24 (7), 39 (4) or 71 (3) of the *Police Act 1990* a statement that the report is furnished on the understanding that the information in the report is confidential to the following authorised persons—
  - (a) the recipient of the report, and
  - (b) any persons specified in the statement.
- (2) Each authorised person is subject to the secrecy provisions of section 180 (Secrecy) in relation to the information, but the information may, despite that section, be divulged to any other such authorised person.
- (3) For the purposes of section 180, the authorised persons are taken to have acquired the information in the exercise of functions under this Act.
- (4) A person may be specified under this section by reference to the person's name or office.

## **Subdivision 3 Special and annual reports**

### **138 Special reports of Commission**

The Commission—

- (a) may, at any time, make a special report to the Presiding Officer of each House of Parliament on any matter arising in connection with the exercise of the Commission's functions, and
- (b) in that event, must provide the Minister with a copy of the report.

### 139 Annual reports of Commission

- (1) The Commission is required to prepare, within the period of 4 months after each 30 June, a report of its operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.
- (2) A report by the Commission under this section must include the following—
  - (a) a description of the types of matters that were referred to the Commission,
  - (b) a description of the types of matters investigated by the Commission,
  - (c) the total number of matters dealt with by the Commission during the year,
  - (d) the number of police investigations, Crime Commission investigations and critical incident investigations that were the subject of oversight by the Commission under Parts 7 and 8 during the year,
  - (e) the number of matters that were investigated by the Commission under Part 6 during the year,
  - (f) the following details with respect to matters investigated by the Commission—
    - (i) the time interval between the receipt of each misconduct matter by the Commission and the Commission deciding to investigate the misconduct matter,
    - (ii) the number of misconduct matters commenced to be investigated but not finally dealt with during the year,
    - (iii) the average time taken to deal with misconduct matters and the actual time taken to investigate any matter in respect of which a report is made,
    - (iv) the total number of examinations and private and public examinations conducted during the year,
    - (v) the number of days spent during the year in conducting public examinations,
    - (vi) the time interval between the completion of each public examination conducted during the year and the furnishing of a report on the matter,
  - (g) an evaluation of the response of the Commissioner of Police, relevant members of the NSW Police Force Senior Executive Service (within the meaning of the *Police Act 1990*) and other relevant authorities to the opinions and recommendations of the Commission,
  - (h) an evaluation of the response of the Crime Commissioner, relevant members of the Crime Commission Senior Executive Service and other relevant authorities to the opinions and recommendations of the Commission,



- (i) any recommendations for changes in the laws of the State, or for administrative action, that the Commission considers should be made as a result of the exercise of the Commission's functions,
- (j) the general nature and extent of any information furnished under this Act by the Commission during the year to a law enforcement agency,
- (k) the extent to which investigations by the Commission have resulted in prosecutions, disciplinary action or the making of an order under section 173 or 181D of the *Police Act 1990* in that year,
- (l) the number of search warrants issued by authorised officers and the Commissioners respectively under this Act in that year,

**Note—**

Under section 242A of the *Law Enforcement (Powers and Responsibilities) Act 2002* the Commission is also required to report annually with respect to the exercise of powers under Part 5 of that Act with respect to covert search warrants. The report may be combined with the annual report under this Act.

- (m) a description of its activities during that year in relation to the exercise of its functions under sections 27 and 32.
- (3) Any such information that relates to investigations or other matters involving Crime Commission officers must be kept separate from other matters in the report.
- (4) **Modification of *Annual Reports (Departments) Act 1985*** The *Annual Reports (Departments) Act 1985* is, in its application to the annual report of the Commission, modified as follows—
- (a) letters of submission under that Act are to be made to the Presiding Officer of each House of Parliament and not to the appropriate Minister,
  - (b) the annual report is to be submitted to the Presiding Officer of each House of Parliament and not to the appropriate Minister,
  - (c) provisions of that Act relating to the submission of annual reports to the appropriate Minister and to the public availability of annual reports do not apply to the Commission or the Chief Executive Officer of the Commission.
- (5) The financial report for the year to which the annual report relates is to set out the separate cost of the operations of the Commission under each of Parts 6, 7 and 8.
- (6) In this section—
- 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 prosecutorial authority,
- (e) any investigative agency within the meaning of section 161 (Co-operation with other agencies),
- (f) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of the State or another State or Territory.

***prosecutorial authority*** means the following—

- (a) the Director of Public Prosecutions,
- (b) the Director of Public Prosecutions of the Commonwealth,
- (c) the Director of Public Prosecutions of another State or Territory,
- (d) any other authority or person prescribed by the regulations for the purposes of this definition.

## **Division 2 Reports by Inspector**

### **140 Special reports**

The Inspector may, at any time, make a special report to the Presiding Officer of each House of Parliament 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 122 (Functions of Inspector) that the Inspector considers warrants the making, in the public interest, of a special report.

### **141 Annual reports of Inspector**

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

## **Division 3 General**

### **142 Provisions relating to reports furnished to Parliament**

- (1) **Tabling** A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this Act must be laid before that House within 15 sitting days of that House after it is received by the Presiding Officer.

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

### **143 Persons to be heard**

- (1) Before including in a report under section 27 or 32 or this Part any comment about a person that the Commission or the Inspector considers is adverse, the Commission or Inspector must, so far as practicable—
  - (a) inform that person of the substance of the grounds of the adverse comment, and
  - (b) give the person an opportunity to make submissions.
- (2) The Commission is taken to have complied with this section if the Commission has held an examination at which the person who is the subject of the adverse comment concerned was informed of the substance of the grounds of the adverse comment and given an opportunity to make submissions.
- (3) The Inspector is taken to have complied with this section if it has held an inquiry under section 126 (Inquiries) at which the person who is the subject of the adverse comment concerned was informed of the substance of the grounds of the adverse comment and given an opportunity to make submissions.
- (4) This section applies only to the following reports—
  - (a) a report by the Commission in relation to any matter that has been or is the subject of an investigation by the Commission,
  - (b) a report by the Inspector in relation to any Commission misconduct matter,
  - (c) a report by the Commission in relation to a matter arising out of the functions of the Commission under section 27 or 32.

### **144 Report to complainant**

Where the Commission or the Inspector investigates conduct the subject of a complaint, the Commission or Inspector—

- (a) may from time to time report to the complainant on the progress of the investigation,

and

- (b) must report to the complainant on the results of the investigation, and
- (c) may make such comments to the complainant on the investigation and its consequences as the Commission or Inspector thinks fit.

**145 Commission or Inspector may omit matter from reports**

- (1) The Commission or Inspector may omit any matter from a copy of a report given to a complainant or an administrative employee, Crime Commission officer or a police officer (other than the Commissioner of Police or Crime Commissioner) under this Act if the Commission or Inspector thinks it is in the public interest to do so.
- (2) The Inspector may omit any matter from a copy of a report given to a complainant or an officer of the Commission (other than a Commissioner) under this Act if the Inspector thinks it is in the public interest to do so.
- (3) The Commission or Inspector must omit critical police information and critical Crime Commission information from a copy of a report given to a complainant or an administrative employee, Crime Commission officer or police officer (other than the Commissioner of Police or Crime Commissioner) under this Act.
- (4) The Commission or Inspector must include in a report the Commission's or Inspector's recommendation as to whether or not the report (or any part of the report) should be made public and, if the report or part is made public, whether it should be made public immediately or at a later time.
- (5) The Commission or Inspector may include a recommendation that certain matter be omitted from a report (or part of a report) that is made public.

**146 Notification of proposed action on reports**

- (1) As soon as practicable after the Commissioner of Police or Crime Commissioner receives a report under section 27, 32, 132, 134, 135 or 136 or a copy of the report is laid before a House of Parliament, the Commissioner of Police or Crime Commissioner, respectively, must notify the Commission of the nature of the action taken, or to be taken, as a result of the report.
- (2) If the Commission has provided a copy of the report to the Commissioner of Police or Crime Commissioner and the Commission is of the opinion—
  - (a) that the Commissioner of Police or Crime Commissioner has unreasonably delayed notifying the Commission of the nature of the action taken, or to be taken, as a result of the report, or
  - (b) that the nature of the action taken, or to be taken, as a result of the report is, in the circumstances of the case, unreasonable or inadequate, or

(c) that the Commissioner of Police or Crime Commissioner has unreasonably delayed taking action as a result of the report,

the Commission is to advise the Commissioner of Police or Crime Commissioner accordingly by notice in writing served on that Commissioner.

- (3) If the Commission and the Commissioner of Police do not, within 28 days, resolve any issue the subject of a notice under subsection (2), either or both of them may notify the Minister administering the *Police Act 1990* that the issue is unresolved.
- (4) If the Commission and the Crime Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (2), either or both of them may notify the Minister administering the *Crime Commission Act 2012* that the issue is unresolved.
- (5) The issue may be the subject of a Commission's special report under section 138.

