

# ROYAL COMMISSION (POLICE SERVICE) ACT 1994 No. 60

NEW SOUTH WALES



## TABLE OF PROVISIONS

### PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Act applies only to Police Royal Commission
4. Definitions
5. Relationship with 1923 Act

### PART 2—OBTAINING INFORMATION, DOCUMENTS AND OTHER THINGS

6. Power to obtain information (s. 21 ICAC Act)
7. Power to obtain documents etc. (s. 22 ICAC Act)
8. Privilege as regards information, documents etc. (s. 24 ICAC Act)
9. Self-incrimination (s. 26 ICAC Act)
10. Power to enter public premises (ss. 23, 25 ICAC Act)

### PART 3—ATTENDANCE BEFORE THE COMMISSION

11. Arrest of witness (s. 36 ICAC Act)
12. Declaration as to objection by witness (s. 38 ICAC Act)
13. Reimbursement of expenses of witnesses (s. 51 ICAC Act)
14. Attendance of prisoner before Commission (s. 39 ICAC Act)

### PART 4—SEARCH AND LISTENING DEVICE WARRANTS

15. Issue of search warrant (s. 40 ICAC Act)
16. Authority conferred by warrant (s. 41 ICAC Act)
17. Duty to show warrant (s. 42 ICAC Act)
18. Use of force (s. 43 ICAC Act)
19. Use of assistants to execute warrant (s. 44 ICAC Act)
20. Execution of warrant by day or night (s. 45 ICAC Act)

*Royal Commission (Police Service) Act 1994 No. 60*

---

21. Expiry of warrant (s. 46 ICAC Act)
22. Seizure of other documents and things (s. 47 (1) ICAC Act)
23. Application of provisions of the Search Warrants Act 1985 (s. 48 ICAC Act)
24. Obstruction of person executing search warrant (s. 84 ICAC Act)
25. Listening devices (s. 19 (2) ICAC Act)

PART 5—PROTECTION OF WITNESSES AND EVIDENCE

26. Protection of witnesses (s. 50 ICAC Act)
27. Publication of evidence etc. (s. 112 ICAC Act)
28. Disclosures prejudicing inquiry (s. 114 ICAC Act)
29. Indemnities and undertakings (s. 49 ICAC Act)

PART 6—SECRECY, DISCLOSURE, ADMISSIBILITY

30. Secrecy (s. 111 ICAC Act)
31. Disclosure of information and giving of evidence by Ombudsman
32. Secrecy provisions in other Acts
33. Admissibility of documents relating to complaints about police
34. Telecommunications (Interception) (New South Wales) Act 1987
35. Legal Profession Act 1987
36. Privacy Committee Act 1975
37. Religious confessions

PART 7—MISCELLANEOUS

38. Effect of pending proceedings (s. 18 ICAC Act)
  39. Delegation (s. 107 ICAC Act)
  40. Protection from liability (s. 109 ICAC Act)
  41. Proceedings for offences
  42. Regulations
-

**ROYAL COMMISSION (POLICE SERVICE) ACT 1994 No. 60**

NEW SOUTH WALES



**Act No. 60, 1994**

An Act to confer additional powers on the Royal Commission of inquiry into the operations of the New South Wales Police Service and to assist the conduct of that inquiry; and for other purposes. [Assented to 1 November 1994]

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

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the Royal Commission (Police Service) Act 1994.

**Commencement**

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

**Act applies only to Police Royal Commission**

3. (1) This Act applies only to:

- (a) the Royal Commission of inquiry issued by the Governor by letters patent under the Public Seal on 13 May 1994, appointing the Honourable James Roland Tomson Wood sole commissioner to make inquiry into, and report on, the operations of the New South Wales Police Service; and
- (b) any further Royal Commission by which a commissioner is appointed as sole commissioner to exercise functions at the request of, or otherwise to assist, the Royal Commissioner under the Royal Commission referred to in paragraph (a), but only if the terms of that further Royal Commission provide that this Act is to apply to the Commission.

(2) If a Royal Commission to which this Act applies is altered, extended or continued by another Royal Commission, or is replaced by another Royal Commission on the same or similar terms as that Royal Commission, this Act extends to apply to the Royal Commission as so altered, extended, continued or replaced.

**Definitions**

4. (1) In this Act:

“**exercise**” a function includes perform a duty;

“**function**” includes a power, authority or duty;

“**ICAC Act**” means the Independent Commission Against Corruption Act 1988;

“**legal practitioner**” has the same meaning as in the Legal Profession Act 1987;

**“1923 Act”** means the Royal Commissions Act 1923;

**“officer of the Commission”** means any legal practitioner appointed by the Crown to assist the Commission or any other person employed, seconded or otherwise engaged to assist the Commission;

**“premises”** includes any structure, building, aircraft, vehicle, vessel and place (whether built or not), and any part thereof;

**“public authority”** and **“public official”** have the same meanings as in the ICAC Act;

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

(2) Notes included in this Act are explanatory notes and do not form part of this Act.

### **Relationship with 1923 Act**

5. (1) This Act is to be read as if it formed part of the 1923 Act (but only for the purposes of the operation of this Act in relation to a Royal Commission to which this Act applies). A reference in any other Act to the 1923 Act does not include a reference to this Act, except as expressly provided by this Act.

(2) The provisions of this Act are in addition to and not in derogation of any provisions of the 1923 Act, except as specifically provided by this Act. In particular, Part 2 of this Act does not limit or otherwise affect the provisions of the 1923 Act with respect to a person summoned to attend or appearing as a witness before the Commission.

(3) Nothing in the 1923 Act operates to constrain or restrict the exercise of a function conferred or imposed by or under this Act.

## **PART 2—OBTAINING INFORMATION, DOCUMENTS AND OTHER THINGS**

### **Power to obtain information (ss. 21, 82 ICAC Act)**

6. (1) For the purposes of the Commission’s inquiry, the Commissioner may, by notice in writing served on a public authority or public official, require the authority or official to 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 the Commissioner or an officer of the Commission) to whom the production is to be made.

*Royal Commission (Police Service) Act 1994 No. 60*

---

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

**Power to obtain documents etc. (ss. 22, 83 ICAC Act)**

7. (1) For the purposes of the Commission's inquiry, the Commissioner 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 the Commissioner or an 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.

**Privilege as regards information, documents etc. (s. 24 ICAC Act)**

8. (1) This section applies where, under section 6 or 7, the Commissioner requires any person:

- (a) to produce any statement of information; or
- (b) to produce any document or other thing.

*Royal Commission (Police Service) Act 1994 No. 60*

---

(2) The Commissioner must set aside the requirement if it appears to the Commissioner that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commissioner that the person consents to compliance with the requirement.

- (3) The person must however comply with the requirement despite:
- (a) any rule which 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 which 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.

**Self-incrimination (s. 26 ICAC Act)**

9. (1) This section applies where, under section 6 or 7, the Commissioner requires any person:

- (a) to produce any statement of information; or
- (b) to produce 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, 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 or the 1923 Act).

(3) They may however be used for the purposes of the Commission's inquiry, despite any such objection.

**Power to enter public premises (ss. 23, 25 ICAC Act)**

10. (1) For the purposes of the Commission's inquiry, the Commissioner or an officer of the Commission authorised in writing by the Commissioner 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 powers conferred by this section must not be exercised other than for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve a criminal offence.

(3) 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.

(4) 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 whereby, 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.

(5) The powers may however be exercised despite:

- (a) any rule of law which, 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 which 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.

### **PART 3—ATTENDANCE BEFORE THE COMMISSION**

#### **Arrest of witness (s. 36 ICAC Act)**

**11. (1)** If a person served with a summons to attend the Commission as a witness fails to attend in answer to the summons, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness.

(2) The Commissioner may issue a warrant for the arrest of a person whose evidence is desired and is necessary and relevant to the Commission's inquiry if the Commissioner is satisfied by evidence on oath or affirmation that it is probable that the person:

- (a) will not attend before the Commission 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 Commission if the person departs.



*Royal Commission (Police Service) Act 1994 No. 60*

---

(3) The powers conferred by subsection (2) must not be exercised unless the Commissioner is satisfied that the evidence of the person concerned is required for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve a criminal offence.

(4) The Commissioner is authorised to administer an oath or affirmation for the purposes of subsection (2).

(5) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.

(6) A warrant may be issued under subsection (2) 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.

(7) A warrant under this section authorises the arrest of the witness and his or her being promptly brought before the Commission and detained in custody for that purpose until released by order of the Commissioner.

(8) 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.

(9) 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.

(10) This section operates in place of section 16 (Warrant) of the 1923 Act.

**Declaration as to objection by witness (s. 38 ICAC Act)**

12. The 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.

**Reimbursement of expenses of witnesses (s. 51 ICAC Act)**

13. (1) A witness attending or appearing before the Commission 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 for the purposes of section 51 of the Independent Commission Against Corruption Act 1988 or, if there is no such prescribed scale, such amount as the Royal Commissioner determines.

(2) Section 13 of the 1923 Act (Allowance to witnesses) does not apply in respect of witnesses attending or appearing before a Royal Commission to which this Act applies.

#### **Attendance of prisoner before Commission (s. 39 ICAC Act)**

14. (1) If the Commissioner requires the attendance before the Commission of a prisoner, the Commissioner may, by order in writing served on the governor of the prison in whose custody the prisoner is, direct the governor to produce the prisoner, or have the prisoner produced, at the time and place stated in the order.

(2) Such an order is sufficient authority to the governor of the prison for producing the prisoner or having the prisoner produced, and the prisoner must be produced accordingly.

(3) A prisoner is, when produced under this section in the actual custody of the governor of the prison, a prison officer or a police officer, taken to be in lawful custody.

(4) The governor, prison officer or police officer must in due course return the prisoner to the prison.

(5) In this section, “governor of a prison”, “prison” and “prisoner” have the same meanings as in the Prisons Act 1952.

### **PART 4—SEARCH AND LISTENING DEVICE WARRANTS**

#### **Issue of search warrant (s. 40 ICAC Act)**

15. (1) An authorised justice 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) The Commissioner, on application made to the Commissioner under subsection (4), may issue a search warrant if the Commissioner thinks fit in the circumstances and if satisfied that there are reasonable grounds for doing so.

(3) Search warrants should, as far as practicable, be issued by authorised justices, but nothing in this subsection affects the discretion of the Commissioner to issue them.

(4) An authorised person may apply to an authorised justice or the Commissioner for a search warrant if the person has reasonable grounds for believing that:

*Royal Commission (Police Service) Act 1994 No. 60*

---

- (a) there is in or on any premises a document or other thing connected with any matter that is the subject of the Commission's inquiry or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises; and
- (b) the matter involves any conduct of a person that constitutes or involves or may constitute or involve a criminal offence.

(5) In this section:

**"authorised justice"** has the same meaning as in the Search Warrants Act 1985;

**"authorised person"** means an officer of the Commission and, in relation to an application to an authorised justice for a search warrant, includes the Commissioner.

