



New South Wales

# Police Integrity Commission Amendment Bill 2004

## Explanatory note

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

## Overview of Bill

The object of this Bill is to amend the *Police Integrity Commission Act 1996* (**the PIC Act**) so as:

- (a) to apply the provisions of sections 331 and 332 of the *Crimes Act 1900* to proceedings for an offence under section 107 of the PIC Act (False or misleading evidence) so as to enable a jury to convict a person who has made conflicting statements of which at least one must be false and so as to deny a person a right of acquittal merely because a false or misleading statement is contained in a document that contains a technical defect, and
- (b) to enable the Police Integrity Commission (**PIC**) to communicate information to the Commissioner of Police, and to other persons or bodies, on the understanding that the information is confidential, and
- (c) to replace a requirement for the PIC Commissioner to obtain the Minister's concurrence when authorising a police officer to exercise any investigative, surveillance or enforcement functions under or for the purposes of the PIC Act with a requirement for the PIC Commissioner to notify the PIC Inspector of the granting of the authorisation, and

- (d) to enable PIC to dispose of certain documents and things (being documents and things seized for the purposes of its investigations) in accordance with the directions of a Local Court, and
- (e) to provide for the service of documents by fax and by e-mail, and
- (f) to confirm the independent and accountable nature of PIC, and
- (g) to provide for a further review of the PIC Act at the end of 5 years from the date of assent to the proposed Act.

The Bill also amends the *Police Act 1990* so as to require the Commissioner of Police to consult with PIC or the Ombudsman, as the case requires, before taking management or disciplinary action against a police officer who is the subject of a complaint being dealt with by either of those bodies.

The Bill also makes consequential amendments to the *New South Wales Crime Commission Act 1985*.

## Outline of provisions

**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 appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Police Integrity Commission Act 1996* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to other Acts set out in Schedule 2.

## Schedule 1      Amendment of Police Integrity Commission Act 1996

### False or misleading evidence

Section 107 of the PIC Act creates an offence of giving false or misleading evidence at a hearing before PIC. This section is analogous to section 330 of the *Crimes Act 1900* which deals with false or misleading evidence that does not amount to perjury. Section 331 of the *Crimes Act 1900* permits a jury to find a person guilty of an offence under section 330 with respect to the making of conflicting statements of which one (but the jury cannot determine which) must have been made by the person in the knowledge that it was false. Section 332 of the *Crimes Act 1900* denies a person the right to acquittal merely because a false or misleading statement is contained in an affidavit or other document in respect of which there is a technical defect. **Schedule 1 [5]** applies those sections to proceedings under section 107 of the PIC Act.

### **Communication of information from PIC to Commissioner of Police and other bodies**

Sections 77 and 83 of the PIC Act provide that information communicated by PIC in the context of a referral of matters from it to the Commissioner of Police or some other person or body is automatically subject to the secrecy provisions of section 56 of that Act. Section 18 of the PIC Act, which also deals with the communication of information by PIC to other bodies, invokes the secrecy provisions only if information is communicated on the understanding that it is confidential. **Schedule 1 [3] and [4]** impose a similar qualification on the communication of information under sections 77 and 83.

### **Protocols for exercise by police of investigative, surveillance or enforcement functions under PIC Act**

Section 142 of the PIC Act prohibits a police officer from exercising investigative, surveillance or enforcement functions under or for the purposes of the Act unless he or she is authorised to do so by the PIC Commissioner, and requires the PIC Commissioner to obtain the Minister's concurrence to any such authorisation. **Schedule 1 [7] and [8]** amend section 142 to replace the requirement for the PIC Commissioner to obtain the Minister's concurrence with a requirement for the PIC Commissioner to notify the PIC Inspector of the granting of the authorisation.

### **Disposal of evidence**

Section 47 of the PIC Act provides for the seizure of documents and things for the purpose of PIC investigations, and for their return when they are no longer needed. **Schedule 1 [2]** amends section 47 so as to allow PIC to seek directions from a Local Court as to the disposal of such documents and things in circumstances where nobody is entitled to, or wants to have, possession of them.

### **Service by fax and e-mail**

Section 139 of the PIC Act allows documents to be served on a person personally, or by delivery or post to the person's business or residential address. **Schedule 1 [6]** amends section 139 so as to permit service by fax or e-mail to any person who indicates that fax or e-mail is an available means of communication for that person, and so as to provide that service of a faxed copy of a document has the same effect as service of the document that was faxed.

### **Confirmation of independent and accountable nature of PIC**

Section 3 (a) of the PIC Act provides that a principal object of the Act is to establish a body whose principal function is to detect, investigate and prevent police corruption and other serious police misconduct. **Schedule 1 [1]** amends section 3 (a) so as to make it clear that the body is intended to be both independent and accountable.

### **Further review of PIC Act**

Section 146 of the PIC Act provides for the review of the Act at the end of 5 years from its date of assent. **Schedule 1 [9]** amends section 146 so as to require a further review of the Act at the end of 5 years from the date of assent to the proposed Act. **Schedule 1 [10]** makes a consequential amendment to section 146 (3).