## Part 12 Offences

### 147 Offence of making false complaint or giving false information

- (1) A person must not make a complaint under this Act knowing the complaint to be false.  
Maximum penalty—50 penalty units or imprisonment for 12 months, or both.
- (2) A person must not, in the course of the investigation of a misconduct matter under this Act, provide information to any of the following knowing the information to be false or misleading in a material particular—
- (a) the Minister,
  - (b) a member of the NSW Police Force,
  - (c) a Commissioner,
  - (d) the Inspector,
  - (e) the Independent Commission Against Corruption,
  - (f) the Inspector of the Independent Commission Against Corruption,
  - (g) the Crime Commission,
  - (h) the Ombudsman,
  - (i) a member of Parliament,
  - (i1) the Children's Guardian, or
  - (j) a prison officer within the meaning of section 38.

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

#### **148 Obstruction of Commission or Inspector**

A person must not—

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten—
  - (i) the Commission or an officer of the Commission in the exercise of functions under this or any other Act, or
  - (ii) the Inspector or an officer of the Inspector in the exercise of functions under this or any other Act, or
  - (iii) an Australian legal practitioner appointed by the Commission to assist an examining Commissioner as counsel in the exercise of functions as such counsel, or
  - (iv) an Australian legal practitioner or other person authorised to appear before an examining Commissioner in relation to that appearance, or
- (b) without reasonable excuse, refuse or wilfully fail to comply with any lawful requirement of the Commission or an officer of the Commission, or the Inspector or an officer of the Inspector, under this or any other Act, or
- (c) wilfully make any false statement to or mislead, or attempt to mislead, the Commission or an officer of the Commission, or the Inspector or an officer of the Inspector, in the exercise of functions under this or any other Act, or
- (d) disrupt an examination before an examining Commissioner or an inquiry being held by the Inspector.

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

#### **149 Public and private examinations**

A person who is present at an examination in contravention of a direction under section 63 (6) is guilty of an offence.

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

#### **150 Failure to attend and other offences**

- (1) A person summoned to attend, or appearing before an examining Commissioner at, an examination must not, without reasonable excuse, fail—
  - (a) to attend before the examining Commissioner in accordance with the summons, or
  - (b) to be sworn or to make an affirmation, or

- (c) to answer any question relevant to an examination or other investigation put to the person by the examining Commissioner, or
- (d) to produce any document or other thing in the person's custody or control that the person is required by the summons or by the examining Commissioner to produce.

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

- (2) It is a defence to a prosecution for failing without reasonable excuse to produce a document or other thing if the defendant establishes that the document or other thing was not relevant to an examination or other investigation.
- (3) A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 72 or 94 is subject, is guilty of an offence.

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

### **151 False or misleading evidence**

- (1) A person who, at an examination, gives evidence that is, to the knowledge of the person, false or misleading in a material particular is guilty of an indictable offence.

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

- (2) 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.

### **152 Offences relating to documents or other things**

- (1) A person is guilty of an indictable offence if the person, knowing that any document or other thing is or may be required in connection with an examination or other investigation and with intent to prevent it from being used in connection with the examination or investigation—

- (a) wilfully destroys the document or other thing or renders it incapable of identification, or

- (b) in the case of a document, renders it illegible, indecipherable or unusable.

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

- (2) A person is guilty of an indictable offence if the person, with intent to delay or obstruct the carrying out of any examination or other investigation—

- (a) destroys or alters any document or other thing relating to the subject-matter of the examination or investigation, or

- (b) sends or attempts to send, or conspires with any other person to send, out of New South Wales any such document or other thing, or any property of any description

belonging to or in the disposition of or under the control of any person whose affairs are the subject-matter of the examination or other investigation.

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

(3) A person is guilty of an indictable offence if the person, with intent to delay or obstruct the carrying out of any investigation, or with intent to mislead the Commission—

(a) fabricates any document or other thing, and

(b) produces it in evidence to the Commission or in purported compliance with a production requirement.

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

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

### **153 Procuring false testimony by witness**

A person is guilty of an indictable offence if the person procures or causes or attempts or conspires to procure or cause—

(a) the giving of false testimony at an examination, or

(b) in purported compliance with a notice served on any person under section 54, the furnishing of information that is, to the knowledge of the person so served, false or misleading in a material particular.

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

### **154 Bribery of witness**

A person is guilty of an indictable offence if the person—

(a) gives, confers or procures, or promises to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, on or for any person, on any agreement or understanding that any person called or to be called as a witness before an examining Commissioner will give false testimony or withhold true testimony, or

(b) attempts by any means to induce a person called or to be called before an examining Commissioner to give false testimony or to withhold true testimony, or

(c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or herself, or for any other person, on any agreement or



understanding that any person will as a witness before an examining Commissioner give false testimony or withhold true testimony.

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

### **155 Fraud on witness**

A person is guilty of an indictable offence if the person practises any fraud or deceit on, or knowingly makes or exhibits any false statement, representation or writing to, any person—

- (a) called or to be called as a witness before an examining Commissioner with intent to affect the testimony of that person as a witness, or
- (b) required to comply with a production requirement with intent to affect that person's compliance with the requirement.

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

### **156 Preventing witness from attending and threats to witnesses**

(1) A person is guilty of an indictable offence if the person—

- (a) wilfully prevents or wilfully endeavours to prevent any person who has been summoned to attend as a witness before an examining Commissioner from attending as a witness or from producing anything in evidence pursuant to a summons to attend, or
- (b) threatens to do or cause, or does or causes, any injury or detriment to any person intending to influence a person summoned as a witness before an examining Commissioner to give false testimony or to withhold true testimony or to not attend as a witness or not produce anything in evidence pursuant to a summons to attend.

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

(2) A person is guilty of an indictable offence if the person—

- (a) wilfully prevents or wilfully endeavours to prevent any person from complying with a production requirement, or
- (b) threatens to do or cause, or does or causes, any injury or detriment to any person intending to influence a person to not comply with a production requirement.

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

(3) A reference in subsection (1) to a person who has been summoned to attend as a witness before an examining Commissioner includes a reference to a person who is in detention under a warrant under section 71 (6) or who, having been released under

that subsection on condition that the person appear and report himself or herself before the examining Commissioner, is still subject to that condition.

### **157 Injury to witness or person assisting Commission or examining Commissioner**

A person is guilty of an indictable offence if the person uses, causes, inflicts or procures, or threatens to use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to any person for or on account of—

- (a) his or her assisting the Commission or an examining Commissioner, or
- (b) any evidence given by him or her before an examining Commissioner.

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

### **158 Dismissal of witness, or person assisting Commission, by employer**

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

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

- (2) **Onus on employer** In any proceedings for an offence against this section, it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1).

### **159 Impersonation of officer of Commission**

- (1) A person must not directly or indirectly represent that he or she is an officer of the Commission (whether generally or of a particular class of officer), unless the person is such an officer (or of that class).

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

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

### **160 Bribery of officer of Commission**

- (1) An officer of the Commission must not corruptly ask for, receive or obtain, or agree to receive or obtain, any money, property or benefit of any kind for himself or herself, or for another person—

- (a) to forgo or neglect his or her duty, or influence him or her, in the exercise of his or

her functions as an officer of the Commission, or

- (b) on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him or her in the exercise of those functions, or
- (c) to use, or take advantage of, his or her position as an officer of the Commission in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, another person.

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

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

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

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

## **Part 13 Relationship of Commission with other agencies**

### **161 Co-operation with other agencies**

- (1) In exercising its investigative and prevention functions, the Commission may work in co-operation with investigative agencies and such other persons and bodies as the Commission thinks appropriate (whether or not they are in or of the State).
- (2) In exercising its education and prevention functions, the Commission may work in co-operation with educational institutions and such other persons and bodies as the Commission thinks appropriate (whether or not they are in or of the State).

#### **Note—**

See section 27 for a description of the education and prevention functions of the Commission.

- (3) The Commission may consult with, and disseminate information to, investigative agencies and such other persons and bodies (including any task force and any member of a task force) as the Commission thinks appropriate (whether or not they are in or of the State).

- (4) If the Commission disseminates information to a person or body under this section on the understanding that the information is confidential, the person or body is subject to the secrecy provisions of section 180 in relation to the information.
- (5) In this section—
- investigative agency** means—
- (a) the Ombudsman, or
  - (a1) the Children’s Guardian,
  - (b) the Crime Commission, or
  - (c) the Independent Commission Against Corruption, or
  - (d) the Auditor-General, or
  - (e) the NSW Police Force (or any unit or other part of it), or
  - (f) a police force of another State or Territory (or any unit or other part of it), or
  - (g) the Australian Federal Police (or any unit or other part of it), or
  - (h) the Australian Crime Commission, or
  - (i) any other authority or person responsible for the enforcement of laws of the Commonwealth or of the State, another State or Territory or charged under any such laws with investigating or detecting police or other misconduct.

**162 Referral of matter to authorities other than Commissioner of Police or Crime Commissioner**

- (1) The Commission may, before or after the investigation of a matter (whether or not the investigation is completed or any opinions have been formed), refer the matter for investigation or other action, or for information, to any person or body (other than the Commissioner of Police or the Crime Commissioner) it considers to be appropriate in the circumstances.

**Note—**

Section 47 provides for the reference of matters to the Commissioner of Police and Crime Commissioner.

- (2) The person or body to whom a matter is referred is called in this section a **relevant authority**.
- (3) The Commission may, when referring a matter, recommend what action should be taken by the relevant authority and the time within which it should be taken.
- (4) The Commission must not refer a matter to a person or body except after appropriate consultation with the person or body and after taking into consideration the views of

the person or body.