**Authority conferred by warrant (s. 41 ICAC Act)**

16. (1) A search warrant authorises any police officer, or any other person, named in the warrant:

- (a) to enter the premises; and
- (b) to search the premises for documents or other things connected with any matter that is the subject of the Commission's inquiry; 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 executing a search warrant may search a person found in or on the premises whom the police officer reasonably suspects of having a document or other thing mentioned in the warrant.

(3) If the person executing a search warrant is a police officer under the law of another State or of a Territory or the Commonwealth, he or she may exercise the functions of a police officer under subsection (2).

(4) Section 12 (Inspection and copies of documents) of the 1923 Act extends to apply to a document or other thing seized pursuant to a search warrant.

**Duty to show warrant (s. 42 ICAC Act)**

17. A person executing a search warrant must produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

**Use of force (s. 43 ICAC Act)**

18. (1) A person authorised to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

(2) A person authorised to enter premises under a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of the search.

**Use of assistants to execute warrant (s. 44 ICAC Act)**

19. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

**Execution of warrant by day or night (s. 45 ICAC Act)**

20. (1) A search warrant may be executed by day, but must not be executed by night unless the person issuing the warrant, by the warrant, authorises its execution by night.

(2) The person issuing a search warrant is not to authorise the execution of the warrant by night unless satisfied that there are reasonable grounds for doing so. Those grounds include (but are not limited to) the following:

- (a) the execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing which is likely to be on the premises only at night or other relevant circumstances will only exist at night;
- (b) there is likely to be less risk to the safety of any person if it is executed at night;
- (c) an occupier is likely to be on the premises only at night to allow entry without the use of force.

(3) In this section:

“**by day**” means during the period between 6 a.m. and 9 p.m. on any day;

“**by night**” means during the period between 9 p.m. on any day and 6 a.m. on the following day.

**Expiry of warrant (s. 46 ICAC Act)**

21. A search warrant ceases to have effect:

- (a) one month after its issue; or
- (b) if it is withdrawn by the person who issued the warrant; or
- (c) when it is executed,

whichever first occurs.

**Seizure of other documents and things (s. 47 (1) ICAC Act)**

22. 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 the law of the Commonwealth, a State or a Territory; and
- (b) the first-mentioned person 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,

that 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.

**Application of provisions of the Search Warrants Act 1985 (s. 48 ICAC Act)**

23. (1) Part 3 of the Search Warrants Act 1985 (other than sections 16–20) applies to a search warrant issued under this Act.

(2) Part 3 of the Search Warrants Act 1985 so applies as if references in that Part to an authorised justice to whom an application for a search warrant is made or by whom a search warrant is issued included (where relevant) references to the Commissioner, where such an application is made to the Commissioner or a search warrant is issued by the Commissioner.

**Obstruction of person executing search warrant (s. 84 ICAC Act)**

24. 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.

**Listening devices (s. 19 (2) ICAC Act)**

25. The Commissioner or an officer of the Commission may seek the issue of a warrant under the Listening Devices Act 1984.

**PART 5—PROTECTION OF WITNESSES AND EVIDENCE****Protection of witnesses (s. 50 ICAC Act)**

**26. (1)** If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary to avoid prejudice to the safety of any such person or to protect any such person from intimidation or harassment.

**(2)** In this section, a reference to a person who is assisting the Commission is a reference to a person who:

- (a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing; or
- (b) has produced or proposes to produce a document or other thing to the Commission under this Act or the 1923 Act, otherwise than by attending before the Commission; or
- (c) has assisted, is assisting or is to assist the Commission in some other manner.

**Publication of evidence etc. (s. 112 ICAC Act)**

**27. (1)** The Commissioner may direct that:

- (a) any evidence given before the Commission; or
- (b) the contents of any document, or a description of any thing, produced to the Commission, or seized under a search warrant issued under this Act; or
- (c) any information that might enable a person who has given evidence before the Commission to be identified; or
- (d) the fact that any person has given or may be about to give evidence before the Commission,

must not be published or must not be published except in such manner, and to such persons, as the Commissioner specifies.

**(2)** The Commissioner is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

**(3)** A person must not make a publication in contravention of a direction given under this section.

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

**Disclosures prejudicing inquiry (s. 114 ICAC Act)**

**28. (1)** A person who is required by a notice under section 6 or 7 to produce a statement of information or to attend and produce a document or other thing, or by a summons to attend the Commission and give evidence or produce a document or other thing, must not disclose any information about the notice or summons that is likely to prejudice the Commission's inquiry or any part or aspect of the Commission's inquiry to which it relates.

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

**(2)** Subsection (1) does not apply to a notice or summons unless it specifies that information about the notice or summons must not be disclosed.

**(3)** A person does not contravene this section if:

- (a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter; or
- (b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons; or
- (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

**(4)** A reference in this section to the disclosure of any information about a notice or summons includes a reference to:

- (a) a disclosure about the existence or nature of the notice or summons or of the part or aspect of the Commission's inquiry to which it relates; and
- (b) a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the notice or summons or of the part or aspect of the Commission's inquiry to which it relates.

**Indemnities and undertakings (s. 49 ICAC Act)**

**29. (1)** The Commissioner may recommend to the Attorney General that a person be granted (under section 13 of the Criminal Procedure Act 1986) an indemnity from prosecution.

**(2)** The Commissioner may recommend to the Attorney General that a person be given (under section 14 of the Criminal Procedure Act 1986) an undertaking that:

*Royal Commission (Police Service) Act 1994 No. 60*

---

- (a) an answer, statement or disclosure in proceedings before the Commission; or
- (b) the fact of a disclosure or production of a document in proceedings before the Commission,

will not be used in evidence against the person.

(3) Section 14 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 any activity in connection with the Commission's inquiry involving the Commission, the Commissioner or an officer of the Commission.

## **PART 6—SECURITY, DISCLOSURE, ADMISSIBILITY**

### **Secrecy (s. 111 ICAC Act)**

**30. (1)** This section applies to:

- (a) a person who is or was the Commissioner or an officer of the Commission; and
- (b) a person who is or was a person who assists, or performs services for or on behalf of, a legal practitioner appointed by the Crown to assist the Commission in the exercise of the legal practitioner's functions as counsel to the Commission.

(2) A person to whom this section applies must not, directly or indirectly, except for the purposes of this Act or the 1923 Act or the person's Royal Commission functions or otherwise in connection with the exercise of the person's Royal Commission functions:

- (a) make a record of any information; or
- (b) divulge 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 Royal Commission functions.

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

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

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



*Royal Commission (Police Service) Act 1994 No. 60*

---

- (b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's Royal Commission functions,

except for the purposes of a prosecution or disciplinary proceedings instituted as a result of the Commission's inquiry.

(4) Despite this section, a person to whom this section applies may divulge any such information:

- (a) for the purposes of the Commission's inquiry and report or otherwise for the purposes of and in accordance with this Act or the 1923 Act; or
- (b) for the purposes of a prosecution or disciplinary proceedings instituted as a result of the Commission's inquiry; or
- (c) in accordance with a direction of the Commissioner, if the Commissioner certifies that it is necessary to do so in the public interest; or
- (d) to any prescribed authority or person.

(5) An authority or person to whom information is divulged under subsection (4), and any person or employee under the control of that authority or person, is subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) 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 the person's Royal Commission functions.

(6) In this section:

“**court**” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“**produce**” includes permit access to;

“**Royal Commission functions**” means functions arising under or in connection with this Act or the 1923 Act or any commission establishing or conferring functions on the Commission or conferring functions on the Commission or the Commissioner.

**Disclosure of information and giving of evidence by Ombudsman**

**31. (1)** The Ombudsman, and any officer of the Ombudsman acting with the approval of the Ombudsman, may:

- (a) furnish to the Commission information obtained by the Ombudsman or officer in exercising functions under the Ombudsman Act 1974, Part 8A (Complaints about conduct of police officers) of the Police Service Act 1990 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 or officer as witness) of the Ombudsman Act 1974 and section 169 (Ombudsman or officer as witness) of the Police Service Act 1990, and any other law.

(4) Section 35 of the Ombudsman Act 1974 and section 169 of the Police Service Act 1990 do not apply in respect of any proceedings for an offence under this Act.

(5) In this section, a reference to an officer of the Ombudsman includes a reference to an acting Ombudsman, a Deputy Ombudsman, an Assistant Ombudsman and a special officer of the Ombudsman.

### **Secrecy provisions in other Acts**

**32. (1)** The following provisions do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under this Act or the 1923 Act:

- (a) section 15 (Secrecy) of the Companies (Administration) Act 1981;
- (b) section 155A (Secrecy) of the Liquor Act 1982;
- (c) section 206 (Disclosure of information relating to Police Board functions) of the Police Service Act 1990;
- (d) section 72C (Secrecy) of the Registered Clubs Act 1976.

(2) For the purposes of section 13 (Unlawful disclosure of information concerning spent convictions) of the Criminal Records Act 1991, the Commission is taken to be a law enforcement agency.

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

**33. (1)** A document brought into existence for the purposes of Part 8A (Complaints about conduct of police officers) of the Police Service Act 1990 is admissible in evidence before the Commission.

(2) This section applies despite section 172A (Certain documents privileged) of the Police Service Act 1990.

**Telecommunications (Interception) (New South Wales) Act 1987**

**34.** Section 21 (Disclosure by persons under the Minister's administration) of the Telecommunications (Interception) (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.

**Legal Profession Act 1987**

**35.** Section 171R (Commissioner, Council etc. as witness) of the Legal Profession Act 1987 does not apply to proceedings for an offence under this Act.

**Note.** The section of the Legal Profession Act 1987 referred to here makes members of the Council and Tribunal under that Act (and certain other persons) not competent and not compellable to give evidence in legal proceedings. There is an exception for proceedings for an offence under the 1923 Act. Section 35 extends this exception to include proceedings for an offence under this Act.

**Privacy Committee Act 1975**

**36. (1)** Section 20 (Prohibition on disclosure by members and others) of the Privacy Committee Act 1975 does not apply to the disclosure of information for the purposes of any proceedings for an offence under this Act.

**(2)** Section 21 (Members and others as witnesses) of the Privacy Committee Act 1975 does not apply in respect of any proceedings for an offence under this Act.

**Note.** The sections of the Privacy Committee Act 1975 referred to here prevent disclosures by members and officers of the Privacy Committee and make those members and officers not competent and not compellable to give evidence in legal proceedings. There is an exception in each case in respect of proceedings for an offence under the 1923 Act. Section 36 extends this exception to include proceedings for an offence under this Act.

**Religious confessions**

**37.** Section 10 (Religious confessions) of the Evidence Act 1898 applies to any hearing or proceedings to which this Act applies.

**Note.** Section 10 of the Evidence Act 1898 protects religious confessions from disclosure in proceedings. The section specifically provides that the protection applies to a hearing or proceeding before a Royal Commission. Section 37 makes it clear that the protection extends to a hearing or proceeding under this Act.

