

FIRST PRINT

**CRIMES (SECRET COMMISSIONS) AMENDMENT BILL
1987**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Local Government (Secret Commissions) Amendment Bill 1987 is cognate with this Bill.

The objects of this Bill are—

- (a) to repeal the Secret Commissions Prohibition Act 1919; and
- (b) to re-enact, with modifications, the provisions of that Act as Part IVA of the Crimes Act 1900.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 repeals the Secret Commissions Prohibition Act 1919.

Clause 5 is a saving provision relating to offences committed under the Secret Commissions Prohibition Act 1919 before the commencement of the proposed Act.

Schedule 1 (1) amends section 1 of the Crimes Act 1900 (Short title and contents of Act) as a consequence of the proposed insertion of Part IVA into that Act.

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Schedule 1 (2) inserts into the Crimes Act 1900 proposed Part IVA (Corruptly receiving commissions and other corrupt practices) which contains the following proposed sections:

Section 249A (Interpretation) which defines the words "agent" and "benefit" for the purposes of the proposed new Part. Corporations and unincorporated associations may be either agents or principals within the meaning of the proposed new Part.

Section 249B (Corrupt commissions or rewards) which restates the offence of an agent's corruptly receiving or soliciting, or of corruptly giving to an agent, a commission or reward for the doing of or failure to do things relating to the affairs or business of the agent's principal. The maximum penalty will be imprisonment for 7 years.

Section 249C (Misleading documents or statements used or made by agents) which restates the offence of an agent's receiving or using false or misleading documents with intent to defraud the agent's principal. The proposed section also makes it an offence for an agent to make a false or misleading statement to the agent's principal with intent to defraud the principal. The maximum penalty for the offences will be imprisonment for 7 years.

Section 249D (Corrupt inducements for advice) which restates the offence of corruptly giving, receiving, offering or soliciting inducements in connection with the giving of advice, where the advice is intended or likely to influence a person to enter into a contract with another person or to promote the appointment of another person to any office. The maximum penalty will be imprisonment for 7 years.

Section 249E (Corrupt benefits for trustees and others) which restates the offence of a person's offering or giving a benefit to a trustee, or a trustee's receiving or soliciting a benefit, where the benefit is an inducement or reward for the appointment of anyone to the trustee's position instead of the trustee. The offence is extended to the offering or giving of a benefit to certain other persons having control over the property of others and the receiving of a benefit by any such person. The maximum penalty will be imprisonment for 7 years. The proposed section also requires the consent of the Attorney General before proceedings can be brought for an offence under the section.

Section 249F (Aiding, abetting etc.) which provides that a person who, in New South Wales, aids, abets, counsels or procures the commission in New South Wales of an offence under the new Part, or the commission in a place outside New South Wales of an offence punishable under the corresponding provisions of a law of that place, is guilty of an offence. The maximum penalty will be imprisonment for 7 years.

Section 249G (Repayment of value of gift etc.) which provides that, in addition to imposing a penalty on a person convicted of an offence under the new Part, the court may order the person to pay the amount or value of any relevant benefit as the court directs.

Section 249H (Disqualification for office) which states that a person convicted of an offence under the new Part is disqualified for a civic office (within the meaning of the Local Government Act 1919) for 7 years or for any lesser period the court orders.

Section 249I (Dismissal of trivial case) which provides for the dismissal of a case if the alleged offence appears to the court to be trivial or purely technical.

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Section 249J (Custom not a defence) which states that it is not a defence in proceedings for an offence under the new Part that the receiving, soliciting, giving or offering of a benefit is customary in a trade, business, profession or calling.

Schedule 1 (3) amends section 476 of the Crimes Act 1900 to enable offences under proposed section 249C or 249F (where no benefit which may be assessed in terms of money is concerned) to be dealt with by a Local Court with the consent of the accused and offences under proposed section 249B, 249D, 249E or 249F to be so dealt with if the relevant benefit is an amount or has a value not exceeding \$10,000.

Schedule 1 (4) amends section 501 of the Crimes Act 1900 to enable offences under proposed section 249B, 249D, 249E or 249F to be dealt with by a Local Court without the consent of the accused if the relevant benefit is an amount or has a value not exceeding \$2,000.