- (5) The Commission may communicate to the relevant authority any information that the Commission has obtained in connection with the matter.
- (6) If the Commission communicates information to a person or body on the understanding that the information is confidential, the person or body is subject to the secrecy provisions of section 180 in relation to the information.
- (7) The Commission may, if it considers it to be appropriate, oversee the progress of an investigation or action taken by a relevant authority in relation to a matter referred to it.
- (8) For the purpose of overseeing the progress, the Commission may confer with officers of the relevant authority and request reports on the progress from the relevant authority.
- (9) The Commission may, when referring a matter, request the relevant authority to submit to the Commission a report or reports in relation to the matter and any investigation or other action taken by the relevant authority.
- (10) The relevant authority may deal with a matter referred to it under this section in such manner as it thinks appropriate, having regard, and subject to, any statutory requirements applicable to it.
- (11) The Commission does not have a power of control, supervision or direction in relation to a matter referred under this section, and any oversight or other function with respect to an investigation or other action taken by the relevant authority is to be carried out in accordance with arrangements agreed with the relevant authority. However, it is the duty of the relevant authority to co-operate with the Commission in the exercise of its functions with respect to the referred matter.
- (12) The Commission may decide that the Commission is to investigate any matter referred under this section even though the relevant authority has investigated or taken other action with respect to the matter.

### **163 Referral of matter for action under confiscation legislation**

- (1) Section 162 authorises the Commission to refer a matter to the Director of Public Prosecutions or the Crime Commission for action under the *Confiscation of Proceeds of Crime Act 1989* or the *Criminal Assets Recovery Act 1990*. This subsection does not affect the generality of that section.
- (2) Such a referral may be made even though the Commission has functions under either or both of those Acts.

#### **Note—**

Section 31 of this Act extends the operation of the *Criminal Assets Recovery Act 1990* so as to confer

functions on the Commission.

- (3) The Commission may enter into arrangements with the Director of Public Prosecutions or the Crime Commission (or both) regarding the class or kind of matters that might appropriately be dealt with by the respective parties to the arrangements.
- (4) An arrangement does not prevent any of the parties to it from exercising any functions.

#### **164 Further action by Commission**

- (1) If the Commission is not satisfied that a relevant authority has duly and properly taken action in connection with a matter referred to it under section 162, the Commission must inform the relevant authority of the grounds of its dissatisfaction and must give the relevant authority an opportunity to comment within a specified time.
- (2) If, after considering any comments received from the relevant authority within the specified time, the Commission is still not satisfied, the Commission may submit a report to the Minister for the relevant authority setting out the recommendation concerned and the grounds of dissatisfaction, together with any comments from the relevant authority and the Commission.

#### **165 Relationship with Ombudsman and Children's Guardian**

- (1) Conduct of the Commission or an officer of the Commission cannot be made the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1974* or the *Children's Guardian Act 2019*, except in relation to matters referred to the Ombudsman or the Children's Guardian by the Inspector.
- (2) Conduct of the Inspector or an officer of the Inspector can be made the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1974* or the *Children's Guardian Act 2019*.
- (3) The Ombudsman must give the Commission notice in writing of any complaint received by the Ombudsman (or misconduct information of which the Ombudsman becomes aware) under the *Ombudsman Act 1974* concerning the NSW Police Force or members of the NSW Police Force that consists of or involves a reportable allegation or reportable conviction (within the meaning of Part 3C of the *Ombudsman Act 1974*), or the inappropriate handling or response to such an allegation or conviction.
- (3A) The Children's Guardian must give the Commission notice in writing of any complaint received by the Children's Guardian (or misconduct information of which the Children's Guardian becomes aware) under the *Children's Guardian Act 2019* concerning the NSW Police Force or members of the NSW Police Force that consists of or involves—

- (a) a reportable allegation or a conviction considered to be a reportable conviction (within the meaning of the *Children's Guardian Act 2019*), or
- (b) the inappropriate handling or response to the allegation or conviction.

**Note—**

The Ombudsman and the Children's Guardian are under a duty under section 33 to report possible officer misconduct or serious maladministration to the Commission and may refer a complaint received by the Ombudsman or Children's Guardian to the Commission.

- (4) The Commission and the Ombudsman, or the Commission and the Children's Guardian, may enter into arrangements regarding—
  - (a) notifiable matters that the Commission may decide to investigate, take over the investigation of or otherwise deal with under this Act, or
  - (b) notifiable matters that the Ombudsman or the Children's Guardian may, with the consent of the Commission, deal with or continue to deal with under the *Ombudsman Act 1974* or the *Children's Guardian Act 2019*, as appropriate, or
  - (c) the furnishing of reports by the Ombudsman or the Children's Guardian on action taken in relation to matters referred to in paragraph (b), or
  - (d) the exchange of information between the Ombudsman and the Commission for the purposes of the Ombudsman's functions under section 6B (Oversight of Act by Ombudsman) of the *Public Interest Disclosures Act 1994*.
- (5) In this section—

**notifiable matter** means a matter notice of which is required to be given under subsection (3) or (3A).

#### **166 Relationship with ICAC regarding conduct of Commission**

- (1) Conduct of the Commission or an officer of the Commission cannot be made the subject of a complaint, inquiry, investigation or other action under the *Independent Commission Against Corruption Act 1988*, except in relation to matters referred to the ICAC by the Inspector.
- (2) Conduct of the Inspector or an officer of the Inspector cannot be made the subject of a complaint, inquiry, investigation or other action under the *Independent Commission Against Corruption Act 1988*.

#### **167 Statutory notification by Commission to ICAC**

Section 11 of the *Independent Commission Against Corruption Act 1988* does not apply to the Commission.

**Note—**

Section 171 provides for arrangements to be entered into regarding notification of matters by the Commission to the ICAC.

### **168 Notification of complaints by ICAC to Commission**

The ICAC is required to refer to the Commission all complaints received by it involving police officers, Crime Commission officers or administrative employees or agency maladministration by the NSW Police Force or the Crime Commission, whether or not involving conduct of other public officials.

### **169 Functions of ICAC where police officers, Crime Commission officers or administrative employees involved**

- (1) The ICAC cannot investigate or otherwise deal with a matter involving the conduct of police officers, Crime Commission officers or administrative employees or agency maladministration by the NSW Police Force or the Crime Commission if the matter does not also involve the conduct of public officials who are not police officers, Crime Commission officers or administrative employees or agencies other than the NSW Police Force or the Crime Commission.
- (2) The ICAC may investigate and otherwise deal with a matter involving the conduct of police officers, Crime Commission officers or administrative employees or agency maladministration by the NSW Police Force or the Crime Commission, provided this is done in the context of matters that also involve public officials who are not police officers, Crime Commission officers or administrative employees or agencies other than the NSW Police Force or the Crime Commission.
- (3) This section has effect subject to arrangements under section 171.

### **170 Functions of Commission where other public officials involved**

- (1) The Commission cannot investigate or otherwise deal with a matter involving the conduct of public officials or agency maladministration if the matter does not also involve the conduct of police officers, Crime Commission officers or administrative employees or the NSW Police Force or Crime Commission.
- (2) The Commission may investigate and otherwise deal with a matter involving the conduct of public officials or agency maladministration, provided this is done in the context of matters that also involve police officers, Crime Commission officers or administrative employees or the NSW Police Force or Crime Commission.

**Note—**

A **public official** includes a member of the New South Wales Crime Commission Management Committee constituted by the [Crime Commission Act 2012](#).

- (3) This section has effect subject to arrangements under section 171.



### **171 Arrangements between Commission and ICAC**

- (1) **Arrangements may be entered into** The Commission and the ICAC Commissioner may enter into arrangements regarding—
- (a) matters about which the ICAC will notify the Commission where the ICAC suspects officer misconduct, officer maladministration or agency maladministration may exist, and
  - (b) matters about which the Commission will notify the ICAC where the Commission suspects corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (other than by a police officer, Crime Commission officer or administrative employee) may exist, and
  - (c) matters that the Commission will investigate or otherwise deal with where conduct involves—
    - (i) both police officers and other public officials, or
    - (ii) both Crime Commission officers and other public officials, or
    - (iii) both administrative employees and other public officials, or
    - (iv) both the NSW Police Force and other public authorities, or
    - (v) both the Crime Commission and other public authorities, and
  - (d) matters that the ICAC will investigate or otherwise deal with where conduct involves—
    - (i) both police officers and other public officials, or
    - (ii) both Crime Commission officers and other public officials, or
    - (iii) both administrative employees and other public officials, or
    - (iv) both the NSW Police Force and other public authorities, or
    - (v) both the Crime Commission and other public authorities.
- (2) **Arrangements to be observed** The Commission and the ICAC are empowered and required to exercise their functions in conformity with any relevant arrangements entered into under this section.

### **172 Other roles of ICAC not affected**

Nothing in this Act prevents the ICAC from exercising its educative and advisory roles, including its functions referred to in section 13 (1) (e), (i), (j) and (k) of the *Independent Commission Against Corruption Act 1988*, even though they may involve the NSW Police Force or the Crime Commission.