**PART 7—MISCELLANEOUS****Effect of pending proceedings (s. 18 ICAC Act)**

**38. (1)** The Commissioner may do any or all of the following, despite any proceedings that may be in or before any court, tribunal, warden, coroner, Magistrate, justice of the peace or other person:

- (a) commence, continue, discontinue or complete the Commission's inquiry and any part or aspect of that inquiry;
- (b) furnish any report in connection with that inquiry or any part or aspect of that inquiry;
- (c) all such acts and things as are necessary or expedient for those purposes.

**(2)** If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commissioner may, to the extent to which the Commissioner thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced:

- (a) order any hearing or other matters relating to the inquiry are conducted in private during the currency of the proceedings; and
- (b) give directions under section 27 (Publication of evidence etc.), having effect during the currency of the proceedings.

**(3)** Subsection (2) does not apply:

- (a) (in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings; and
- (b) (in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.

**(4)** This section has effect whether or not the proceedings commenced before or after the Commission's inquiry commenced and has effect whether or not the Commission, the Commissioner or an officer of the Commission is a party to the proceedings.

**Delegation (s. 107 ICAC Act)**

**39.** The Commissioner may delegate any of the following functions of the Commissioner to the person appointed as Senior Counsel Assisting the Commission, to be exercisable only during the illness of the Commissioner or the absence of the Commissioner from Sydney or the State:

*Royal Commission (Police Service) Act 1994 No. 60*

---

- (a) functions under section 6 (Power to obtain information) of this Act;
- (b) functions under section 7 (Power to obtain documents) of this Act;
- (c) functions under section 10 (Power to enter public premises) of this Act;
- (d) functions under section 14 (Attendance of prisoner before Commission) of this Act;
- (e) functions under section 8 (Witnesses) of the 1923 Act.

**Protection from liability (s. 109 ICAC Act)**

**40. (1)** A matter or thing done by the Commission, the Commissioner or any person acting under the direction of the Commission or Commissioner which was done in good faith for the purposes of the Commission's inquiry or for the purpose of executing this or any other Act does not subject the Commissioner or the person so acting personally to any action, liability, claim or demand.

**(2)** Subsection (1) does not limit any protection or immunity afforded the Commissioner by section 6 (Protection of Commissioners) of the 1923 Act.

**(3)** A legal practitioner assisting the Commission or representing a person before the Commission has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.

**(4)** Subject to this Act and the 1923 Act, a person summoned to attend or appearing before the Commission 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 attaches to any person for compliance, or purported compliance in good faith, with any requirement made under this Act or the 1923 Act.

**(6)** In particular, if a person gives any statement of information or produces any document or other thing under section 6 or 7, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

**(7)** The reference to the 1923 Act in item 10 of Schedule 1 (Excluded conduct of public authorities) of the Ombudsman Act 1974 is taken to include a reference to this Act.

**Note.** Item 10 of Schedule 1 to the Ombudsman Act 1974 operates to exclude the conduct of a Royal Commissioner under the 1923 Act from investigation by the Ombudsman. Subsection (7) extends this to include conduct of the Royal Commissioner under this Act.

**Proceedings for offences**

41. Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

42. 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.

---

*[Minister's second reading speech made in—  
Legislative Assembly on 22 September 1994  
Legislative Council on 27 October 1994]*

FIRST PRINT

## ROYAL COMMISSION (POLICE SERVICE) BILL 1994

NEW SOUTH WALES



### EXPLANATORY NOTE

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

On 13 May 1994, the Governor issued a Royal Commission of inquiry by letters patent under the Public Seal of the State, appointing the Honourable James Roland Tomson Wood sole commissioner to make inquiry into, and report on, the operations of the New South Wales Police Service. This Bill applies to and in respect of that Royal Commission ("the Police Royal Commission").

The objects of this Bill are:

- (a) to confer additional powers on the Police Royal Commission paralleling powers conferred on the Independent Commission Against Corruption by the Independent Commission Against Corruption Act 1988 ("the ICAC Act"); and
- (b) to facilitate the co-operation of public authorities and officials (such as the Ombudsman) with the Commission's inquiry; and
- (c) to assist generally the conduct of the Commission's inquiry.

The functions conferred and imposed on the Police Royal Commission by this Bill are in addition to those conferred and imposed on Royal Commissions generally by the Royal Commissions Act 1923.

---

### PART 1—PRELIMINARY

**Clause 1** specifies 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** provides that the Act applies to the Police Royal Commission, including any Royal Commission by which the Police Royal Commission is altered, extended, continued or replaced (on the same or similar terms as the Police Royal Commission). The Act also applies to any other Royal Commission by which a Commissioner is appointed to report to or otherwise assist the Police Royal Commission.

*Royal Commission (Police Service) 1994*

---

**Clause 4** contains definitions of terms used in the proposed Act and interpretation provisions. The clause also provides that notes in the text of the proposed Act are explanatory notes and do not form part of the proposed Act.

**Clause 5** explains the relationship between the proposed Act and the Royal Commissions Act. The functions conferred or imposed on the Police Royal Commission by the proposed Act are in addition to those conferred or imposed on Royal Commissions generally by the Royal Commissions Act and nothing in that Act constrains the exercise of a function conferred or imposed by the proposed Act.

**PART 2—OBTAINING INFORMATION, DOCUMENTS AND OTHER THINGS**

**Clause 6** gives the Commissioner power to require public authorities and officials to provide information. (This provision parallels section 21 of the ICAC Act.)

**Clause 7** gives the Commissioner power to require any person to attend before the Commissioner or an officer of the Commission and produce a specified document or other thing. (This provision parallels section 22 of the ICAC Act.)

**Clause 8** allows claims of privilege to be made in respect of certain information, documents or other things produced to the Commission under clause 6 or 7. (This provision parallels section 24 of the ICAC Act.)

**Clause 9** protects persons from prosecution in respect of certain self-incriminating statements, documents or other things produced to the Commission. (This provision parallels section 26 of the ICAC Act.)

**Clause 10** gives the Commissioner or an authorised officer of the Commission power to enter the premises of a public authority or official and inspect and copy documents for the purpose of investigating conduct which may involve a criminal offence. A claim of privilege may be made in respect of such documents. (This provision parallels sections 23 and 25 of the ICAC Act.)

**PART 3—ATTENDANCE BEFORE THE COMMISSION**

**Clause 11** authorises the Commissioner to issue a warrant for the arrest of a person who fails to attend in answer to a summons to appear before the Commission. This power is broadly similar to powers conferred on a commissioner under the Royal Commissions Act. The clause goes on however to confer power on the Commissioner, for the purposes of investigating conduct which may involve a criminal offence, to issue a warrant for the arrest of a person whose evidence is required in connection with that investigation if the Commissioner is satisfied the person is unlikely to attend in answer to a summons. (This provision parallels section 36 of the ICAC Act.)

**Clause 12** empowers the making of a declaration that answers, documents or other things are given or produced subject to a general objection by the witness concerned, so as to avoid repeated objections. (This provision parallels section 38 of the ICAC Act.)

**Clause 13** provides for the payment of the expenses of a witness attending or appearing before the Commission. (This provision parallels section 51 of the ICAC Act.)

**Clause 14** provides for the attendance of prisoners before the Commission. (This provision parallels section 39 of the ICAC Act.)



*Royal Commission (Police Service) 1994*

---

**PART 4—SEARCH AND LISTENING DEVICE WARRANTS**

**Clause 15** authorises the issue of search warrants by an authorised justice or the Commissioner in connection with the investigation by the Commission of conduct which may involve a criminal offence. (This provision parallels section 40 of the ICAC Act.)

**Clause 16** sets out the powers conferred by a search warrant. (This provision parallels section 41 of the ICAC Act.)

**Clause 17** provides for the production of search warrants to the occupier of the premises being searched. (This provision parallels section 42 of the ICAC Act.)

**Clause 18** allows the use of reasonably necessary force to execute a search warrant. (This provision parallels section 43 of the ICAC Act.)

**Clause 19** allows the use of assistants to execute a search warrant. (This provision parallels section 44 of the ICAC Act.)

**Clause 20** provides that a warrant is not to authorise execution by night except in certain special circumstances. (This provision parallels section 45 of the ICAC Act and section 19 of the Search Warrants Act 1985.)

**Clause 21** specifies when a search warrant expires. (This provision parallels section 46 of the ICAC Act.)

**Clause 22** provides for the seizure of certain documents or other things found in the course of executing a search warrant. (This provision parallels section 47 (1) of the ICAC Act.)

**Clause 23** applies certain provisions of the Search Warrants Act 1985 to search warrants issued under the proposed Act. (This provision parallels section 48 of the ICAC Act.)

**Clause 24** makes it an offence to obstruct or hinder a person executing a search warrant. (This provision parallels section 84 of the ICAC Act.)

**Clause 25** provides that the Commissioner or an officer of the Commission may apply for the issue of a warrant authorising the use of a listening device under the Listening Devices Act 1984. (This provision parallels section 19 (2) of the ICAC Act.)

**PART 5—PROTECTION OF WITNESSES AND EVIDENCE**

**Clause 26** allows the Commissioner to make arrangements for the protection of witnesses or other persons whose safety may be prejudiced because they have assisted or are assisting the Commission. (This provision parallels section 50 of the ICAC Act.)

**Clause 27** allows the Commissioner to give directions prohibiting the publication of certain information or evidence given to the Commission. (This section parallels section 112 of the ICAC Act.)

**Clause 28** makes it an offence for a person who receives a summons or a notice to produce information or documents to the Commission to disclose information about the notice or summons that is likely to prejudice the Commission's inquiry or any aspect of that inquiry. (This provision parallels section 114 of the ICAC Act.)

*Royal Commission (Police Service) 1994*

---

**Clause 29** provides that the Attorney General may, on the recommendation of the Commissioner, grant an indemnity from prosecution to a person or give an undertaking not to use statements made to the Commission as evidence in other proceedings. (This provision parallels section 49 of the ICAC Act.)

**PART 6—SECRECY, DISCLOSURE, ADMISSIBILITY**

**Clause 30** imposes a duty of secrecy on certain persons who obtain information in connection with the Commission's inquiry. (This provision parallels section 111 of the ICAC Act.)

**Clause 31** provides that the Ombudsman may furnish certain information obtained by the Ombudsman to the Commission and may give evidence before the Commission and produce documents to the Commission. However, the Ombudsman (and his or her officers) cannot be compelled to give evidence or produce a document.

**Clause 32** provides that certain secrecy provisions in other Acts do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under the proposed Act or the Royal Commissions Act.

**Clause 33** provides that certain documents relating to complaints about police conduct are admissible in evidence before the Commission.

**Clause 34** creates an exception to secrecy provisions contained in the Telecommunications (Interception) (New South Wales) Act 1987 for proceedings for an offence under the proposed Act. (This provision parallels an existing exception for proceedings for an offence under the Royal Commissions Act.)