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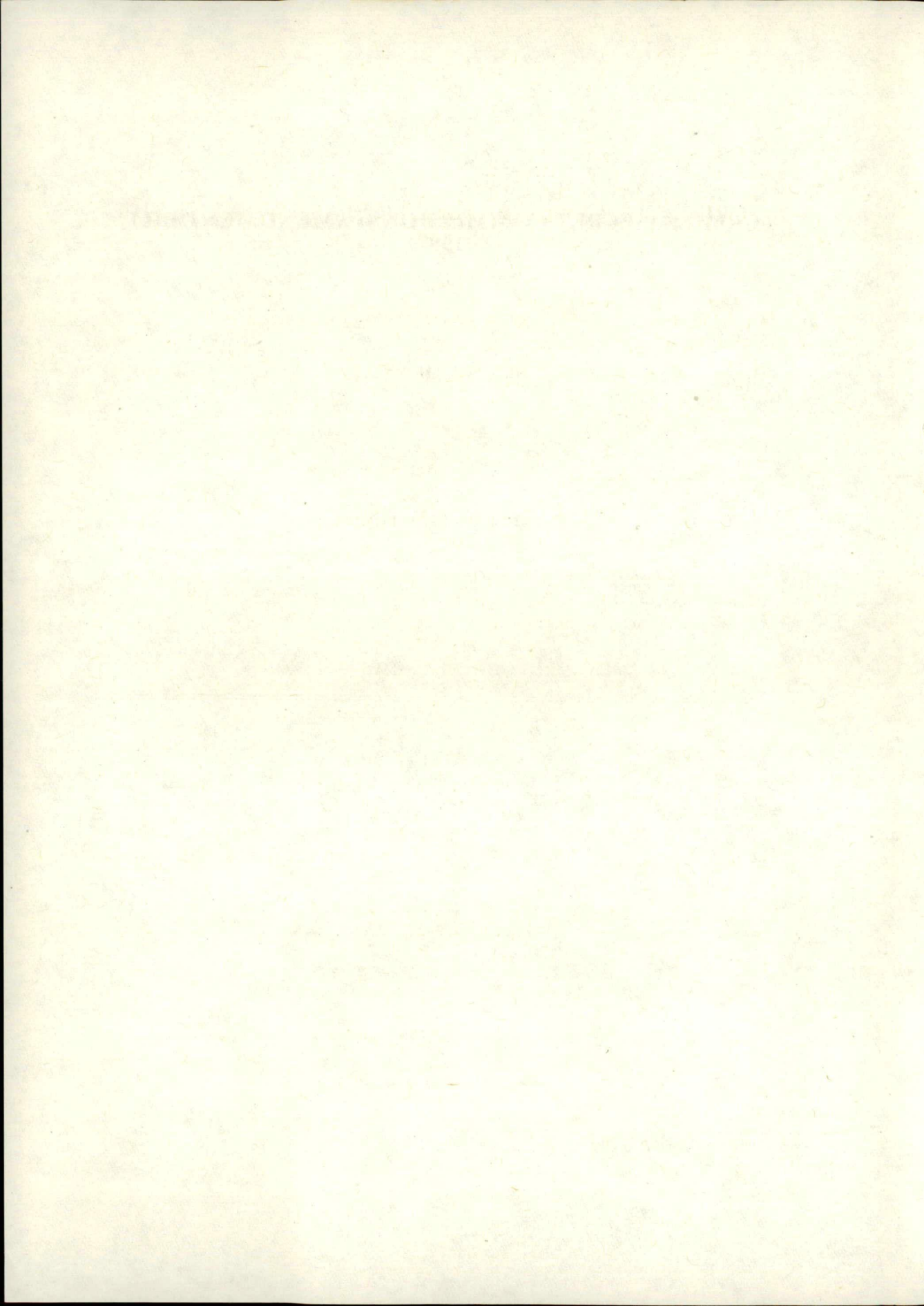
NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 40, 1900
4. Repeal of Act No. 26, 1919
5. Savings

SCHEDULE 1—AMENDMENTS TO THE CRIMES ACT 1900



**CRIMES (SECRET COMMISSIONS) AMENDMENT BILL
1987**

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Crimes Act 1900 with respect to the giving or receiving of secret commissions and other corrupt practices; to repeal the Secret Commissions Prohibition Act 1919; to make certain savings; and for other purposes.

See also Local Government (Secret Commissions) Amendment Bill 1987.