### **173 Relationship with Auditor-General**

The Commission may enter into arrangements with the Auditor-General regarding the identity and qualifications (including security clearance) of the persons who will audit the books and accounts of the Commission or exercise any other functions of the Auditor-General in relation to the Commission.

### **174 Roles of coroner and SafeWork NSW not affected by Commission oversight of critical incident investigations**

- (1) Nothing in this Act prevents the coroner from exercising the coroner's functions with respect to investigation of any death.
- (2) Nothing in this Act prevents SafeWork NSW from exercising SafeWork NSW's functions with respect to investigation of any serious injury.

## **Part 14 Secrecy and confidentiality**

### **175 Definitions**

In this Part—

**disclose** examination material, police information or any other information includes the following—

- (a) to make available,
- (b) to disclose copies, contents or descriptions of examination material or information.

**use** of examination material or information includes use of copies, contents or descriptions of that material or information.

### **176 Disclosure and use of examination material**

- (1) **Direction regarding use and disclosure** An examining Commissioner may direct that examination material—
  - (a) must not be used or disclosed, or
  - (b) may only be used by, or disclosed to, specified persons in specified ways or on specified conditions.

- (2) **Offence** A person must not use or disclose examination material in contravention of a direction given under this section.

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

- (3) **Exceptions** It is not a contravention of a direction given under this section to disclose examination material—

- (a) to a registered medical practitioner or registered psychologist for the purposes of that health practitioner providing medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person who has given or may be about to give evidence before an examining Commissioner, or
- (b) to the Director of Public Prosecutions for the purposes of the Director of Public Prosecutions providing advice about the commencement of proceedings against particular persons for criminal offences against laws of the State.

(4) In this section—

***examination material*** means the following—

- (a) any evidence given by a person before an examining Commissioner at an examination or record of the evidence,
- (b) a statement, document or other thing produced by a person in accordance with a production requirement or seized under a search warrant,
- (c) any information that might enable a person who has given or is about to give evidence before an examining Commissioner to be identified or located,
- (d) the fact that a person has given or may be about to give evidence at an examination,
- (e) any written submission received by an examining Commissioner (including but not limited to submissions made by an Australian legal practitioner appointed to assist the Commission).

### **177 Disclosure and use of evidence given at examination**

- (1) A person who was present at an examination held in private must not, without reasonable excuse, use or disclose, or permit or allow to be used or disclosed, any examination material, except to an officer of the Commission or an Australian legal practitioner appointed to assist the Commission or as permitted by the examining Commissioner or the regulations.

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

- (2) Nothing in this section affects section 176, but a person cannot be punished under both sections for the same use or disclosure.
- (3) This section does not apply to an officer of the Commission or an Australian legal practitioner appointed to assist the Commission.
- (4) It is not a contravention of this section to disclose any examination material to a registered medical practitioner or registered psychologist for the purposes of that

health practitioner providing medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person who has given or may be about to give evidence before an examining Commissioner.

(5) In this section—

**examination material** means the following—

- (a) any evidence given by a person before an examining Commissioner at an examination or record of the evidence,
- (b) a document or other thing produced by a person to an examining Commissioner at an examination.

### **178 Disclosures prejudicing investigations**

- (1) A person who is required by a production requirement to produce a document or thing or to give evidence must not disclose any information about the production requirement that is likely to prejudice the examination or other 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 production requirement unless it specifies that information about the production requirement must not be disclosed.
- (3) A person does not contravene this section if the disclosure is made—
  - (a) to an employee, agent or other person in order to obtain information to comply with the production requirement and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter, or
  - (b) to obtain legal advice or representation in relation to the production requirement, or
  - (c) for the purposes of, or in the course of, legal proceedings, or
  - (d) to a registered medical practitioner or registered psychologist in relation to the provision by that health practitioner of medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person required by a production requirement to give evidence, or
  - (e) in accordance with guidelines issued by the Commission or in accordance with the regulations.
- (4) A reference in this section to the disclosure of any information about a production requirement includes a reference to—

- (a) a disclosure about the existence or nature of the production requirement or of the examination or other 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 production requirement or of the examination or other investigation to which it relates.

### **179 Commission not to disclose critical police or Crime Commission information**

(1) This section applies—

- (a) to information (referred to as **police information**) that is provided to the Commission by the Commissioner of Police or by some other police officer in accordance with a requirement under this Act or the *Police Act 1990*, and
- (b) to information (referred to as **Crime Commission information**) that is provided to the Commission by the Crime Commissioner or by some other Crime Commission officer in accordance with a requirement under this Act or the *Crime Commission Act 2012*.

- (2) The Commissioner of Police may at any time notify the Commission that specified police information (referred to in this section as **critical police information**) is information the disclosure of which may, in the opinion of the Commissioner of Police, prejudice the investigation or prevention of crime, or otherwise be contrary to the public interest.
- (3) The Crime Commissioner may at any time notify the Commission that specified Crime Commission information (referred to in this section as **critical Crime Commission information**) is information the disclosure of which may, in the opinion of the Crime Commissioner, prejudice the investigation or prevention of crime, or otherwise be contrary to the public interest.
- (4) Any notice under subsection (2) or (3) must include the reasons for which the Commissioner of Police or Crime Commissioner has formed the opinion referred to in that subsection.
- (5) The Commission is not to disclose critical police information or critical Crime Commission information at any time.
- (6) The Commission is not to disclose police information or Crime Commission information that is provided to the Commission by the Commissioner of Police or some other police officer or the Crime Commissioner or some other Crime Commission officer in accordance with a requirement under this Act (other than critical police information or critical Crime Commission information) before the expiry of 21 days after the date on which it was provided.

**Note—**

The 21-day period provides the Commissioner of Police and Crime Commissioner with an opportunity to notify the Commission that the information is critical police information or critical Crime Commission information, respectively.

- (7) Subsections (5) and (6) do not apply to or in respect of the disclosure of information for the purpose of Part 6.
- (8) Nothing in this section prevents the Commission from disclosing—
  - (a) police information (including critical police information) to the Minister or the Commissioner of Police or to any other person to whom the Commissioner of Police authorises disclosure of the information, or
  - (b) Crime Commission information (including critical Crime Commission information) to the Minister or the Crime Commissioner or to any other person to whom the Crime Commissioner authorises disclosure of the information.
- (9) Nothing in this section prevents the Commission from including police information (including critical police information) or Crime Commission information (including critical Crime Commission information)—
  - (a) in any report submitted to the Presiding Officer of each House of Parliament, or
  - (b) in the copy of any such report submitted to the Minister,if, in the Commission's opinion, the circumstances so warrant.

### **180 Secrecy**

- (1) This section applies to the following—
  - (a) a person who is or was an officer of the Commission,
  - (b) a person who is or was the Inspector or an officer of the Inspector,
  - (c) a person who is or was an Australian legal practitioner appointed to assist the Commission or an examining Commissioner 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,
  - (d) a person or body referred to in section 28 (6), 161 (4) or 162 (6),
  - (e) an authorised person referred to in section 137,
  - (f) a person who is or was a member of a task force assisting the Commission in accordance with an arrangement under section 21 (5) (a),
  - (g) a person carrying out or participating in investigations for or on behalf of or under the direction of the Commission in accordance with an arrangement under section

21 (5) (b).

(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) disclose or communicate to any person any information,

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

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

(3) A person to whom this section applies who is involved in the investigation under Part 6 of serious misconduct 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 disclose or communicate to any police officer or former police officer any information acquired by the person by reason of, or in the course of, the exercise of the person's functions under that Part in relation to the investigation.

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

(4) A person to whom this section applies cannot be required—

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

(b) to disclose or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's functions under this Act,

except for the purposes of a prosecution, disciplinary proceedings or proceedings under Division 1A or 1C of Part 9 of the *Police Act 1990*, arising out of any investigation conducted by a Commissioner or Assistant Commissioner under this Act or a prosecution or disciplinary proceedings against an officer of the Commission arising out of any investigation of the Inspector or an Assistant Inspector under this Act.

(5) Despite this section, a person to whom this section applies may (subject to sections 176-179) disclose any such information as follows—

(a) for the purposes of and in accordance with this Act or of discharging the Commission's functions under this or any other Act,

(b) for the purpose of any proceedings for an offence under this Act or proceedings for contempt under this Act,

- (c) for the purposes of criminal, coronial or disciplinary proceedings—
    - (i) resulting from an investigation conducted by the Commission or the Inspector or an Assistant Inspector, or
    - (ii) arising out of (or relating to) a police investigation, critical incident investigation or Crime Commission investigation overseen by the Commission under Part 7 or 8,
  - (d) in accordance with a direction of the Commission or Inspector, if the Commission or Inspector certifies that it is necessary to do so in the public interest,
  - (e) if the information is obtained from a police officer, with the consent of the Commissioner of Police or the Minister administering the *Police Act 1990*,
  - (f) where the information is obtained from a public authority, with the consent of the head of that authority or of the responsible Minister,
  - (g) if the information is obtained from any other person, with the consent of that person,
  - (h) to a police officer, the Department of Family and Community Services or any other public authority that the Commission considers appropriate in the circumstances if the information relates to the safety, welfare or well-being of a particular child or young person (or a class of children or young persons),
  - (i) to any person if the Commission believes on reasonable grounds that disclosure to that person is necessary to prevent or lessen the likelihood of harm being done to any person (but only if the Commission also believes on reasonable grounds that there is a risk of harm (including self-harm) being done to any person),
  - (j) for the purpose of any proceedings under Part 5 of the *Government Information (Public Access) Act 2009* arising as a consequence of a decision made by the Commission in respect of an access application under that Act,
  - (k) for the purpose of any proceedings under section 20 or 20B of the *Public Interest Disclosures Act 1994*,
  - (l) to a registered medical practitioner or registered psychologist in relation to the provision by that health practitioner of medical or psychiatric care, treatment or counselling (including but not limited to psychological counselling) to a person to whom this section applies,
  - (m) to any prescribed authority or person.
- (6) An authority or person to whom information is disclosed under subsection (5), and any person or employee under the control of that authority or person, is subject to the same rights, privileges, obligations and liabilities under subsections (2), (3) and (4) in



respect of that information as if he or she were a person to whom this section applies and had acquired the information in the exercise of functions under this Act.