**Clause 35** relates to the competence and compellability of certain witnesses. At present, the Legal Profession Act 1987 provides that certain persons involved in the administration of that Act are neither competent nor compellable to give evidence in any proceedings in respect of any matter in which they were involved in the course of that administration. This clause creates an exception for proceedings for an offence under the proposed Act. (This parallels an existing exception for proceedings for an offence under the Royal Commissions Act.)

**Clause 36** creates an exception to secrecy provisions contained in the Privacy Committee Act 1975 for proceedings for an offence under the proposed Act. In addition, that Act also provides that certain persons involved in the execution or administration of that Act are neither competent nor compellable to give evidence in any proceedings in respect of any information obtained in that execution or administration. This clause creates an exception for proceedings for an offence under the proposed Act. (These exceptions parallel existing exceptions for proceedings for an offence under the Royal Commissions Act.)

**Clause 37** applies a provision in the Evidence Act 1898 (which gives members of the clergy the right to refuse to give evidence of a religious confession) to any hearing or proceedings to which the proposed Act applies. The provision currently applies to hearings or proceedings to which the Royal Commissions Act applies.

**PART 7—MISCELLANEOUS**

**Clause 38** authorises the Commissioner to carry out the Commission's inquiry even though court proceedings are in progress, subject to certain requirements that, as far as practicable, the inquiry be held in private. (This provision parallels section 18 of the ICAC Act.)

*Royal Commission (Police Service) 1994*

---

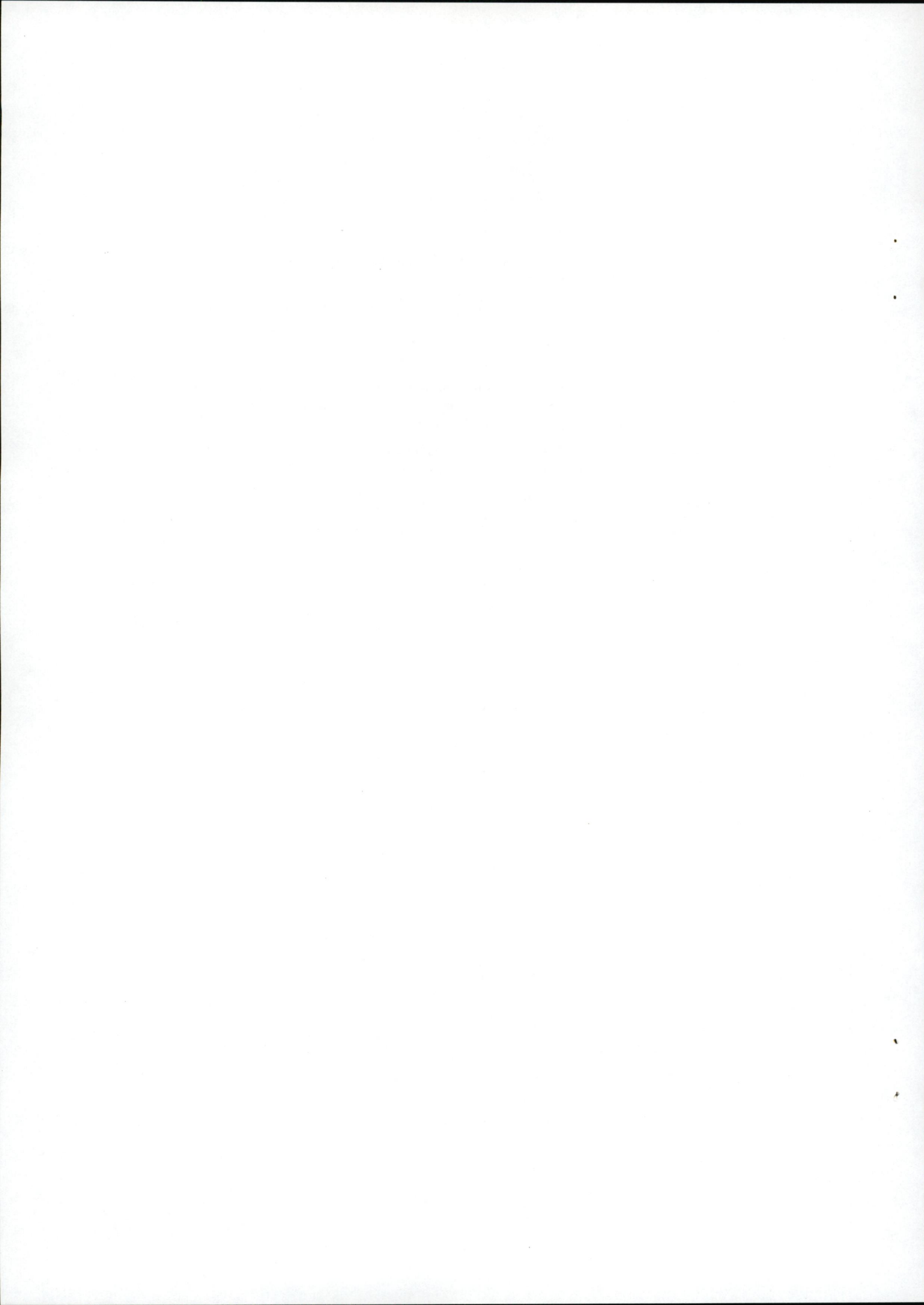
**Clause 39** allows the Commissioner to delegate certain powers to Senior Counsel Assisting the Commission, to be exercisable only during the illness of the Commissioner or the absence of the Commissioner from Sydney or the State. (This provision parallels section 107 of the ICAC Act.)

**Clause 40** provides protection from liability to the Commissioner, any person acting under the direction of the Commission or the Commissioner and other persons involved in the Commission's inquiry. (This provision parallels section 109 of the ICAC Act.)

**Clause 41** provides that proceedings for an offence under the proposed Act are to be dealt with summarily before a Local Court.

**Clause 42** contains a regulation making power.

---



FIRST PRINT

## ROYAL COMMISSION (POLICE SERVICE) BILL 1994

NEW SOUTH WALES



### TABLE OF PROVISIONS

#### PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Act applies only to Police Royal Commission
4. Definitions
5. Relationship with 1923 Act

#### PART 2—OBTAINING INFORMATION, DOCUMENTS AND OTHER THINGS

6. Power to obtain information (s. 21 ICAC Act)
7. Power to obtain documents etc. (s. 22 ICAC Act)
8. Privilege as regards information, documents etc. (s. 24 ICAC Act)
9. Self-incrimination (s. 26 ICAC Act)
10. Power to enter public premises (ss. 23, 25 ICAC Act)

#### PART 3—ATTENDANCE BEFORE THE COMMISSION

11. Arrest of witness (s. 36 ICAC Act)
12. Declaration as to objection by witness (s. 38 ICAC Act)
13. Reimbursement of expenses of witnesses (s. 51 ICAC Act)
14. Attendance of prisoner before Commission (s. 39 ICAC Act)

#### PART 4—SEARCH AND LISTENING DEVICE WARRANTS

15. Issue of search warrant (s. 40 ICAC Act)
16. Authority conferred by warrant (s. 41 ICAC Act)
17. Duty to show warrant (s. 42 ICAC Act)
18. Use of force (s. 43 ICAC Act)
19. Use of assistants to execute warrant (s. 44 ICAC Act)
20. Execution of warrant by day or night (s. 45 ICAC Act)
21. Expiry of warrant (s. 46 ICAC Act)
22. Seizure of other documents and things (s. 47 (1) ICAC Act)

*Royal Commission (Police Service) 1994*

---

23. Application of provisions of the Search Warrants Act 1985 (s. 48 ICAC Act)
24. Obstruction of person executing search warrant (s. 84 ICAC Act)
25. Listening devices (s. 19 (2) ICAC Act)

**PART 5—PROTECTION OF WITNESSES AND EVIDENCE**

26. Protection of witnesses (s. 50 ICAC Act)
27. Publication of evidence etc. (s. 112 ICAC Act)
28. Disclosures prejudicing inquiry (s. 114 ICAC Act)
29. Indemnities and undertakings (s. 49 ICAC Act)

**PART 6—SECRECY, DISCLOSURE, ADMISSIBILITY**

30. Secrecy (s. 111 ICAC Act)
31. Disclosure of information and giving of evidence by Ombudsman
32. Secrecy provisions in other Acts
33. Admissibility of documents relating to complaints about police
34. Telecommunications (Interception) (New South Wales) Act 1987
35. Legal Profession Act 1987
36. Privacy Committee Act 1975
37. Religious confessions

**PART 7—MISCELLANEOUS**

38. Effect of pending proceedings (s. 18 ICAC Act)
  39. Delegation (s. 107 ICAC Act)
  40. Protection from liability (s. 109 ICAC Act)
  41. Proceedings for offences
  42. Regulations
-

**ROYAL COMMISSION (POLICE SERVICE) BILL 1994**

NEW SOUTH WALES



No.           , 1994

---

---

**A BILL FOR**

An Act to confer additional powers on the Royal Commission of inquiry into the operations of the New South Wales Police Service and to assist the conduct of that inquiry; and for other purposes.

---

---

*Royal Commission (Police Service) 1994*

---

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

**PART 1—PRELIMINARY**

**Short title**

- 5      1. This Act may be cited as the Royal Commission (Police Service) Act 1994.

**Commencement**

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

**Act applies only to Police Royal Commission**

- 10      3. (1) This Act applies only to:
- 15          (a) the Royal Commission of inquiry issued by the Governor by letters patent under the Public Seal on 13 May 1994, appointing the Honourable James Roland Tomson Wood sole commissioner to make inquiry into, and report on, the operations of the New South Wales Police Service; and
- 20          (b) any further Royal Commission by which a commissioner is appointed as sole commissioner to exercise functions at the request of, or otherwise to assist, the Royal Commissioner under the Royal Commission referred to in paragraph (a), but only if the terms of that further Royal Commission provide that this Act is to apply to the Commission.

- 25      (2) If a Royal Commission to which this Act applies is altered, extended or continued by another Royal Commission, or is replaced by another Royal Commission on the same or similar terms as that Royal Commission, this Act extends to apply to the Royal Commission as so altered, extended, continued or replaced.