Crimes (Secret Commissions) Amendment 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

5 Short title

1. This Act may be cited as the "Crimes (Secret Commissions) Amendment Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 40, 1900

15 3. The Crimes Act 1900 is amended in the manner set forth in Schedule 1.

Repeal of Act No. 26, 1919

4. The Secret Commissions Prohibition Act 1919 is repealed.

Savings

20 5. (1) The Secret Commissions Prohibition Act 1919, as in force when the offence was committed, applies to and in respect of any offence committed under that Act before the commencement of this Act.

(2) Where the Secret Commissions Prohibition Act 1919 or any provision of that Act is referred to in any other Act or any instrument (whether made
25 under an Act or not), the reference extends to Part IVA of the Crimes Act 1900, as amended by this Act, or to any corresponding provision of that Part.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE CRIMES ACT 1900

(1) Section 1 (Short title and contents of Act)—

5 After the matter relating to Part IV, insert:

PART IV_A—CORRUPTLY RECEIVING COMMISSIONS AND
OTHER CORRUPT PRACTICES—ss. 249A–249J

(2) Part IV_A—

After Part IV, insert:

10 PART IV_A
CORRUPTLY RECEIVING COMMISSIONS AND OTHER
CORRUPT PRACTICES

Interpretation

249A. In this Part—

15 “agent” includes—

- (a) any person employed by, or acting for or on behalf of, any other person (who in this case is referred to in this Part as the person’s principal) in any capacity;
- 20 (b) any person purporting to be, or intending to become, an agent of any other person (who in this case is referred to in this Part as the person’s principal); and
- (c) any person serving under the Crown (which in this case is referred to in this Part as the person’s principal);

“benefit” includes money and any contingent benefit.

25 **Corrupt commissions or rewards**

249B. (1) If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit—

- 30 (a) as an inducement or reward for or otherwise on account of—
 - (i) doing or not doing something, or having done or not having done something; or

*Crimes (Secret Commissions) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CRIMES ACT 1900—*continued*

(ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,

in relation to the affairs or business of the agent's principal;
or

5 (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,

the agent is liable to imprisonment for 7 years.

10 (2) If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit—

(a) as an inducement or reward for or otherwise on account of the agent's—

15 (i) doing or not doing something, or having done or not having done something; or

(ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,

20 in relation to the affairs or business of the agent's principal;
or

(b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,

25 the firstmentioned person is liable to imprisonment for 7 years.

(3) For the purposes of subsection (1), where a benefit is received or solicited by anyone with the consent or at the request of an agent, the agent shall be deemed to have received or solicited the benefit.

SCHEDULE 1—*continued*AMENDMENTS TO THE CRIMES ACT 1900—*continued***Misleading documents or statements used or made by agents**

5 249C. (1) Any agent who uses, or gives to the agent's principal, a document which contains anything that is false or misleading in any material respect, with intent to defraud the agent's principal, is liable to imprisonment for 7 years.

(2) Any agent who makes a statement to the agent's principal which is false or misleading in any material respect, with intent to defraud the principal, is liable to imprisonment for 7 years.

Corrupt inducements for advice

10 249D. (1) If a person corruptly gives a benefit to another person for giving advice to a third person, being advice which the person giving the benefit intends will influence the third person—

(a) to enter into a contract with the person who gives the benefit; or

15 (b) to appoint the person who gives the benefit to any office, and, at the time the benefit is given, the person who gives the benefit intends the giving of the benefit not be made known to the person advised, the person who gives the benefit is liable to imprisonment for 7 years.

20 (2) If a person corruptly receives a benefit for giving advice to another person, being advice which is likely to influence the other person—

(a) to enter into a contract with the person who gave the benefit; or

25 (b) to appoint the person who gave the benefit to any office,

and, at the time the benefit is received, the person who receives the benefit intends the giving of the benefit not be made known to the person to be advised, the person who receives the benefit is liable to imprisonment for 7 years.

*Crimes (Secret Commissions) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CRIMES ACT 1900—*continued*

(3) For the purposes of subsections (1) and (2), where a benefit is given or received by anyone with the consent or at the request of another person, the other person shall be deemed to have given or received the benefit.

5 (4) If any person corruptly offers or solicits a benefit for the giving of advice by one person to another—

(a) intending that the advice will influence the person advised—

(i) to enter into a contract with anyone; or

10 (ii) to appoint anyone to any office; and

(b) intending that the giving or receipt of the benefit not be made known to the person advised,

the firstmentioned person is liable to imprisonment for 7 years.