(7) This section does not prevent the Commission from disclosing any information relating to—

(a) a matter arising under a law of another State, the Commonwealth or a Territory of the Commonwealth, or

(b) an undertaking that is or was being carried out jointly by New South Wales and another State, the Commonwealth or a Territory of the Commonwealth,

to a person exercising under a law of that other State, the Commonwealth or that Territory, as the case may be, functions similar to those exercised by the Commission under this Act.

(8) This section does not operate to render admissible in evidence in any proceedings any document that would not have been so admissible if this section had not been enacted.

(9) If—

(a) the Commission, or an officer of the Commission, is to give evidence before, or to produce the whole or any part of a document to, the Joint Committee, and

(b) the evidence proposed to be given, or the whole or any part of the document proposed to be produced, would disclose information obtained by the Commission or officer, in the course of his or her office, from a public authority or other person, and

(c) the public authority or other person has informed the Commission or officer that the information is confidential,

the Commission or officer must make a request under section 31H (1) of the [Ombudsman Act 1974](#) for the evidence to be taken in private or for a direction to be given that the document, or part of the document, be treated as confidential.

(10) In the case of information obtained from a public authority or other person as referred to in subsection (5), a reference in section 31H of the [Ombudsman Act 1974](#) to the consent in writing of a witness, in relation to the disclosure or publication of evidence, is to be construed as a reference to the consent in writing of the public authority or other person.

(11) 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.

**181 Disclosure of information and giving of evidence by Ombudsman to Commission**

- (1) The Ombudsman, and any officer of the Ombudsman acting with the approval of the Ombudsman, may—
  - (a) disclose to the Commission information obtained by the Ombudsman or officer in exercising functions under the *Ombudsman Act 1974* or any other Act, or
  - (b) give evidence before the Commission and produce any document to the Commission, in respect of any such information.
- (2) Neither the Ombudsman nor any officer of the Ombudsman can be compelled to give any evidence before the Commission or produce any document before the Commission in respect of information obtained by the Ombudsman or officer in exercising functions as referred to in subsection (1).
- (3) This section applies despite sections 34 (Disclosure by Ombudsman or officer) and 35 (Ombudsman, officer or expert as witness) of the *Ombudsman Act 1974* or sections 163 (Ombudsman not to publish certain information) and 165 (Ombudsman and officers of Ombudsman not compellable witnesses in respect of certain matters) of the *Police Act 1990*, and any other law.
- (4) Section 35 of the *Ombudsman Act 1974* and section 165 of the *Police Act 1990* do not apply in respect of any proceedings for an offence under this Act.

**181A Disclosure of information and giving of evidence by Children’s Guardian to Commission**

- (1) The Children’s Guardian, and any officer of the Children’s Guardian acting with the approval of the Children’s Guardian, may—
  - (a) disclose to the Commission information obtained by the Children’s Guardian or an officer of the Children’s Guardian in exercising functions under the *Children’s Guardian Act 2019* or any other Act, or
  - (b) give evidence before the Commission and produce any document to the Commission in respect of the information.
- (2) Neither the Children’s Guardian nor any officer of the Children’s Guardian can be compelled to give any evidence before the Commission or produce any document before the Commission in respect of information obtained by the Children’s Guardian or officer of the Children’s Guardian in exercising functions as referred to in subsection (1).
- (3) This section applies despite sections 59 and 62 of the *Children’s Guardian Act 2019*.

- (4) Section 62 of the *Children's Guardian Act 2019* does not apply in respect of proceedings for an offence under this Act.

### **182 Officers of Commission not compellable witnesses in respect of certain matters**

- (1) An officer of the Commission (including a seconded police officer) is not compellable, in any legal proceedings, to give evidence or produce documents in respect of any matter in which he or she is or was involved in the course of the administration or execution of functions under this Act.
- (2) Subsection (1) does not apply to or in respect of any of the following—
- (a) proceedings for an offence under this Act or proceedings for contempt under this Act,
  - (b) proceedings under section 20 or 20B of the *Public Interest Disclosures Act 1994*,
  - (c) criminal, coronial or disciplinary proceedings—
    - (i) resulting from an investigation conducted by the Commission, or
    - (ii) arising out of (or relating to) a police investigation or critical incident investigation overseen by the Commission under Part 7 or 8.
- (3) In this section—
- seconded police officer** means a police officer appointed to, employed in or engaged by, or seconded to the service of the Commission under section 21 (3) (b).

### **183 Admissibility of documents relating to complaints about police**

- (1) A document brought into existence for the purposes of Part 8A (Complaints about conduct of police officers) of the *Police Act 1990* or section 11A of the *Crime Commission Act 2012* is admissible in evidence before an examining Commissioner.
- (2) This section applies despite section 170 (Certain documents privileged) of the *Police Act 1990*.

### **184 Telecommunications (Interception and Access) (New South Wales) Act 1987**

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

### **185 Privacy and Personal Information Protection Act 1998**

Section 67 (Disclosure by Privacy Commissioner or staff member) of the *Privacy and Personal Information Protection Act 1998* does not apply to the disclosure of information for the purposes of any proceedings for an offence under this Act.

### **186 Consultation with Minister**

- (1) The Commission may consult with the Minister administering the *Police Act 1990* about a police misconduct matter or administrative employee misconduct matter at any stage and may for that purpose disclose to the Minister any information relating to or arising in connection with the misconduct matter, including—
  - (a) any matters arising from an investigation of the misconduct matter, and
  - (b) any report or proposed report relating to the misconduct matter, and
  - (c) any action taken or proposed to be taken in connection with the misconduct matter.
- (2) The Commission may consult with the Minister administering the *Crime Commission Act 2012* about a Crime Commission misconduct matter at any stage and may for that purpose disclose to the Minister any information relating to or arising in connection with the misconduct matter, including—
  - (a) any matters arising from an investigation of the misconduct matter, and
  - (b) any report or proposed report relating to the misconduct matter, and
  - (c) any action taken or proposed to be taken in connection with the misconduct matter.
- (3) The Commission may consult with the Minister about any other matter related to the exercise of the Commission's functions under this Act.
- (4) Before publishing a report of an investigation under this Act, the Commission—
  - (a) must inform the responsible Minister that the Commission proposes to publish such a report, and
  - (b) must, on request by that Minister, consult that Minister.

### **187 Identity of complainant not to be disclosed**

An officer of the Commission must not disclose to any person the identity of a complainant unless the disclosure is made—

- (a) in accordance with guidelines established by the Commission, or
- (b) with the consent of the complainant, or
- (c) in accordance with a requirement of or made under this or any other Act, or
- (d) for the purposes of any legal proceedings before a court or tribunal.

## Part 15 Miscellaneous

### 188 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### 189 Vetting of prospective staff or consultants

- (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 Transport for NSW constituted under the [Transport Administration Act 1988](#) relating to licences or other authorities, offences or penalties,
  - (d) information held by Corrective Services NSW or the Department of Communities and Justice,
  - (e) information held by the Australian Crime Commission,
  - (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 the information may be collected, disclosed or used despite any other Act or law.

**Note—**

Section 180 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—

**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.

### **190 Exclusion of personal liability**

(1) A matter or thing done or omitted to be done by—

- (a) an officer of the Commission, or
- (b) the Inspector, or
- (c) an Assistant Inspector, or
- (d) a member of staff of the Inspector, or
- (e) a person acting under the direction of any person referred to in paragraphs (a)–(d),

does not, if the matter or thing was done or omitted to be done in good faith for the purposes of executing this Act, subject any such officer, member or person so acting personally to any action, liability, claim or demand.