**Definitions**

- 30      4. (1) In this Act:
- “exercise” a function includes perform a duty;
- “function” includes a power, authority or duty;
- “ICAC Act” means the Independent Commission Against Corruption Act 1988;
- “legal practitioner” has the same meaning as in the Legal Profession Act 1987;



*Royal Commission (Police Service) 1994*

---

**“1923 Act”** means the Royal Commissions Act 1923;

**“officer of the Commission”** means any legal practitioner appointed by the Crown to assist the Commission or any other person employed, seconded or otherwise engaged to assist the Commission;

**“premises”** includes any structure, building, aircraft, vehicle, vessel and place (whether built or not), and any part thereof; 5

**“public authority”** and **“public official”** have the same meanings as in the ICAC Act;

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

(2) Notes included in this Act are explanatory notes and do not form part of this Act. 10

**Relationship with 1923 Act**

5. (1) This Act is to be read as if it formed part of the 1923 Act (but only for the purposes of the operation of this Act in relation to a Royal Commission to which this Act applies). A reference in any other Act to the 1923 Act does not include a reference to this Act, except as expressly provided by this Act. 15

(2) The provisions of this Act are in addition to and not in derogation of any provisions of the 1923 Act, except as specifically provided by this Act. In particular, Part 2 of this Act does not limit or otherwise affect the provisions of the 1923 Act with respect to a person summoned to attend or appearing as a witness before the Commission. 20

(3) Nothing in the 1923 Act operates to constrain or restrict the exercise of a function conferred or imposed by or under this Act.

**PART 2—OBTAINING INFORMATION, DOCUMENTS AND OTHER THINGS** 25

**Power to obtain information (ss. 21, 82 ICAC Act)**

6. (1) For the purposes of the Commission’s inquiry, the Commissioner may, by notice in writing served on a public authority or public official, require the authority or official to produce a statement of information. 30

(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 the Commissioner or an officer of the Commission) to whom the production is to be made. 35

*Royal Commission (Police Service) 1994*

---

(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.

5 (4) A person must not:

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

10 (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: 20 penalty units or imprisonment for 6 months, or both.

**Power to obtain documents etc. (ss. 22, 83 ICAC Act)**

15 7. (1) For the purposes of the Commission's inquiry, the Commissioner 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 the Commissioner or an officer of the Commission) specified in the notice; and

20 (b) to produce at that time and place to the person so specified a document or other thing specified in the notice.

25 (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.

30 **Privilege as regards information, documents etc. (s. 24 ICAC Act)**

8. (1) This section applies where, under section 6 or 7, the Commissioner requires any person:

(a) to produce any statement of information; or

(b) to produce any document or other thing.

*Royal Commission (Police Service) 1994*

---

(2) The Commissioner must set aside the requirement if it appears to the Commissioner that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commissioner that the person consents to compliance with the requirement. 5

(3) The person must however comply with the requirement despite:

- (a) any rule which 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 which the authority or official could have claimed in a court of law; or 10
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

**Self-incrimination (s. 26 ICAC Act) 15**

9. (1) This section applies where, under section 6 or 7, the Commissioner requires any person:

- (a) to produce any statement of information; or
- (b) to produce 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, 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 or the 1923 Act). 20

(3) They may however be used for the purposes of the Commission's inquiry, despite any such objection. 25

**Power to enter public premises (ss. 23, 25 ICAC Act)**

10. (1) For the purposes of the Commission's inquiry, the Commissioner or an officer of the Commission authorised in writing by the Commissioner may, at any time: 30

- (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 powers conferred by this section must not be exercised other than for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve a criminal offence. 35

*Royal Commission (Police Service) 1994*

---

(3) 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.

5 (4) 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 whereby, 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.

10 (5) The powers may however be exercised despite:

- (a) any rule of law which, 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
- 15 (b) any privilege of a public authority or public official in that capacity which 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.

20 **PART 3—ATTENDANCE BEFORE THE COMMISSION**

**Arrest of witness (s. 36 ICAC Act)**

25 **11. (1)** If a person served with a summons to attend the Commission as a witness fails to attend in answer to the summons, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness.

(2) The Commissioner may issue a warrant for the arrest of a person whose evidence is desired and is necessary and relevant to the Commission's inquiry if the Commissioner is satisfied by evidence on oath or affirmation that it is probable that the person:

- 30 (a) will not attend before the Commission 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 Commission if the person departs.

*Royal Commission (Police Service) 1994*

---

(3) The powers conferred by subsection (2) must not be exercised unless the Commissioner is satisfied that the evidence of the person concerned is required for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve a criminal offence. 5

(4) The Commissioner is authorised to administer an oath or affirmation for the purposes of subsection (2).

(5) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.

(6) A warrant may be issued under subsection (2) 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. 10

(7) A warrant under this section authorises the arrest of the witness and his or her being promptly brought before the Commission and detained in custody for that purpose until released by order of the Commissioner. 15

(8) 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.

(9) 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. 20

(10) This section operates in place of section 16 (Warrant) of the 1923 Act.

**Declaration as to objection by witness (s. 38 ICAC Act) 25**

12. The 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. 30

**Reimbursement of expenses of witnesses (s. 51 ICAC Act)**

13. (1) A witness attending or appearing before the Commission 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 for the purposes of section 51 of the Independent Commission Against Corruption Act 1988 or, if there is no such prescribed scale, such amount as the Royal Commissioner determines. 35

*Royal Commission (Police Service) 1994*

---

(2) Section 13 of the 1923 Act (Allowance to witnesses) does not apply in respect of witnesses attending or appearing before a Royal Commission to which this Act applies.

**Attendance of prisoner before Commission (s. 39 ICAC Act)**

5       **14.** (1) If the Commissioner requires the attendance before the Commission of a prisoner, the Commissioner may, by order in writing served on the governor of the prison in whose custody the prisoner is, direct the governor to produce the prisoner, or have the prisoner produced, at the time and place stated in the order.

10       (2) Such an order is sufficient authority to the governor of the prison for producing the prisoner or having the prisoner produced, and the prisoner must be produced accordingly.

15       (3) A prisoner is, when produced under this section in the actual custody of the governor of the prison, a prison officer or a police officer, taken to be in lawful custody.

(4) The governor, prison officer or police officer must in due course return the prisoner to the prison.

(5) In this section, “governor of a prison”, “prison” and “prisoner” have the same meanings as in the Prisons Act 1952.

20       **PART 4—SEARCH AND LISTENING DEVICE WARRANTS**

**Issue of search warrant (s. 40 ICAC Act)**

15       **15.** (1) An authorised justice to whom an application is made under subsection (4) may issue a search warrant if satisfied that there are reasonable grounds for doing so.

25       (2) The Commissioner, on application made to the Commissioner under subsection (4), may issue a search warrant if the Commissioner thinks fit in the circumstances and if satisfied that there are reasonable grounds for doing so.

30       (3) Search warrants should, as far as practicable, be issued by authorised justices, but nothing in this subsection affects the discretion of the Commissioner to issue them.

(4) An authorised person may apply to an authorised justice or the Commissioner for a search warrant if the person has reasonable grounds for believing that:

*Royal Commission (Police Service) 1994*

---

- (a) there is in or on any premises a document or other thing connected with any matter that is the subject of the Commission's inquiry or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises; and
- (b) the matter involves any conduct of a person that constitutes or involves or may constitute or involve a criminal offence. 5

(5) In this section:

**"authorised justice"** has the same meaning as in the Search Warrants Act 1985;

**"authorised person"** means an officer of the Commission and, in relation to an application to an authorised justice for a search warrant, includes the Commissioner. 10

**Authority conferred by warrant (s. 41 ICAC Act)**

16. (1) A search warrant authorises any police officer, or any other person, named in the warrant: 15

- (a) to enter the premises; and
- (b) to search the premises for documents or other things connected with any matter that is the subject of the Commission's inquiry; and
- (c) to seize any such documents or other things found in or on the premises and deliver them to the Commission. 20

(2) A police officer executing a search warrant may search a person found in or on the premises whom the police officer reasonably suspects of having a document or other thing mentioned in the warrant.

(3) If the person executing a search warrant is a police officer under the law of another State or of a Territory or the Commonwealth, he or she may exercise the functions of a police officer under subsection (2). 25

(4) Section 12 (Inspection and copies of documents) of the 1923 Act extends to apply to a document or other thing seized pursuant to a search warrant. 30

**Duty to show warrant (s. 42 ICAC Act)**

17. A person executing a search warrant must produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

**Use of force (s. 43 ICAC Act)**

18. (1) A person authorised to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

5 (2) A person authorised to enter premises under a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of the search.

**Use of assistants to execute warrant (s. 44 ICAC Act)**

10 19. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

**Execution of warrant by day or night (s. 45 ICAC Act)**

20. (1) A search warrant may be executed by day, but must not be executed by night unless the person issuing the warrant, by the warrant, authorises its execution by night.

15 (2) The person issuing a search warrant is not to authorise the execution of the warrant by night unless satisfied that there are reasonable grounds for doing so. Those grounds include (but are not limited to) the following:

- 20 (a) the execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing which is likely to be on the premises only at night or other relevant circumstances will only exist at night;
- (b) there is likely to be less risk to the safety of any person if it is executed at night;
- 25 (c) an occupier is likely to be on the premises only at night to allow entry without the use of force.

(3) In this section:

30 "by day" means during the period between 6 a.m. and 9 p.m. on any day;

"by night" means during the period between 9 p.m. on any day and 6 a.m. on the following day.

**Expiry of warrant (s. 46 ICAC Act)**

21. A search warrant ceases to have effect:

- 35 (a) one month after its issue; or
- (b) if it is withdrawn by the person who issued the warrant; or
- (c) when it is executed,

whichever first occurs.



*Royal Commission (Police Service) 1994*

---

**Seizure of other documents and things (s. 47 (1) ICAC Act)**

22. 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 the law of the Commonwealth, a State or a Territory; and 5
- (b) the first-mentioned person 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, 10

that 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. 15

**Application of provisions of the Search Warrants Act 1985 (s. 48 ICAC Act)**

23. (1) Part 3 of the Search Warrants Act 1985 (other than sections 16–20) applies to a search warrant issued under this Act.

(2) Part 3 of the Search Warrants Act 1985 so applies as if references in that Part to an authorised justice to whom an application for a search warrant is made or by whom a search warrant is issued included (where relevant) references to the Commissioner, where such an application is made to the Commissioner or a search warrant is issued by the Commissioner. 20  
25

**Obstruction of person executing search warrant (s. 84 ICAC Act)**

24. 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. 30

**Listening devices (s. 19 (2) ICAC Act)**

25. The Commissioner or an officer of the Commission may seek the issue of a warrant under the Listening Devices Act 1984.

**PART 5—PROTECTION OF WITNESSES AND EVIDENCE****Protection of witnesses (s. 50 ICAC Act)**

5       **26. (1)** If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary to avoid prejudice to the safety of any such person or to protect any such person from intimidation or harassment.

10       **(2)** In this section, a reference to a person who is assisting the Commission is a reference to a person who:

- 15       (a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing; or
- (b) has produced or proposes to produce a document or other thing to the Commission under this Act or the 1923 Act, otherwise than by attending before the Commission; or
- (c) has assisted, is assisting or is to assist the Commission in some other manner.

**Publication of evidence etc. (s. 112 ICAC Act)**

20       **27. (1)** The Commissioner may direct that:

- (a) any evidence given before the Commission; or
- (b) the contents of any document, or a description of any thing, produced to the Commission, or seized under a search warrant issued under this Act; or
- 25       (c) any information that might enable a person who has given evidence before the Commission to be identified; or
- (d) the fact that any person has given or may be about to give evidence before the Commission,

      must not be published or must not be published except in such manner, and to such persons, as the Commissioner specifies.