(5) In this section—

15 (a) a reference to the giving of advice includes a reference to the providing of information orally or in writing;

(b) a reference to entering into a contract includes a reference to offering to enter into a contract; and

20 (c) a reference to the appointment of a person includes a reference to—

(i) joining in the appointment of the person; and

(ii) voting for or assisting in the election or appointment of the person.

Corrupt benefits for trustees and others

25 249E. (1) In this section, a reference to a person entrusted with property is a reference to—

(a) a trustee of the property;

(b) an executor or administrator appointed for the purpose of dealing with the property;

*Crimes (Secret Commissions) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CRIMES ACT 1900—*continued*

- (c) a person who, because of a power of attorney or a power of appointment, has authority over the property; and
- 5 (d) a person or a member of a committee managing or administering the property (or appointed or employed to manage or administer the property) under the Mental Health Act 1958 or Protected Estates Act 1983.

10 (2) Any person who offers or gives a benefit to a person entrusted with property, and any person entrusted with property who receives or solicits a benefit for anyone, without the consent—

- (a) of each person beneficially entitled to the property; or
- (b) of the Supreme Court,

15 as an inducement or reward for the appointment of any person to be a person entrusted with the property, are each liable to imprisonment for 7 years.

(3) In this section, a reference to the appointment of a person includes a reference to—

- (a) joining in the appointment of the person; and
- (b) assisting in the appointment of the person.

20 (4) Proceedings for an offence under this section shall not be commenced without the consent of the Attorney General.

(5) A consent to commence any such proceedings purporting to have been signed by the Attorney General is evidence of that consent without proof of the signature of the Attorney General.

25 **Aiding, abetting etc.**

249F. (1) A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Part is guilty of an offence and is liable to imprisonment for 7 years.

SCHEDULE 1—*continued*AMENDMENTS TO THE CRIMES ACT 1900—*continued*

5 (2) A person who, in New South Wales, aids, abets, counsels or procures the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Part, is guilty of an offence and is liable to imprisonment for 7 years.

Repayment of value of gift etc.

10 249G. (1) If a person is convicted of an offence under this Part, the court may (as well as imposing a penalty for the offence) order the person to pay to such other person as the court directs the whole or part of the amount or the value, assessed by the court, of any benefit received or given by the person.

15 (2) Any money payable to a person under this section may be recovered in a court of competent jurisdiction as a debt due to the person.

Disqualification for office

20 249H. If a person is convicted of an offence under this Part, the person is disqualified for a civic office, within the meaning of the Local Government Act 1919, for the period of 7 years from the conviction or such lesser period as the court may order.

Dismissal of trivial case

249I. If, in any proceedings for an offence under this Part, it appears to the court that the offence is of a trivial or merely technical nature, the court may in its discretion dismiss the case.

25 Custom not a defence

249J. In any proceedings for an offence under this Part, it is not a defence that the receiving, soliciting, giving or offering of any benefit is customary in any trade, business, profession or calling.

Crimes (Secret Commissions) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE CRIMES ACT 1900—*continued*

- (3) Section 476 (**Indictable offences punishable summarily with consent of accused**)—
- (a) Section 476 (6) (a) (iii)—
After “248,” insert “249B, 249D, 249E, 249F.”
- 5 (b) Section 476 (6) (d)—
After “178BB”, insert “, 249C, 249F (where no benefit is concerned)”.
- (4) Section 501 (**Indictable offences punishable summarily without consent of accused**)—
- 10 Section 501 (1) (c)—
After “247”, insert “, 249B, 249D, 249E, 249F”.

**CRIMES (SECRET COMMISSIONS) AMENDMENT ACT
1987 No. 116**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Act No. 40, 1900
4. Repeal of Act No. 26, 1919
5. Savings

SCHEDULE 1—AMENDMENTS TO THE CRIMES ACT 1900

1957, Nov. 11

NEW YORK



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CRIMES (SECRET COMMISSIONS) AMENDMENT ACT 1987
No. 116

NEW SOUTH WALES



Act No. 116, 1987

An Act to amend the Crimes Act 1900 with respect to the giving or receiving of secret commissions and other corrupt practices; to repeal the Secret Commissions Prohibition Act 1919; to make certain savings; and for other purposes. [Assented to 16 June 1987]

See also Local Government (Secret Commissions) Amendment Act 1987.