- (2) A reference in subsection (1) to the execution of this Act includes a reference to the execution of the provisions of any other Act that confer or impose functions on the Commission, a Commissioner or Inspector.
- (3) An Australian legal practitioner assisting the Commission or an examining Commissioner or representing a person before the Commission or an examining Commissioner has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.
- (4) Subject to this Act, a person summoned to attend or appearing before the Commission or an examining Commissioner as a witness, or producing a document or other thing to the Commission, has the same protection as a witness in proceedings in the Supreme Court.
- (5) No criminal or civil liability (apart from this Act) attaches to a person for compliance, or purported compliance in good faith, with any requirement made under this Act.
- (6) In particular, if a person gives any statement of information or produces any document or other thing under a production requirement, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.
- (7) For the purposes of this section, **barrister** has the same meaning as in the [Legal](#)

*Profession Uniform Law (NSW).*

**191 Disclosure of pecuniary interests and other matters**

The regulations may make provision for or with respect to—

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

**192 Service of documents**

- (1) For the purposes of this Act, service of a document on a person may be effected—
  - (a) on a natural person—
    - (i) by delivering it to the person personally, or



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

### **193 Penalties for offences committed by corporations**

The maximum penalty applicable to a corporation convicted of an offence against this Act or the regulations is (except in so far as other provision is made by section 194) double the pecuniary penalty otherwise applying to the offence.

### **194 Proceedings for offences**

- (1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.
- (2) If an offence against this Act is an indictable offence, the Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.
- (3) If, in accordance with subsection (2), the Local Court convicts a person of such an offence, the maximum penalty that the court may impose is—
- (a) in the case of an individual—the smaller of—
    - (i) a fine of 50 penalty units or imprisonment for 2 years, or both, or
    - (ii) the maximum penalty otherwise applicable to the offence when committed by an individual, or
  - (b) in the case of a corporation—the smaller of—
    - (i) a fine of 100 penalty units, or
    - (ii) the maximum penalty otherwise applicable to the offence when committed by

a corporation.

- (4) Proceedings for an alleged offence under any of the following provisions of this Act may be commenced within 3 years after the commission of the alleged offence—
- (a) sections 54 and 55,
  - (b) section 147,
  - (c) section 148 (c),
  - (d) section 150,
  - (e) section 159,
  - (f) sections 176, 177, 178 and 180.

#### **195 Exercise of functions by police**

- (1) A police officer may not exercise investigative, surveillance or enforcement functions under or for the purposes of Part 6 unless authorised to do so by the Commission.
- (2) As soon as practicable after giving such an authorisation, the Commission must notify the Inspector of that fact.
- (3) This section has effect despite any other provision of this Act, but does not apply to functions specified or described in the regulations for the purposes of this subsection.

#### **196 References by Parliament**

- (1) Both Houses of Parliament may, by resolution of each House, refer any conduct that is (or could be) officer misconduct or officer maladministration or agency maladministration or any other matter to the Commission for investigation by the Commission.
- (2) It is the duty of the Commission to fully investigate a matter so referred to it for investigation.
- (3) Both Houses of Parliament may, by resolution of each House, amend or revoke a reference made under this section.
- (4) The Commission is to prepare a report in relation to a matter referred to it under this section, as directed by the Houses of Parliament.

#### **197 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) In particular, regulations may be made for or with respect to the following—
- (a) the giving of notice with respect to, and referral of, misconduct matters to the Commission, the Inspector, the Commissioner of Police, the Crime Commissioner, the Ombudsman, the Children’s Guardian, the officer the subject of the misconduct matter, complainants and referring authorities,
  - (b) the giving of reasons with respect to specified decisions made under this Act,
  - (c) notices required to be given with respect to the carrying out, progress and completion of investigations under this Act and police investigations,
  - (d) notices required to be given relating to the oversight and discontinuance of oversight by the Commission of police investigations and Crime Commission investigations,
  - (e) the matters that may be included in an agreement under section 14,
  - (f) security checks of officers of the Commission and applicants for appointment or engagement as officers of the Commission,
  - (g) the issue of identity cards to officers of the Commission and their use.

### **198 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 3 years from the date of assent to 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 3 years.

## **Schedule 1 Provisions relating to members of the Commission, Assistant Commissioners and alternate Commissioners**

(Sections 18 and 20)

### **1 Acting Chief Commissioner, 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 Chief Commissioner, Commissioner or Assistant Commissioner during the illness or absence of the Chief Commissioner, Commissioner or Assistant Commissioner.
- (2) **Standing appointments of alternates** An appointment may be made under subclause (1) of a person (an **alternate Commissioner**) to act in the office of Chief Commissioner,

Commissioner or Assistant Commissioner from time to time during the illness or absence at short notice of the Chief Commissioner, Commissioner or Assistant Commissioner. An alternate Commissioner may act in an office in respect of which the alternate Commissioner is appointed at the request of the Minister.

- (3) (Repealed)
- (4) A person is not eligible to be appointed as an alternate Commissioner to act in the office of a Commissioner or Assistant Commissioner unless the person has special legal qualifications.
- (5) **Short illness or absence** The Minister may appoint a person to act in the office of Chief Commissioner, Commissioner or Assistant Commissioner during the illness or absence of the Chief Commissioner, 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).
- (6) The person, while acting under this clause, has all the functions of the Chief Commissioner, Commissioner or Assistant Commissioner and is to be taken to be the Chief Commissioner, Commissioner or Assistant Commissioner.
- (7) 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.
- (8) 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.
- (9) For the purposes of this clause—
  - (a) a vacancy in the office of Chief Commissioner, Commissioner or Assistant Commissioner is taken to be an absence from office of the Chief Commissioner, Commissioner or Assistant Commissioner, and
  - (b) a Commissioner is taken to be absent from office as a Commissioner during any period when the Commissioner acts in the office of the Chief Commissioner pursuant to an appointment under this clause.

## 2 Basis of offices

- (1) The office of Chief Commissioner is a full-time office.
- (2) The office of a member of the Commission (other than the Chief Commissioner), or of an 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.

### **3 Terms of office**

- (1) Subject to this Schedule, a member of the Commission, an Assistant Commissioner or alternate Commissioner 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 office as a member of the Commission or an Assistant Commissioner or alternate Commissioner (whether or not the same or a different office or on a regular or an acting basis) for terms that exceed 5 years in total.

### **4 Remuneration**

- (1) The Chief Commissioner and any other full-time member of the Commission or 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 member of the Commission or 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 member or Assistant Commissioner.
- (3) An alternate 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 alternate Commissioner.
- (4) A member of the Commission, Assistant Commissioner or alternate Commissioner 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 member of the Commission, Assistant Commissioner or alternate Commissioner**

- (1) The appointment of a person who is the holder of a judicial office as a member of the Commission, Assistant Commissioner or alternate Commissioner, or service by a person who is the holder of a judicial office as a member of the Commission, Assistant Commissioner or alternate Commissioner, does not affect—
  - (a) the person's tenure of that judicial office, or
  - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.

(2) The person's service as a member of the Commission, Assistant Commissioner or alternate Commissioner is, for all purposes, taken to be service as the holder of that judicial office.

(3) In this clause—

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

## **6 Appointment of Supreme Court Judge as member of the Commission or Assistant Commissioner**

(1) This clause applies to a person—

(a) who was a Judge of the Supreme Court before being appointed as a member of the Commission or Assistant Commissioner (whether on a regular or an acting basis), and

(b) whose resignation as a Judge took effect immediately before the appointment as a member of the Commission or Assistant Commissioner took effect, and

(c) whose instrument of appointment as a member of the Commission or Assistant Commissioner declared that the person's commission as a Judge is to revive by force of this clause, and

(d) who consented by letter to the Minister to the application of this clause.

(2) The person's commission as a Judge revives by force of this clause when the person ceases to hold office as a member of the Commission or Assistant Commissioner. The person becomes a Judge of the Supreme Court again as from that time. This subclause does not apply in relation to any other judicial office held by the person.

(3) For the purposes of the *Judges' Pensions Act 1953*—

(a) service by the person as a member of the Commission or Assistant Commissioner is taken to be service as a Judge of the Supreme Court, and

(b) references to a Judge or judicial office include references to the person in his or her capacity as a member of the Commission or Assistant Commissioner and the office of member of the Commission or Assistant Commissioner, and

(c) references to notional judicial salary are, in relation to the person while a member of the Commission or Assistant Commissioner, references to the salary payable to the holder of a judicial office having a status equivalent to that of the judicial office held by the person immediately before being appointed as a member of the Commission or Assistant Commissioner.

(4) Subclause (2) ceases to apply to the person if—

(a) the person so requests by letter to the Minister, or

(b) the person is removed from office as a member of the Commission or Assistant Commissioner by the Governor under clause 7 (2) on the ground of incapacity, incompetence or misbehaviour.

(5) For the purposes of this clause, a re-appointment of the person as a member of the Commission or Assistant Commissioner without a break is taken to be a continuation of the previous appointment as such a member of the Commission or Assistant Commissioner.

## **7 Vacancy in office**

(1) The office of a member of the Commission, Assistant Commissioner or alternate Commissioner becomes vacant if the holder—

(a) dies, or

(b) completes a term of office and is not re-appointed, or

(c) holds office for longer than the term of office for which the person is appointed or holds office in any office as a member of the Commission, Assistant Commissioner or alternate Commissioner for a term or terms exceeding 5 years in total, 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, or

(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 a member of the Commission, Assistant Commissioner or

alternate Commissioner from office for incapacity, incompetence or misbehaviour.

## **8 Filling of vacancy**

- (1) If the office of Chief Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.
- (2) If the office of any other member of the Commission, Assistant Commissioner or alternate Commissioner becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

## **9 Public Service employment provisions excluded**

The offices of member of the Commission, Assistant Commissioner and alternate Commissioner are statutory offices and the [Government Sector Employment Act 2013](#) does not apply to those offices.