30       **(2)** The Commissioner is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

**(3)** A person must not make a publication in contravention of a direction given under this section.

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

*Royal Commission (Police Service) 1994*

---

**Disclosures prejudicing inquiry (s. 114 ICAC Act)**

28. (1) A person who is required by a notice under section 6 or 7 to produce a statement of information or to attend and produce a document or other thing, or by a summons to attend the Commission and give evidence or produce a document or other thing, must not disclose any information about the notice or summons that is likely to prejudice the Commission's inquiry or any part or aspect of the Commission's inquiry to which it relates. 5

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both. 10

(2) Subsection (1) does not apply to a notice or summons unless it specifies that information about the notice or summons must not be disclosed.

(3) A person does not contravene this section if:

- (a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter; or 15
- (b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons; or 20
- (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

(4) A reference in this section to the disclosure of any information about a notice or summons includes a reference to:

- (a) a disclosure about the existence or nature of the notice or summons or of the part or aspect of the Commission's inquiry to which it relates; and 25
- (b) a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the notice or summons or of the part or aspect of the Commission's inquiry to which it relates. 30

**Indemnities and undertakings (s. 49 ICAC Act)**

29. (1) The Commissioner may recommend to the Attorney General that a person be granted (under section 13 of the Criminal Procedure Act 1986) an indemnity from prosecution. 35

(2) The Commissioner may recommend to the Attorney General that a person be given (under section 14 of the Criminal Procedure Act 1986) an undertaking that:

*Royal Commission (Police Service) 1994*

- (a) an answer, statement or disclosure in proceedings before the Commission; or
- (b) the fact of a disclosure or production of a document in proceedings before the Commission,
- 5 will not be used in evidence against the person.

(3) Section 14 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.

10 (4) A reference in this section to proceedings before the Commission includes a reference to any activity in connection with the Commission's inquiry involving the Commission, the Commissioner or an officer of the Commission.

**PART 6—SECRECY, DISCLOSURE, ADMISSIBILITY****Secrecy (s. 111 ICAC Act)**

15 30. (1) This section applies to:

- (a) a person who is or was the Commissioner or an officer of the Commission; and
- 20 (b) a person who is or was a person who assists, or performs services for or on behalf of, a legal practitioner appointed by the Crown to assist the Commission in the exercise of the legal practitioner's functions as counsel to the Commission.

25 (2) A person to whom this section applies must not, directly or indirectly, except for the purposes of this Act or the 1923 Act or the person's Royal Commission functions or otherwise in connection with the exercise of the person's Royal Commission functions:

- (a) make a record of any information; or
- (b) divulge 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 Royal Commission functions.

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

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

- 35 (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 Royal Commission functions; or

*Royal Commission (Police Service) 1994*

---

- (b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's Royal Commission functions,  
except for the purposes of a prosecution or disciplinary proceedings instituted as a result of the Commission's inquiry. 5
- (4) Despite this section, a person to whom this section applies may divulge any such information:
- (a) for the purposes of the Commission's inquiry and report or otherwise for the purposes of and in accordance with this Act or the 1923 Act; or 10
- (b) for the purposes of a prosecution or disciplinary proceedings instituted as a result of the Commission's inquiry; or
- (c) in accordance with a direction of the Commissioner, if the Commissioner certifies that it is necessary to do so in the public interest; or 15
- (d) to any prescribed authority or person.
- (5) An authority or person to whom information is divulged under subsection (4), and any person or employee under the control of that authority or person, is subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) 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 the person's Royal Commission functions. 20
- (6) In this section:
- "court" includes any tribunal, authority or person having power to require the production of documents or the answering of questions; 25
- "produce" includes permit access to;
- "Royal Commission functions" means functions arising under or in connection with this Act or the 1923 Act or any commission establishing or conferring functions on the Commission or conferring functions on the Commission or the Commissioner. 30

**Disclosure of information and giving of evidence by Ombudsman**

31. (1) The Ombudsman, and any officer of the Ombudsman acting with the approval of the Ombudsman, may:

- (a) furnish to the Commission information obtained by the Ombudsman or officer in exercising functions under the Ombudsman Act 1974, Part 8A (Complaints about conduct of police officers) of the Police Service Act 1990 or any other Act; or 35

*Royal Commission (Police Service) 1994*

---

(b) give evidence before the Commission and produce any document to the Commission, in respect of any such information.

5 (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).

10 (3) This section applies despite sections 34 (Disclosure by Ombudsman or officer) and 35 (Ombudsman or officer as witness) of the Ombudsman Act 1974 and section 169 (Ombudsman or officer as witness) of the Police Service Act 1990, and any other law.

(4) Section 35 of the Ombudsman Act 1974 and section 169 of the Police Service Act 1990 do not apply in respect of any proceedings for an offence under this Act.

15 (5) In this section, a reference to an officer of the Ombudsman includes a reference to an acting Ombudsman, a Deputy Ombudsman, an Assistant Ombudsman and a special officer of the Ombudsman.

**Secrecy provisions in other Acts**

20 32. (1) The following provisions do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under this Act or the 1923 Act:

- (a) section 15 (Secrecy) of the Companies (Administration) Act 1981;
- (b) section 155A (Secrecy) of the Liquor Act 1982;
- 25 (c) section 206 (Disclosure of information relating to Police Board functions) of the Police Service Act 1990;
- (d) section 72C (Secrecy) of the Registered Clubs Act 1976.

(2) For the purposes of section 13 (Unlawful disclosure of information concerning spent convictions) of the Criminal Records Act 1991, the Commission is taken to be a law enforcement agency.

30 **Admissibility of documents relating to complaints about police**

33. (1) A document brought into existence for the purposes of Part 8A (Complaints about conduct of police officers) of the Police Service Act 1990 is admissible in evidence before the Commission.

35 (2) This section applies despite section 172A (Certain documents privileged) of the Police Service Act 1990.

*Royal Commission (Police Service) 1994*

---

**Telecommunications (Interception) (New South Wales) Act 1987**

34. Section 21 (Disclosure by persons under the Minister's administration) of the Telecommunications (Interception) (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. 5

**Legal Profession Act 1987**

35. Section 171R (Commissioner, Council etc. as witness) of the Legal Profession Act 1987 does not apply to proceedings for an offence under this Act. 10

*Note.* The section of the Legal Profession Act 1987 referred to here makes members of the Council and Tribunal under that Act (and certain other persons) not competent and not compellable to give evidence in legal proceedings. There is an exception for proceedings for an offence under the 1923 Act. Section 35 extends this exception to include proceedings for an offence under this Act. 15

**Privacy Committee Act 1975**

36. (1) Section 20 (Prohibition on disclosure by members and others) of the Privacy Committee Act 1975 does not apply to the disclosure of information for the purposes of any proceedings for an offence under this Act. 20

(2) Section 21 (Members and others as witnesses) of the Privacy Committee Act 1975 does not apply in respect of any proceedings for an offence under this Act.

*Note.* The sections of the Privacy Committee Act 1975 referred to here prevent disclosures by members and officers of the Privacy Committee and make those members and officers not competent and not compellable to give evidence in legal proceedings. There is an exception in each case in respect of proceedings for an offence under the 1923 Act. Section 36 extends this exception to include proceedings for an offence under this Act. 25

**Religious confessions** 30

37. Section 10 (Religious confessions) of the Evidence Act 1898 applies to any hearing or proceedings to which this Act applies.

*Note.* Section 10 of the Evidence Act 1898 protects religious confessions from disclosure in proceedings. The section specifically provides that the protection applies to a hearing or proceeding before a Royal Commission. Section 37 makes it clear that the protection extends to a hearing or proceeding under this Act. 35

**PART 7—MISCELLANEOUS****Effect of pending proceedings (s. 18 ICAC Act)**

5       **38. (1)** The Commissioner may do any or all of the following, despite any proceedings that may be in or before any court, tribunal, warden, coroner, Magistrate, justice of the peace or other person:

- (a) commence, continue, discontinue or complete the Commission's inquiry and any part or aspect of that inquiry;
- (b) furnish any report in connection with that inquiry or any part or aspect of that inquiry;
- 10       (c) all such acts and things as are necessary or expedient for those purposes.

15       **(2)** If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commissioner must, to the extent to which the Commissioner thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced:

- (a) ensure that, as far as practicable, any hearing or other matters relating to the inquiry are conducted in private during the currency of the proceedings; and
- 20       (b) give directions under section 27 (Publication of evidence etc.), having effect during the currency of the proceedings; and
- (c) defer making a report in relation to the Commission's inquiry or any part or aspect of that inquiry during the currency of the proceedings.

25       **(3)** Subsection (2) does not apply:

- (a) (in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings; and
- 30       (b) (in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.

**(4)** This section has effect whether or not the proceedings commenced before or after the Commission's inquiry commenced and has effect whether or not the Commission, the Commissioner or an officer of the Commission is a party to the proceedings.



*Royal Commission (Police Service) 1994*

---

**Delegation (s. 107 ICAC Act)**

39. The Commissioner may delegate any of the following functions of the Commissioner to the person appointed as Senior Counsel Assisting the Commission, to be exercisable only during the illness of the Commissioner or the absence of the Commissioner from Sydney or the State: 5

- (a) functions under section 6 (Power to obtain information) of this Act;
- (b) functions under section 7 (Power to obtain documents) of this Act;
- (c) functions under section 10 (Power to enter public premises) of this Act; 10
- (d) functions under section 14 (Attendance of prisoner before Commission) of this Act;
- (e) functions under section 8 (Witnesses) of the 1923 Act.

**Protection from liability (s. 109 ICAC Act)** 15

40. (1) A matter or thing done by the Commission, the Commissioner or any person acting under the direction of the Commission or Commissioner which was done in good faith for the purposes of the Commission's inquiry or for the purpose of executing this or any other Act does not subject the Commissioner or the person so acting personally to any action, liability, claim or demand. 20

(2) Subsection (1) does not limit any protection or immunity afforded the Commissioner by section 6 (Protection of Commissioners) of the 1923 Act.

(3) A legal practitioner assisting the Commission or representing a person before the Commission has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court. 25

(4) Subject to this Act and the 1923 Act, a person summoned to attend or appearing before the Commission 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. 30

(5) No criminal or civil liability attaches to any person for compliance, or purported compliance in good faith, with any requirement made under this Act or the 1923 Act. 35

(6) In particular, if a person gives any statement of information or produces any document or other thing under section 6 or 7, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

*Royal Commission (Police Service) 1994*

---

(7) The reference to the 1923 Act in item 10 of Schedule 1 (Excluded conduct of public authorities) of the Ombudsman Act 1974 is taken to include a reference to this Act.