## **Schedule 2      Amendment of other Acts**

### **New South Wales Crime Commission Act 1985**

**Schedule 2.1** makes similar amendments to sections 12 and 20 of the *New South Wales Crime Commission Act 1985* as are made by Schedule 1 to sections 47 and 107 of the PIC Act in relation to the disposal of evidence no longer needed and proceedings for offences of giving false or misleading evidence.

### **Police Act 1990**

**Schedule 2.2 [1]** amends section 173 so as to require the Commissioner of Police to consult with PIC or the Ombudsman, as the case requires, before taking management or disciplinary action against a police officer who is the subject of a complaint being dealt with by either of those bodies. Failure to comply with this requirement will not affect the validity of any such action.

**Schedule 2.2 [2]** corrects a typographical mistake in section 207A.

First print



New South Wales

# Police Integrity Commission Amendment Bill 2004

## Contents

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	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Police Integrity Commission Act 1996 No 28	2
4 Amendment of other Acts	2
Schedule 1 Amendment of Police Integrity Commission Act 1996	3
Schedule 2 Amendment of other Acts	5





New South Wales

# Police Integrity Commission Amendment Bill 2004

No. , 2004

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## **A Bill for**

An Act to amend the *Police Integrity Commission Act 1996* and certain other Acts with respect to the giving of false or misleading evidence, the communication of information, the exercise by police of investigative and other functions and the service of documents; and with respect to other matters.

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**The Legislature of New South Wales enacts:**

**1    Name of Act**

This Act is the *Police Integrity Commission Amendment Act 2004*.

**2    Commencement**

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

**3    Amendment of Police Integrity Commission Act 1996 No 28**

The *Police Integrity Commission Act 1996* is amended as set out in Schedule 1.

**4    Amendment of other Acts**

Each Act referred to in Schedule 2 is amended as set out in that Schedule.

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## Schedule 1      Amendment of Police Integrity Commission Act 1996

(Section 3)

**[1] Section 3 Principal objects of Act**

Omit “a body” from section 3 (a).

Insert instead “an independent, accountable body”.

**[2] Section 47 Seizure of other documents and things**

Insert after section 47 (2):

**(3) Other disposal**

If it appears to the Commission:

(a) that there is no person who is entitled to possession of any document or thing referred to in subsection (2), or

(b) that there is such a person, but the person does not wish to have possession of any such document or thing,

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

**[3] Section 77 Referral of matter**

Insert “on the understanding that the information is confidential” after “under this section” in section 77 (5).

**[4] Section 83 Referral of matter**

Insert “on the understanding that the information is confidential” after “under this section” in section 83 (6).

**[5] Section 107 False or misleading evidence**

Insert at the end of the section:

(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.

**[6] Section 139 Service of documents**

Insert at the end of the section:

(2) In addition to the means of service provided for under subsection (1), service of a document on a person (whether a natural person

or a body corporate) may be effected by facsimile transmission or other electronic means notified by the person as being an available means of communication.

- (3) Service of a facsimile copy of a document in accordance with subsection (1) is taken to be service of the document for the purposes of that subsection.

**[7] Section 142 Exercise of functions by police**

Omit “Such an authorisation may not be given without concurrence of the Minister.” from section 142 (1).

**[8] Section 142 (1A)**

Insert after section 142 (1):

- (1A) As soon as practicable after giving such an authorisation, the Commissioner must notify the Inspector of that fact.

**[9] Section 146 Review of Act**

Insert after section 146 (2):

- (2A) A further such review is to be undertaken as soon as practicable after the period of 5 years from the date of assent to the *Police Integrity Commission Amendment Act 2004*.

**[10] Section 146 (3)**

Omit “the review”. Insert instead “each such review”.

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## Schedule 2    Amendment of other Acts

(Section 4)

### 2.1    New South Wales Crime Commission Act 1985 No 117

#### [1]    Section 12 Seizure pursuant to search warrant—special provisions

Insert after section 12 (3):

(3A)    If it appears to the Commission:

- (a)    that there is no person who is entitled to possession of any thing referred to in subsection (2), or
- (b)    that there is such a person, but the person does not wish to have possession of any such thing,

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

#### [2]    Section 20 False or misleading evidence

Insert after section 20 (4):

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

### 2.2    Police Act 1990 No 47

#### [1]    Section 173 Commissioner may take action with respect to police officer's misconduct or unsatisfactory performance

Insert after section 173 (4):

- (4A)    Before making an order under subsection (2) or (3) with respect to a police officer who is the subject of a complaint under Part 8A that is being dealt with by the Police Integrity Commission or the Ombudsman, the Commissioner must consult with the Police Integrity Commission or the Ombudsman, as the case requires.
- (4B)    Failure to comply with subsection (4A) with respect to any order under subsection (2) or (3) does not affect the validity of the order.

Police Integrity Commission Amendment Bill 2004

Schedule 2      Amendment of other Acts

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**[2] Section 207A Commissioner may conduct integrity testing programs**

Omit “351B or section” from section 207A (4) (f).

Insert instead “section 351B or”.

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