Crimes (Secret Commissions) Amendment 1987

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Crimes (Secret Commissions) Amendment Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 40, 1900

3. The Crimes Act 1900 is amended in the manner set forth in Schedule 1.

Repeal of Act No. 26, 1919

4. The Secret Commissions Prohibition Act 1919 is repealed.

Savings

5. (1) The Secret Commissions Prohibition Act 1919, as in force when the offence was committed, applies to and in respect of any offence committed under that Act before the commencement of this Act.

(2) Where the Secret Commissions Prohibition Act 1919 or any provision of that Act is referred to in any other Act or any instrument (whether made under an Act or not), the reference extends to Part IVA of the Crimes Act 1900, as amended by this Act, or to any corresponding provision of that Part.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE CRIMES ACT 1900

(1) Section 1 (**Short title and contents of Act**)—

After the matter relating to Part IV, insert:

PART IV_A—CORRUPTLY RECEIVING COMMISSIONS AND
OTHER CORRUPT PRACTICES—ss. 249A–249J(2) Part IV_A—

After Part IV, insert:

PART IV_A
CORRUPTLY RECEIVING COMMISSIONS AND OTHER
CORRUPT PRACTICES**Interpretation**

249A. In this Part—

“agent” includes—

- (a) any person employed by, or acting for or on behalf of, any other person (who in this case is referred to in this Part as the person’s principal) in any capacity;
- (b) any person purporting to be, or intending to become, an agent of any other person (who in this case is referred to in this Part as the person’s principal); and
- (c) any person serving under the Crown (which in this case is referred to in this Part as the person’s principal);

“benefit” includes money and any contingent benefit.

Corrupt commissions or rewards

249B. (1) If any agent corruptly receives or solicits (or corruptly agrees to receive or solicit) from another person for the agent or for anyone else any benefit—

- (a) as an inducement or reward for or otherwise on account of—
 - (i) doing or not doing something, or having done or not having done something; or

Crimes (Secret Commissions) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE CRIMES ACT 1900—*continued*

- (ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,

in relation to the affairs or business of the agent's principal;
or

- (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,

the agent is liable to imprisonment for 7 years.

(2) If any person corruptly gives or offers to give to any agent, or to any other person with the consent or at the request of any agent, any benefit—

- (a) as an inducement or reward for or otherwise on account of the agent's—

- (i) doing or not doing something, or having done or not having done something; or

- (ii) showing or not showing, or having shown or not having shown, favour or disfavour to any person,

in relation to the affairs or business of the agent's principal;
or

- (b) the receipt or any expectation of which would in any way tend to influence the agent to show, or not to show, favour or disfavour to any person in relation to the affairs or business of the agent's principal,

the firstmentioned person is liable to imprisonment for 7 years.

(3) For the purposes of subsection (1), where a benefit is received or solicited by anyone with the consent or at the request of an agent, the agent shall be deemed to have received or solicited the benefit.

SCHEDULE 1—*continued*AMENDMENTS TO THE CRIMES ACT 1900—*continued***Misleading documents or statements used or made by agents**

249C. (1) Any agent who uses, or gives to the agent's principal, a document which contains anything that is false or misleading in any material respect, with intent to defraud the agent's principal, is liable to imprisonment for 7 years.

(2) Any agent who makes a statement to the agent's principal which is false or misleading in any material respect, with intent to defraud the principal, is liable to imprisonment for 7 years.

Corrupt inducements for advice

249D. (1) If a person corruptly gives a benefit to another person for giving advice to a third person, being advice which the person giving the benefit intends will influence the third person—

- (a) to enter into a contract with the person who gives the benefit; or
- (b) to appoint the person who gives the benefit to any office,

and, at the time the benefit is given, the person who gives the benefit intends the giving of the benefit not be made known to the person advised, the person who gives the benefit is liable to imprisonment for 7 years.

(2) If a person corruptly receives a benefit for giving advice to another person, being advice which is likely to influence the other person—

- (a) to enter into a contract with the person who gave the benefit; or
- (b) to appoint the person who gave the benefit to any office,

and, at the time the benefit is received, the person who receives the benefit intends the giving of the benefit not be made known to the person to be advised, the person who receives the benefit is liable to imprisonment for 7 years.