5 **Note.** Item 10 of Schedule 1 to the Ombudsman Act 1974 operates to exclude the conduct of a Royal Commissioner under the 1923 Act from investigation by the Ombudsman. Subsection (7) extends this to include conduct of the Royal Commissioner under this Act.

**Proceedings for offences**

10 **41.** Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

15 **42.** 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.

---

SECOND PRINT

**ROYAL COMMISSION (POLICE SERVICE) BILL 1994**

NEW SOUTH WALES



**TABLE OF PROVISIONS**

**PART 1—PRELIMINARY**

1. Short title
2. Commencement
3. Act applies only to Police Royal Commission
4. Definitions
5. Relationship with 1923 Act

**PART 2—OBTAINING INFORMATION, DOCUMENTS AND OTHER THINGS**

6. Power to obtain information (s. 21 ICAC Act)
7. Power to obtain documents etc. (s. 22 ICAC Act)
8. Privilege as regards information, documents etc. (s. 24 ICAC Act)
9. Self-incrimination (s. 26 ICAC Act)
10. Power to enter public premises (ss. 23, 25 ICAC Act)

**PART 3—ATTENDANCE BEFORE THE COMMISSION**

11. Arrest of witness (s. 36 ICAC Act)
12. Declaration as to objection by witness (s. 38 ICAC Act)
13. Reimbursement of expenses of witnesses (s. 51 ICAC Act)
14. Attendance of prisoner before Commission (s. 39 ICAC Act)

**PART 4—SEARCH AND LISTENING DEVICE WARRANTS**

15. Issue of search warrant (s. 40 ICAC Act)
16. Authority conferred by warrant (s. 41 ICAC Act)
17. Duty to show warrant (s. 42 ICAC Act)
18. Use of force (s. 43 ICAC Act)
19. Use of assistants to execute warrant (s. 44 ICAC Act)
20. Execution of warrant by day or night (s. 45 ICAC Act)

*Royal Commission (Police Service) 1994*

---

21. Expiry of warrant (s. 46 ICAC Act)
22. Seizure of other documents and things (s. 47 (1) ICAC Act)
23. Application of provisions of the Search Warrants Act 1985 (s. 48 ICAC Act)
24. Obstruction of person executing search warrant (s. 84 ICAC Act)
25. Listening devices (s. 19 (2) ICAC Act)

**PART 5—PROTECTION OF WITNESSES AND EVIDENCE**

26. Protection of witnesses (s. 50 ICAC Act)
27. Publication of evidence etc. (s. 112 ICAC Act)
28. Disclosures prejudicing inquiry (s. 114 ICAC Act)
29. Indemnities and undertakings (s. 49 ICAC Act)

**PART 6—SECRECY, DISCLOSURE, ADMISSIBILITY**

30. Secrecy (s. 111 ICAC Act)
31. Disclosure of information and giving of evidence by Ombudsman
32. Secrecy provisions in other Acts
33. Admissibility of documents relating to complaints about police
34. Telecommunications (Interception) (New South Wales) Act 1987
35. Legal Profession Act 1987
36. Privacy Committee Act 1975
37. Religious confessions

**PART 7—MISCELLANEOUS**

38. Effect of pending proceedings (s. 18 ICAC Act)
  39. Delegation (s. 107 ICAC Act)
  40. Protection from liability (s. 109 ICAC Act)
  41. Proceedings for offences
  42. Regulations
-

*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly.*

NEW SOUTH WALES



Act No.           , 1994

An Act to confer additional powers on the Royal Commission of inquiry into the operations of the New South Wales Police Service and to assist the conduct of that inquiry; and for other purposes.

*Royal Commission (Police Service) 1994*

---

The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title**

5       1. This Act may be cited as the Royal Commission (Police Service) Act 1994.

**Commencement**

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

**Act applies only to Police Royal Commission**

10       3. (1) This Act applies only to:

15       (a) the Royal Commission of inquiry issued by the Governor by letters patent under the Public Seal on 13 May 1994, appointing the Honourable James Roland Tomson Wood sole commissioner to make inquiry into, and report on, the operations of the New South Wales Police Service; and

20       (b) any further Royal Commission by which a commissioner is appointed as sole commissioner to exercise functions at the request of, or otherwise to assist, the Royal Commissioner under the Royal Commission referred to in paragraph (a), but only if the terms of that further Royal Commission provide that this Act is to apply to the Commission.

25       (2) If a Royal Commission to which this Act applies is altered, extended or continued by another Royal Commission, or is replaced by another Royal Commission on the same or similar terms as that Royal Commission, this Act extends to apply to the Royal Commission as so altered, extended, continued or replaced.

**Definitions**

30       4. (1) In this Act:

“exercise” a function includes perform a duty;

“function” includes a power, authority or duty;

“ICAC Act” means the Independent Commission Against Corruption Act 1988;

“legal practitioner” has the same meaning as in the Legal Profession Act 1987;

*Royal Commission (Police Service) 1994*

---

**“1923 Act”** means the Royal Commissions Act 1923;

**“officer of the Commission”** means any legal practitioner appointed by the Crown to assist the Commission or any other person employed, seconded or otherwise engaged to assist the Commission;

**“premises”** includes any structure, building, aircraft, vehicle, vessel and place (whether built or not), and any part thereof; 5

**“public authority”** and **“public official”** have the same meanings as in the ICAC Act;

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

(2) Notes included in this Act are explanatory notes and do not form part of this Act. 10

**Relationship with 1923 Act**

5. (1) This Act is to be read as if it formed part of the 1923 Act (but only for the purposes of the operation of this Act in relation to a Royal Commission to which this Act applies). A reference in any other Act to the 1923 Act does not include a reference to this Act, except as expressly provided by this Act. 15

(2) The provisions of this Act are in addition to and not in derogation of any provisions of the 1923 Act, except as specifically provided by this Act. In particular, Part 2 of this Act does not limit or otherwise affect the provisions of the 1923 Act with respect to a person summoned to attend or appearing as a witness before the Commission. 20

(3) Nothing in the 1923 Act operates to constrain or restrict the exercise of a function conferred or imposed by or under this Act.

**PART 2—OBTAINING INFORMATION, DOCUMENTS AND OTHER THINGS** 25

**Power to obtain information (ss. 21, 82 ICAC Act)**

6. (1) For the purposes of the Commission’s inquiry, the Commissioner may, by notice in writing served on a public authority or public official, require the authority or official to produce a statement of information. 30

(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 the Commissioner or an officer of the Commission) to whom the production is to be made. 35

*Royal Commission (Police Service) 1994*

---

(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.

5 (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.
- 10

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

**Power to obtain documents etc. (ss. 22, 83 ICAC Act)**

15 7. (1) For the purposes of the Commission's inquiry, the Commissioner 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 the Commissioner or an 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.
- 20

(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.

25

(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.

30 **Privilege as regards information, documents etc. (s. 24 ICAC Act)**

8. (1) This section applies where, under section 6 or 7, the Commissioner requires any person:

- (a) to produce any statement of information; or
- (b) to produce any document or other thing.



*Royal Commission (Police Service) 1994*

---

(2) The Commissioner must set aside the requirement if it appears to the Commissioner that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commissioner that the person consents to compliance with the requirement. 5

(3) The person must however comply with the requirement despite:

(a) any rule which 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 which the authority or official could have claimed in a court of law; or 10

(c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

**Self-incrimination (s. 26 ICAC Act)** 15

9. (1) This section applies where, under section 6 or 7, the Commissioner requires any person:

(a) to produce any statement of information; or

(b) to produce 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, 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 or the 1923 Act). 20

(3) They may however be used for the purposes of the Commission's inquiry, despite any such objection. 25

**Power to enter public premises (ss. 23, 25 ICAC Act)**

10. (1) For the purposes of the Commission's inquiry, the Commissioner or an officer of the Commission authorised in writing by the Commissioner may, at any time: 30

(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 powers conferred by this section must not be exercised other than for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve a criminal offence. 35

*Royal Commission (Police Service) 1994*

---

(3) 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.

5 (4) 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 whereby, 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.

10 (5) The powers may however be exercised despite:

(a) any rule of law which, 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

15 (b) any privilege of a public authority or public official in that capacity which 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.

20 **PART 3—ATTENDANCE BEFORE THE COMMISSION**

**Arrest of witness (s. 36 ICAC Act)**

25 **11. (1)** If a person served with a summons to attend the Commission as a witness fails to attend in answer to the summons, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness.

(2) The Commissioner may issue a warrant for the arrest of a person whose evidence is desired and is necessary and relevant to the Commission's inquiry if the Commissioner is satisfied by evidence on oath or affirmation that it is probable that the person:

30 (a) will not attend before the Commission 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 Commission if the person departs.

*Royal Commission (Police Service) 1994*

---

(3) The powers conferred by subsection (2) must not be exercised unless the Commissioner is satisfied that the evidence of the person concerned is required for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve a criminal offence. 5

(4) The Commissioner is authorised to administer an oath or affirmation for the purposes of subsection (2).

(5) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.

(6) A warrant may be issued under subsection (2) 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. 10

(7) A warrant under this section authorises the arrest of the witness and his or her being promptly brought before the Commission and detained in custody for that purpose until released by order of the Commissioner. 15

(8) 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.

(9) 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. 20

(10) This section operates in place of section 16 (Warrant) of the 1923 Act.

**Declaration as to objection by witness (s. 38 ICAC Act) 25**

12. The 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. 30

**Reimbursement of expenses of witnesses (s. 51 ICAC Act)**

13. (1) A witness attending or appearing before the Commission 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 for the purposes of section 51 of the Independent Commission Against Corruption Act 1988 or, if there is no such prescribed scale, such amount as the Royal Commissioner determines. 35

*Royal Commission (Police Service) 1994*

---

(2) Section 13 of the 1923 Act (Allowance to witnesses) does not apply in respect of witnesses attending or appearing before a Royal Commission to which this Act applies.

**Attendance of prisoner before Commission (s. 39 ICAC Act)**

5       **14. (1)** If the Commissioner requires the attendance before the Commission of a prisoner, the Commissioner may, by order in writing served on the governor of the prison in whose custody the prisoner is, direct the governor to produce the prisoner, or have the prisoner produced, at the time and place stated in the order.

10       **(2)** Such an order is sufficient authority to the governor of the prison for producing the prisoner or having the prisoner produced, and the prisoner must be produced accordingly.

15       **(3)** A prisoner is, when produced under this section in the actual custody of the governor of the prison, a prison officer or a police officer, taken to be in lawful custody.

**(4)** The governor, prison officer or police officer must in due course return the prisoner to the prison.

**(5)** In this section, “**governor of a prison**”, “**prison**” and “**prisoner**” have the same meanings as in the Prisons Act 1952.

20       **PART 4—SEARCH AND LISTENING DEVICE WARRANTS**

**Issue of search warrant (s. 40 ICAC Act)**

**15. (1)** An authorised justice to whom an application is made under subsection (4) may issue a search warrant if satisfied that there are reasonable grounds for doing so.