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

- (1) A person is not to be appointed as Chief Commissioner, Commissioner for Integrity or Commissioner for Oversight 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.

## **Schedule 2 Provisions relating to Inspector and Assistant Inspectors**

(Sections 120 and 121)

### **1 References to Inspector include references to Assistant Inspector**

A reference in this Schedule to the Inspector is taken to include a reference to an Assistant Inspector, except—

- (a) in clauses 10 and 12, and
- (b) as may be provided by the regulations.

### **2 Eligibility for appointment**

- (1) A person is not eligible to be appointed as Inspector or to act in that office unless the



person has special legal qualifications.

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

### **3 Acting Inspector or Assistant Inspector**

- (1) **Long illness or absence** 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.
- (2) **Short illness or absence** The Minister may appoint a person to act in the office of Inspector during the illness or absence of the Inspector 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 acting under this clause, has all the functions of the Inspector and is to be taken to be the Inspector.
- (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 Inspector is taken to be an absence from office of the Inspector, and
  - (b) an Assistant Inspector is taken to be absent from office as Assistant Inspector during any period when the Assistant Inspector acts in the office of the Inspector pursuant to an appointment under this clause.

### **4 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.

### **5 Terms of office**

- (1) Subject to this Schedule, the Inspector holds office for such term (not exceeding 5 years) as may be specified in the instrument of appointment, but is eligible (if

otherwise qualified) for re-appointment.

- (2) A person may not hold the office of Inspector (whether on a regular or an acting basis) for terms totalling more than 5 years.

## **6 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.

## **7 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.

## **8 Appointment of Supreme Court Judge as Inspector**

- (1) This clause applies to a person—
- (a) who was a Judge of the Supreme Court before being appointed as Inspector (whether on a regular or an acting basis), and
- (b) whose resignation as a Judge took effect immediately before the appointment as Inspector took effect, and
- (c) whose instrument of appointment as Inspector declared that the person's commission as a Judge is to revive by force of this clause, and
- (d) who consented by letter to the Minister to the application of this clause.
- (2) The person's commission as a Judge revives by force of this clause when the person

ceases to hold office as Inspector. The person becomes a Judge of the Supreme Court again as from that time. This subclause does not apply in relation to any other judicial office held by the person.

- (3) For the purposes of the *Judges' Pensions Act 1953*—
- (a) service by the person as Inspector is taken to be service as a Judge of the Supreme Court, and
  - (b) references to a Judge or judicial office include references to the person in his or her capacity as Inspector and the office of Inspector, and
  - (c) references to notional judicial salary are, in relation to the person while Inspector, references to the salary payable to the holder of a judicial office having a status equivalent to that of the judicial office held by the person immediately before being appointed as Inspector.
- (4) Subclause (2) ceases to apply to the person if—
- (a) the person so requests by letter to the Minister, or
  - (b) the person is removed from office as Inspector by the Governor on the address of both Houses of Parliament under clause 9 (2) on the ground of incapacity, incompetence or misbehaviour.
- (5) For the purposes of this clause, a re-appointment of the person as Inspector without a break is taken to be a continuation of the previous appointment as Inspector.

## **9 Vacancy in office**

- (1) 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 term of office for which the person is appointed or holds office for terms that exceed 5 years in total, 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, or
  - (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.

(1A) Subclause (1) (f) and (g) do not apply if the Inspector holds office on a part-time basis.

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

## **10 Filling of vacancy**

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

## **11 Effect of certain other Acts**

(1) The office of Inspector is a statutory office and the *Government Sector Employment Act 2013* does not apply to that office.

(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.

## **12 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 Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.

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

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

## **Schedule 3 Savings, transitional and other provisions**

### **Part 1 General**

#### **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.

(4) Any such provision has effect despite anything to the contrary in this Schedule.

(5) The regulations may make separate savings and transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

### **Part 2 Provisions consequent on enactment of this Act**

#### **2 Definitions**

In this Part—

**covert powers Act** means any of the following—

(a) the [Law Enforcement \(Controlled Operations\) Act 1997](#),

(b) the [Law Enforcement \(Powers and Responsibilities\) Act 2002](#),

- (c) the *Surveillance Devices Act 2007*,
- (d) the *Telecommunications (Interception and Access) (New South Wales) Act 1987*,
- (e) the *Terrorism (Police Powers) Act 2002*,
- (f) the *Witness Protection Act 1995*.

**Crime Commission Inspectorial record** means any document or other source of information or thing relating to the exercise by the Inspector of the Crime Commission of functions under the *Crime Commission Act 2012* that is in the possession or custody of the Inspector or an officer of the Inspector (within the meaning of that Act) immediately before the repeal of Part 4 of that Act.

**former Part 8A** means Part 8A of the *Police Act 1990* as in force immediately before its amendment by this Act.

**Inspectorial record** means a Crime Commission Inspectorial record, a PIC Inspectorial record or an Ombudsman Inspectorial record.

**Ombudsman Act** means the *Ombudsman Act 1974*.

**Ombudsman Inspectorial record** means any document or other source of information or thing relating to the exercise of the functions of the Ombudsman under a covert powers Act that is in the possession or custody of the Ombudsman or an officer of the Ombudsman immediately before the amendment of the provision by this Act.

**Ombudsman record** means any document or other source of information or thing relating to the exercise of Ombudsman's functions under former Part 8A and the Ombudsman Act immediately before its amendment by this Act that is in the possession or custody of the Ombudsman or an officer of the Ombudsman immediately before the amendment of the Ombudsman Act.

**Operation Prospect** means the inquiry that was the subject of a report of the Select Committee on the Conduct and Progress of the Ombudsman's inquiry "Operation Prospect" tabled with the Clerk of the Parliaments on 25 February 2015 that was commenced under section 19 of the Ombudsman Act on 15 October 2012.

**PIC** means the Police Integrity Commission.

**PIC Act** means the *Police Integrity Commission Act 1996* as in force immediately before its repeal by this Act.

**PIC Commissioner** means the Commissioner for the Police Integrity Commission.

**PIC Inspector** means the Inspector of the Police Integrity Commission.

**PIC Inspectorial record** means any document or other source of information or thing

relating to the exercise of the PIC Inspector's functions under the PIC Act that is in the possession or custody of PIC Inspector or an officer of the Inspector (within the meaning of the PIC Act) immediately before the repeal of the PIC Act.

**PIC record** means any document or other source of information or thing relating to the exercise of PIC's functions under the PIC Act that is in the possession or custody of PIC or an officer of the PIC immediately before the repeal of the PIC Act.

**secrecy provision of a covert powers Act** means any provision of a covert powers Act restricting or prohibiting the use, disclosure, communication or publication of a document or other source of information or thing.

**transferred record** means any of the following (other than a record or class of records that is prescribed by the regulations as excluded from this definition)—

- (a) any PIC record, Ombudsman record or Inspectorial record that has come, whether before or after the commencement of this Schedule, into the possession of the Commission or an officer of the Commission,
- (b) any Inspectorial record that has come, whether before or after the commencement of this Schedule, into the possession of the Inspector, an Assistant Inspector or a member of staff of the Inspector or the Commission or a member of staff of the Commission.

### 3 General saving

- (1) Anything done under the PIC Act or a provision of the PIC Act that has any force or effect immediately before its repeal is taken to have been done under the corresponding provision of this Act, subject to any express or implied provision to the contrary in this Act or the regulations made under this Act.
- (2) Anything done under former Part 8A or a provision of former Part 8A that has any force or effect immediately before its amendment is taken to have been done under the corresponding provision of this Act, subject to any express or implied provision to the contrary in this Act or the regulations made under this Act.

### 4 Effect of repeal of PIC Act

- (1) On the repeal of the PIC Act—
  - (a) the PIC is abolished, and
  - (b) any assets, rights and liabilities of the PIC become assets, rights and liabilities of the Commission.
- (2) Despite subclause (1), the PIC continues in existence until the end of the transition period.

- (3) While the PIC continues in existence, a Commissioner of the Law Enforcement Conduct Commission or member of staff of the Commission authorised by a Commissioner—
  - (a) may exercise any power under the PIC Act (or any other Act) that would have been exercisable by PIC immediately before the repeal of the PIC Act for the purposes of carrying out its functions in relation to the conduct of any investigation under the PIC Act being conducted immediately before that repeal that is declared by the Commission by an order in writing to be an investigation to which this clause applies, and
  - (b) Divisions 2 and 3 of Part 3 of the PIC Act continue to have effect.
- (4) The exercise of any power under subclause (3) is taken at the end of the transition period to have been exercised for the purposes of an investigation under this Act.
- (5) Nothing in this clause prevents the Commission from exercising any function conferred on it under clause 5.
- (6) In this clause—

**assets** means any legal or equitable estate or interest (whether present or future and whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**liabilities** means all liabilities, debts and obligations (whether present or future and whether vested or contingent and whether personal or assignable).

**rights** means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent and whether personal or assignable).

**transition period** means the period of 6 months commencing on the repeal of the PIC Act (or such other period as may be prescribed by the regulations).

