



New South Wales

Crime Commission Bill 2012

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to re-enact (in modernised form) the *New South Wales Crime Commission Act 1985* (the *NSWCC Act*) so as to implement certain recommendations contained in the Report of the Special Commission of Inquiry into the New South Wales Crimes Commission of 30 November 2011 (the Patten Report) in whole or in part and to make other modifications,
- (b) to repeal the *NSWCC Act*,
- (c) to amend the *Criminal Assets Recovery Act 1990* (the *CAR Act*) as follows:
 - (i) to overcome the decision in *New South Wales Crime Commission v Cook* [2011] NSWSC 1348 by enabling the Supreme Court to make consent orders giving effect to the terms of agreements negotiated between the Commission and persons whose interest in property are subject to confiscation orders under that Act without being required to take into account certain restrictions on payment of legal expenses set out in the Act,

- (ii) to provide that such consent orders may only be made if the Commissioner for the New South Wales Crime Commission (the *Commission*) has certified that guidelines with respect to the negotiation of terms of agreements with respect to the making of consent orders set by the New South Wales Crime Commission Management Committee (the *Management Committee*) have been complied with,
- (iii) to enable the Supreme Court to direct the NSW Trustee and Guardian to pay certain legal expenses incurred in respect of proceedings for confiscation orders in stages,
- (d) to make consequential amendments to the CAR Act and other statutory instruments.

In re-enacting the NSWCC Act, the Bill makes the following main changes and additions to the provisions of that Act:

- (a) the object of the proposed Act is widened to emphasise the Commission's role in combatting all organised and other serious crime (not primarily the reduction of the incidence of illegal drug trafficking as in the NSWCC Act),
- (b) as a corollary of the expansion of the object of the proposed Act, the functions of the Commission are expanded to cover relevant criminal activity in relation to any offence punishable by imprisonment for life or a term of 3 or more years or a serious crime concern (involving the committal of such offences on an organised, systemic or sustained basis),
- (c) the Commission is re-structured as a statutory corporation with no members, all the functions of which are exercisable by the Commissioner for the NSW Crime Commission (the *Commissioner*),
- (d) a person may be appointed as Commissioner only if he or she has special legal qualifications (as defined in the proposed Act),
- (e) provision is made for the appointment of two or more full or part-time Assistant Commissioners, at least one of whom must have such special legal qualifications,
- (f) provision is made for appointment of an Inspector of the Commission (having similar powers of scrutiny of the Commission and its officers as the Inspector of the Police Integrity Commission has with respect to that Commission and its officers),
- (g) the joint committee currently known as the Committee on the Office of the Ombudsman and the Police Integrity Commission (to be re-named as the Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission by the proposed Act) is given the power to veto the appointments of the Commissioner and the Inspector and powers of oversight over the exercise of functions by the Commissioner, the Inspector and the Management Committee,

- (h) the Management Committee will consist of 5 (instead of 4 members), one of whom will be the Chief Executive of the Ministry for Police and Emergency Services (instead of the Minister for Police) and one of whom will be an independent chairperson who must be a former Judge of the Supreme Court of a State or Territory or the Federal Court or a former Justice of the High Court,
- (i) the Management Committee is given the power to refer matters relating to serious crime concerns (as defined in the proposed Act) to the Commission for investigation,
- (j) the prohibition in the NSWCC Act against the Management Committee referring a matter to the Commission for investigation unless it is satisfied that ordinary police methods of investigation are unlikely to be effective is removed and replaced with a new test requiring the Commission to consider whether use of the powers of the Commission appears necessary to fully investigate the matter concerned, whether it is in the public interest for the Commission to investigate the matter and whether the relevant criminal activity or serious crime concern is sufficiently serious or prevalent to warrant investigation,
- (k) the Management Committee is required to review references on a regular basis and is given expanded powers to approve and set guidelines with respect to the exercise of functions by the Commission (including guidelines with respect to the negotiation of the terms of consent orders under the CAR Act),
- (l) the Management Committee is empowered to make arrangements with the head of one or more investigative agencies for bodies of persons from those agencies (*task forces*) to assist the Commission in carrying out an investigation into matters relating to a relevant criminal activity or a serious crime concern or any of its other functions (not only, as at present under the NSWCC Act, for the use of police task forces),
- (m) provisions relating to the investigative powers of the Commission and hearings are modernised and clarified in various respects,
- (n) provision is made to require officers of the Commission, and applicants for positions as officers of the Commission, to disclose the pecuniary and financial interests of themselves and certain of their associates.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be proclaimed.

Clause 3 states that the object of the proposed Act is to reduce the incidence of organised and other serious crime.

Clause 4 defines terms used in the proposed Act, including *serious crime concern*.

Clause 5 defines *relevant offence*.

Clause 6 provides that notes do not form part of the proposed Act.

Part 2 New South Wales Crime Commission

Division 1 Constitution of Commission

Clauses 7–9 constitute the Commission and provide for the appointment of the Commissioner and Assistant Commissioners.

Division 2 Functions of Commission

Clauses 10–15 specify the functions of the Commission and provide for delegation of those functions.

Division 3 Search warrants

Clauses 16–18 deal with the issue of search warrants for the purposes of investigations.

Division 4 Hearings

Clauses 19–27 empower the Commission to hold private hearings for the purposes of an investigation and deal with the attendance of witnesses before the Commission.

Division 5 Obtaining information, documents and things

Clauses 28–31 contain provisions relating to information gathering by the Commission.

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

Clauses 32–35 deal with reviews by the Supreme Court of decisions of the Commission relating to refusals or failures to produce documents or things or answer questions.

Division 7 Attendance before Commission

Clauses 36–43 deal with attendance of witnesses before the Commission.

Division 8 Protection of witnesses and evidence

Clauses 44–46 contain provisions for the protection of witnesses and evidence.

Division 9 Miscellaneous

Clauses 47 and 48 create offences relating to contempt of the Commission and protect executive officers and others from liability.

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

Clauses 49–59 constitute the Management Committee and outline its functions, powers and duties.

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

Clauses 60–69 provide for the appointment of the Inspector and outline the Inspector's powers, functions and duties.

Part 5 Parliamentary Joint Committee

Clauses 70 and 71 outline the functions of the Joint Committee.

Part 6 Officers of the Commission

Clauses 72–78 provide for the appointment or engagement of staff of the Commission and require officers of the Commission, and applicants for positions as officers of the Commission, to disclose the pecuniary and financial interests of themselves and certain of their associates.

Part 7 Miscellaneous

Clauses 79–88 contain miscellaneous provisions, including provisions relating to public sittings, disclosures and divulging of information, annual reports and service of documents and machinery provisions.

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

Schedule 1 contains ancillary provisions relating to the offices of Commissioner and Assistant Commissioner.

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

Schedule 2 contains ancillary provisions relating to the Management Committee.

Schedule 3 Provisions relating to Inspector

Schedule 3 contains ancillary provisions relating to the office of Inspector.

Schedule 4 Savings, transitional and other provisions

Schedule 4 contains savings, transitional and other provisions.

Schedule 5 Amendment of Acts and regulations

Schedule 5 contains consequential amendments to a number of Acts and regulations. It also contains the amendments to the *Criminal Assets Recovery Act 1990* described in the Overview of the Bill above (Schedule 5.2).