*Crimes (Secret Commissions) Amendment 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE CRIMES ACT 1900—*continued*

(3) For the purposes of subsections (1) and (2), where a benefit is given or received by anyone with the consent or at the request of another person, the other person shall be deemed to have given or received the benefit.

(4) If any person corruptly offers or solicits a benefit for the giving of advice by one person to another—

(a) intending that the advice will influence the person advised—

(i) to enter into a contract with anyone; or

(ii) to appoint anyone to any office; and

(b) intending that the giving or receipt of the benefit not be made known to the person advised,

the firstmentioned person is liable to imprisonment for 7 years.

(5) In this section—

(a) a reference to the giving of advice includes a reference to the providing of information orally or in writing;

(b) a reference to entering into a contract includes a reference to offering to enter into a contract; and

(c) a reference to the appointment of a person includes a reference to—

(i) joining in the appointment of the person; and

(ii) voting for or assisting in the election or appointment of the person.

Corrupt benefits for trustees and others

249E. (1) In this section, a reference to a person entrusted with property is a reference to—

(a) a trustee of the property;

(b) an executor or administrator appointed for the purpose of dealing with the property;

Crimes (Secret Commissions) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE CRIMES ACT 1900—*continued*

(c) a person who, because of a power of attorney or a power of appointment, has authority over the property; and

(d) a person or a member of a committee managing or administering the property (or appointed or employed to manage or administer the property) under the Mental Health Act 1958 or Protected Estates Act 1983.

(2) Any person who offers or gives a benefit to a person entrusted with property, and any person entrusted with property who receives or solicits a benefit for anyone, without the consent—

(a) of each person beneficially entitled to the property; or

(b) of the Supreme Court,

as an inducement or reward for the appointment of any person to be a person entrusted with the property, are each liable to imprisonment for 7 years.

(3) In this section, a reference to the appointment of a person includes a reference to—

(a) joining in the appointment of the person; and

(b) assisting in the appointment of the person.

(4) Proceedings for an offence under this section shall not be commenced without the consent of the Attorney General.

(5) A consent to commence any such proceedings purporting to have been signed by the Attorney General is evidence of that consent without proof of the signature of the Attorney General.

Aiding, abetting etc.

249F. (1) A person who aids, abets, counsels, procures, solicits or incites the commission of an offence under this Part is guilty of an offence and is liable to imprisonment for 7 years.

SCHEDULE 1—*continued*AMENDMENTS TO THE CRIMES ACT 1900—*continued*

(2) A person who, in New South Wales, aids, abets, counsels or procures the commission of an offence in any place outside New South Wales, being an offence punishable under the provisions of a law in force in that place which corresponds to a provision of this Part, is guilty of an offence and is liable to imprisonment for 7 years.

Repayment of value of gift etc.

249G. (1) If a person is convicted of an offence under this Part, the court may (as well as imposing a penalty for the offence) order the person to pay to such other person as the court directs the whole or part of the amount or the value, assessed by the court, of any benefit received or given by the person.

(2) Any money payable to a person under this section may be recovered in a court of competent jurisdiction as a debt due to the person.

Disqualification for office

249H. If a person is convicted of an offence under this Part, the person is disqualified for a civic office, within the meaning of the Local Government Act 1919, for the period of 7 years from the conviction or such lesser period as the court may order.

Dismissal of trivial case

249I. If, in any proceedings for an offence under this Part, it appears to the court that the offence is of a trivial or merely technical nature, the court may in its discretion dismiss the case.

Custom not a defence

249J. In any proceedings for an offence under this Part, it is not a defence that the receiving, soliciting, giving or offering of any benefit is customary in any trade, business, profession or calling.

Crimes (Secret Commissions) Amendment 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE CRIMES ACT 1900—*continued*

- (3) Section 476 (**Indictable offences punishable summarily with consent of accused**)—
- (a) Section 476 (6) (a) (iii)—
After “248,” insert “249B, 249D, 249E, 249F.”
- (b) Section 476 (6) (d)—
After “178BB”, insert “, 249C, 249F (where no benefit is concerned)”.
- (4) Section 501 (**Indictable offences punishable summarily without consent of accused**)—
- Section 501 (1) (c)—
After “247”, insert “, 249B, 249D, 249E, 249F”.