## 5 Powers of Commission regarding PIC matters

- (1) The Commission may exercise any of the Commission's functions under this Act in relation to anything done or omitted to be done by, to or in relation to the PIC (including, for example, the punishment of contempt of the PIC).
- (2) Without limiting subclause (1) or any other power of the Commission, the Commission may continue any investigation, inquiry, hearing or other matter commenced but not completed by the PIC, and may for this purpose adopt any evidence taken, assessments made or opinions formed by the PIC.
- (3) Without limiting subclause (1) or any other power of the Commission, the Commission may continue to take any action that PIC or the PIC Commissioner may have taken



before the repeal of the PIC Act in respect of the following—

- (a) any matter referred to PIC or complaint or report made to it and any action taken in respect of such a referral, complaint or report,
  - (b) any subpoena, notice or application under the PIC Act,
  - (c) any search warrant issued under the PIC Act,
  - (d) any order, arrangement or direction for the protection of witnesses (including an order, arrangement or direction referred to in clause 2A of Schedule 3 to the PIC Act).
- (4) Accordingly, this Act has effect, for the purposes of this clause, with any necessary adaptations and with such modifications as may be prescribed by the regulations.

## **6 Powers of Commission regarding matters related to Ombudsman**

- (1) The Commission may exercise any of the Commission's functions under this Act in relation to anything done or omitted to be done by, to or in relation to the Ombudsman under former Part 8A, the Ombudsman Act or a covert powers Act as in force immediately before their amendment by this Act, except as provided by clause 16.
- (2) Without limiting subclause (1) or any other power of the Commission, the Commission may deal with any complaint made to the Ombudsman before the commencement of those amendments and may continue any investigation, inquiry or other matter commenced but not completed by the Ombudsman, and may for this purpose adopt any evidence taken, assessments made or opinions formed by the Ombudsman.
- (3) Accordingly, this Act has effect, for the purposes of this clause, with any necessary adaptations and with such modifications as may be prescribed by the regulations.

## **7 Transfer of records**

- (1) A transferred record is to be treated for the purposes of any law of the State as if it were a record that the Commission or Inspector (as the case requires) had lawfully obtained in the performance of its (or the Inspector's) functions or the exercise of its (or the Inspector's) powers under this Act or any covert powers Act. Accordingly, the transfer of a record does not of itself prevent the use of such a record in any proceedings or render the record inadmissible if it would be able to be used or would be admissible in proceedings under this Act.

### **Note—**

Subclause (1) does not otherwise affect the operation of rules as to the admissibility of evidence such as section 138 (Exclusion of improperly or illegally obtained evidence) of the [Evidence Act 1995](#).

- (2) In particular, nothing prevents or restricts—

- (a) the provision, making available or disclosure to the Commission or Inspector of any PIC record, Ombudsman record or Inspectorial record, or
  - (b) the disclosure or use by the Commission or Inspector of a transferred record, or of matter in or referred to in a transferred record, in connection with the performance of its (or the Inspector's) functions or the exercise of its (or the Inspector's) powers under this Act or any covert powers Act.
- (3) This clause has effect despite section 21 of the *State Records Act 1998*, section 34 of the Ombudsman Act, section 56 of the PIC Act or the secrecy provisions of a covert powers Act.

## **8 Secrecy and confidentiality**

- (1) Sections 176–178 and 180 apply to and in respect of any transferred record to which a relevant secrecy provision applied before the commencement of this clause and, for that purpose, a reference in those sections—
- (a) to a provision of this Act includes a reference to the corresponding relevant secrecy provision of the PIC Act or Ombudsman Act or secrecy provision of a covert powers Act, and
  - (b) to the exercise of functions under this Act includes a reference to the exercise of functions under the PIC Act or Ombudsman Act or a covert powers Act.
- (2) In this clause—
- secrecy provision** means the following—
- (a) sections 52, 53, 54 and 56 of the PIC Act,
  - (b) sections 19A, 19B, 19C and 34 of the Ombudsman Act,
  - (c) a secrecy provision of a covert powers Act.

## **9 Arrangements between PIC and ICAC**

Until an arrangement for the purposes of section 171 (Arrangements between Commission and ICAC) is entered into between the Commission and the ICAC Commissioner, an arrangement in force between the PIC Commissioner and the ICAC Commissioner under section 131 of the PIC Act has effect (with any necessary modifications) as if it were an arrangement between the Commission and the ICAC Commissioner under section 171.

## **10 Monitoring arrangements between Ombudsman and Commissioner of Police**

Until an agreement as referred to in section 14 (1) (h) is entered into between the Commissioner of Police and the Commission with respect to arrangements for monitoring by the Commission of police investigations under section 101, an arrangement in force

between the Commissioner of Police and the Ombudsman under section 146 (3) of the former Part 8A has effect (with any necessary modifications) as if it were an agreement concerning such arrangements between the Commissioner of Police and the Commission referred to in section 14 (1) (h).

### **11 Guidelines with respect to police complaints**

Until misconduct matters management guidelines are made publicly available by the Commission—

- (a) a complaint of a kind that, in accordance with the guidelines agreed under section 122 (2) of the *Police Act 1990* (as in force immediately before its amendment by this Act) was a notifiable complaint, is taken to be a notifiable misconduct matter, and
- (b) a complaint of a kind that, in accordance with such guidelines, need not be dealt with under former Part 8A is a misconduct matter that need not be investigated under this Act or Part 8A of the *Police Act 1990* as amended by this Act.

### **12 Inspector of Crime Commission**

- (1) On the repeal day, the person holding office as Inspector of the Crime Commission ceases to hold office as Inspector of the Crime Commission.
- (2) The person is not entitled to any remuneration or compensation because of that loss of office.
- (3) On and from the repeal day, the Law Enforcement Conduct Commission may exercise any of the Commission's functions under this Act in relation to anything done or omitted to be done by, to or in relation to the Crime Commission or an officer of the Crime Commission by the Inspector of the Crime Commission before the repeal day.
- (4) In this clause—

**repeal day** means the day on which Part 4 of the *Crime Commission Act 2012* is repealed by this Act.

### **13 PIC Inspector**

- (1) On the repeal day, the person holding office as PIC Inspector ceases to hold office as PIC Inspector.
- (2) The person is not entitled to any remuneration or compensation because of that loss of office.
- (3) On and from the repeal day, the Inspector may exercise any of the PIC Inspector's functions under this Act in relation to anything done or omitted to be done by, to or in relation to PIC or an officer of PIC by the PIC Inspector before the repeal day.
- (4) In this clause—

**repeal day** means the day on which the *Police Integrity Commission Act 1996* is repealed by this Act.

#### **14 Powers of Inspector regarding matters related to PIC Inspector**

- (1) The Inspector may exercise any of the Inspector's functions under this Act in relation to anything done or omitted to be done by, to or in relation to the PIC Inspector.
- (2) Without limiting subclause (1) or any other power of the Inspector, the Inspector may continue any investigation, inquiry or other matter commenced but not completed by the PIC Inspector and may for this purpose adopt any evidence taken by the PIC Inspector.
- (3) Accordingly, this Act has effect, for the purposes of this clause, with any necessary adaptations and with such modifications as may be prescribed by the regulations.

#### **15 Powers of Inspector regarding covert powers Act matters**

The Inspector may exercise any of the Inspector's functions under a covert powers Act in relation to anything done or omitted to be done by, to or in relation to a covert powers Act by the Ombudsman as in force immediately before its amendment by this Act.

#### **16 Operation Prospect**

- (1) An amendment made to the Ombudsman Act or *Police Act 1990*, or repeal of the PIC Act, by this Act does not affect any action taken by the Ombudsman before the amendment or repeal with respect to Operation Prospect and the Ombudsman may, for the purpose only of commencing proceedings for offences arising out of Operation Prospect and subject to this clause, exercise any function in respect of Operation Prospect that the Ombudsman could have exercised before the amendment or repeal as if those Acts had not been amended or repealed.
- (2) Subclause (1) does not authorise the Ombudsman to accept, investigate or commence any inquiry in respect of a complaint referred to in section 12 of the Ombudsman Act (whether or not relevant to Operation Prospect) made after the commencement of this clause.
- (3) For the purposes only of Operation Prospect, the Ombudsman may commence proceedings for an offence.
- (4) However, the Ombudsman does not have the power to commence proceedings for an offence unless the Director of Public Prosecutions has advised the Ombudsman in writing that the proceedings may be commenced by the Ombudsman.
- (5) For that purpose, the Director of Public Prosecutions may liaise with the Ombudsman, but is to act independently in deciding to advise that proceedings for the offence may be commenced.

- (6) A reference in this clause to the **Ombudsman** includes a reference to a special officer or officer of the Ombudsman.

### **Part 3 Provision consequent on enactment of [Law Enforcement Conduct Commission Amendment Act 2020](#)**

#### **17 Creation of vacancy**

The removal from office of a member of the Commission, or an Assistant Commissioner, or an alternate Commissioner, under Part 6 of the [Government Sector Employment Act 2013](#) before the commencement of the [Law Enforcement Conduct Commission Amendment Act 2020](#) is taken to have created a vacancy in that office.

#### **Schedule 4-7 (Repealed)**