25       **(2)** The Commissioner, on application made to the Commissioner under subsection (4), may issue a search warrant if the Commissioner thinks fit in the circumstances and if satisfied that there are reasonable grounds for doing so.

30       **(3)** Search warrants should, as far as practicable, be issued by authorised justices, but nothing in this subsection affects the discretion of the Commissioner to issue them.

**(4)** An authorised person may apply to an authorised justice or the Commissioner for a search warrant if the person has reasonable grounds for believing that:

*Royal Commission (Police Service) 1994*

---

- (a) there is in or on any premises a document or other thing connected with any matter that is the subject of the Commission's inquiry or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises; and
- (b) the matter involves any conduct of a person that constitutes or involves or may constitute or involve a criminal offence. 5

(5) In this section:

**"authorised justice"** has the same meaning as in the Search Warrants Act 1985;

**"authorised person"** means an officer of the Commission and, in relation to an application to an authorised justice for a search warrant, includes the Commissioner. 10

**Authority conferred by warrant (s. 41 ICAC Act)**

**16. (1)** A search warrant authorises any police officer, or any other person, named in the warrant: 15

- (a) to enter the premises; and
- (b) to search the premises for documents or other things connected with any matter that is the subject of the Commission's inquiry; and
- (c) to seize any such documents or other things found in or on the premises and deliver them to the Commission. 20

**(2)** A police officer executing a search warrant may search a person found in or on the premises whom the police officer reasonably suspects of having a document or other thing mentioned in the warrant.

**(3)** If the person executing a search warrant is a police officer under the law of another State or of a Territory or the Commonwealth, he or she may exercise the functions of a police officer under subsection (2). 25

**(4)** Section 12 (Inspection and copies of documents) of the 1923 Act extends to apply to a document or other thing seized pursuant to a search warrant. 30

**Duty to show warrant (s. 42 ICAC Act)**

**17.** A person executing a search warrant must produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

**Use of force (s. 43 ICAC Act)**

18. (1) A person authorised to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

5 (2) A person authorised to enter premises under a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of the search.

**Use of assistants to execute warrant (s. 44 ICAC Act)**

10 19. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

**Execution of warrant by day or night (s. 45 ICAC Act)**

20. (1) A search warrant may be executed by day, but must not be executed by night unless the person issuing the warrant, by the warrant, authorises its execution by night.

15 (2) The person issuing a search warrant is not to authorise the execution of the warrant by night unless satisfied that there are reasonable grounds for doing so. Those grounds include (but are not limited to) the following:

20 (a) the execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing which is likely to be on the premises only at night or other relevant circumstances will only exist at night;

(b) there is likely to be less risk to the safety of any person if it is executed at night;

25 (c) an occupier is likely to be on the premises only at night to allow entry without the use of force.

(3) In this section:

“by day” means during the period between 6 a.m. and 9 p.m. on any day;

30 “by night” means during the period between 9 p.m. on any day and 6 a.m. on the following day.

**Expiry of warrant (s. 46 ICAC Act)**

21. A search warrant ceases to have effect:

35 (a) one month after its issue; or

(b) if it is withdrawn by the person who issued the warrant; or

(c) when it is executed,

whichever first occurs.

**Seizure of other documents and things (s. 47 (1) ICAC Act)**

22. 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 the law of the Commonwealth, a State or a Territory; and 5
- (b) the first-mentioned person 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, 10

that 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. 15

**Application of provisions of the Search Warrants Act 1985 (s. 48 ICAC Act)**

23. (1) Part 3 of the Search Warrants Act 1985 (other than sections 16–20) applies to a search warrant issued under this Act.

(2) Part 3 of the Search Warrants Act 1985 so applies as if references in that Part to an authorised justice to whom an application for a search warrant is made or by whom a search warrant is issued included (where relevant) references to the Commissioner, where such an application is made to the Commissioner or a search warrant is issued by the Commissioner. 20  
25

**Obstruction of person executing search warrant (s. 84 ICAC Act)**

24. 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. 30

**Listening devices (s. 19 (2) ICAC Act)**

25. The Commissioner or an officer of the Commission may seek the issue of a warrant under the Listening Devices Act 1984.

**PART 5—PROTECTION OF WITNESSES AND EVIDENCE****Protection of witnesses (s. 50 ICAC Act)**

5       26. (1) If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary to avoid prejudice to the safety of any such person or to protect any such person from intimidation or harassment.

10       (2) In this section, a reference to a person who is assisting the Commission is a reference to a person who:

- 15       (a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing; or
- (b) has produced or proposes to produce a document or other thing to the Commission under this Act or the 1923 Act, otherwise than by attending before the Commission; or
- (c) has assisted, is assisting or is to assist the Commission in some other manner.

**Publication of evidence etc. (s. 112 ICAC Act)**

20       27. (1) The Commissioner may direct that:

- (a) any evidence given before the Commission; or
- (b) the contents of any document, or a description of any thing, produced to the Commission, or seized under a search warrant issued under this Act; or
- 25       (c) any information that might enable a person who has given evidence before the Commission to be identified; or
- (d) the fact that any person has given or may be about to give evidence before the Commission,

      must not be published or must not be published except in such manner, and to such persons, as the Commissioner specifies.

30       (2) The Commissioner is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

      (3) A person must not make a publication in contravention of a direction given under this section.

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



*Royal Commission (Police Service) 1994***Disclosures prejudicing inquiry (s. 114 ICAC Act)**

28. (1) A person who is required by a notice under section 6 or 7 to produce a statement of information or to attend and produce a document or other thing, or by a summons to attend the Commission and give evidence or produce a document or other thing, must not disclose any information about the notice or summons that is likely to prejudice the Commission's inquiry or any part or aspect of the Commission's inquiry to which it relates. 5

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both. 10

(2) Subsection (1) does not apply to a notice or summons unless it specifies that information about the notice or summons must not be disclosed.

(3) A person does not contravene this section if:

- (a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter; or 15
- (b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons; or 20
- (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

(4) A reference in this section to the disclosure of any information about a notice or summons includes a reference to:

- (a) a disclosure about the existence or nature of the notice or summons or of the part or aspect of the Commission's inquiry to which it relates; and 25
- (b) a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the notice or summons or of the part or aspect of the Commission's inquiry to which it relates. 30

**Indemnities and undertakings (s. 49 ICAC Act)**

29. (1) The Commissioner may recommend to the Attorney General that a person be granted (under section 13 of the Criminal Procedure Act 1986) an indemnity from prosecution. 35

(2) The Commissioner may recommend to the Attorney General that a person be given (under section 14 of the Criminal Procedure Act 1986) an undertaking that:

*Royal Commission (Police Service) 1994*

(a) an answer, statement or disclosure in proceedings before the Commission; or

(b) the fact of a disclosure or production of a document in proceedings before the Commission,

5 will not be used in evidence against the person.

(3) Section 14 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.

10 (4) A reference in this section to proceedings before the Commission includes a reference to any activity in connection with the Commission's inquiry involving the Commission, the Commissioner or an officer of the Commission.

**PART 6—SECREC Y, DISCLOSURE, ADMISSIBILITY****Secrecy (s. 111 ICAC Act)**

15 **30. (1)** This section applies to:

(a) a person who is or was the Commissioner or an officer of the Commission; and

20 (b) a person who is or was a person who assists, or performs services for or on behalf of, a legal practitioner appointed by the Crown to assist the Commission in the exercise of the legal practitioner's functions as counsel to the Commission.

25 (2) A person to whom this section applies must not, directly or indirectly, except for the purposes of this Act or the 1923 Act or the person's Royal Commission functions or otherwise in connection with the exercise of the person's Royal Commission functions:

(a) make a record of any information; or

(b) divulge 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 Royal Commission functions.

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

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

35 (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 Royal Commission functions; or

*Royal Commission (Police Service) 1994*

- (b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's Royal Commission functions,  
 except for the purposes of a prosecution or disciplinary proceedings instituted as a result of the Commission's inquiry. 5
- (4) Despite this section, a person to whom this section applies may divulge any such information:
- (a) for the purposes of the Commission's inquiry and report or otherwise for the purposes of and in accordance with this Act or the 1923 Act; or 10
  - (b) for the purposes of a prosecution or disciplinary proceedings instituted as a result of the Commission's inquiry; or
  - (c) in accordance with a direction of the Commissioner, if the Commissioner certifies that it is necessary to do so in the public interest; or 15
  - (d) to any prescribed authority or person.
- (5) An authority or person to whom information is divulged under subsection (4), and any person or employee under the control of that authority or person, is subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) 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 the person's Royal Commission functions. 20
- (6) In this section:
- "court" includes any tribunal, authority or person having power to require the production of documents or the answering of questions; 25
  - "produce" includes permit access to;
  - "Royal Commission functions" means functions arising under or in connection with this Act or the 1923 Act or any commission establishing or conferring functions on the Commission or conferring functions on the Commission or the Commissioner. 30
- Disclosure of information and giving of evidence by Ombudsman**
31. (1) The Ombudsman, and any officer of the Ombudsman acting with the approval of the Ombudsman, may:
- (a) furnish to the Commission information obtained by the Ombudsman or officer in exercising functions under the Ombudsman Act 1974, Part 8A (Complaints about conduct of police officers) of the Police Service Act 1990 or any other Act; or 35
- or

*Royal Commission (Police Service) 1994*

---

(b) give evidence before the Commission and produce any document to the Commission, in respect of any such information.

5 (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).

10 (3) This section applies despite sections 34 (Disclosure by Ombudsman or officer) and 35 (Ombudsman or officer as witness) of the Ombudsman Act 1974 and section 169 (Ombudsman or officer as witness) of the Police Service Act 1990, and any other law.

(4) Section 35 of the Ombudsman Act 1974 and section 169 of the Police Service Act 1990 do not apply in respect of any proceedings for an offence under this Act.

15 (5) In this section, a reference to an officer of the Ombudsman includes a reference to an acting Ombudsman, a Deputy Ombudsman, an Assistant Ombudsman and a special officer of the Ombudsman.

**Secrecy provisions in other Acts**

20 **32. (1)** The following provisions do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under this Act or the 1923 Act:

- 25 (a) section 15 (Secrecy) of the Companies (Administration) Act 1981;  
(b) section 155A (Secrecy) of the Liquor Act 1982;  
(c) section 206 (Disclosure of information relating to Police Board functions) of the Police Service Act 1990;  
(d) section 72C (Secrecy) of the Registered Clubs Act 1976.

(2) For the purposes of section 13 (Unlawful disclosure of information concerning spent convictions) of the Criminal Records Act 1991, the Commission is taken to be a law enforcement agency.

30 **Admissibility of documents relating to complaints about police**

**33. (1)** A document brought into existence for the purposes of Part 8A (Complaints about conduct of police officers) of the Police Service Act 1990 is admissible in evidence before the Commission.

35 (2) This section applies despite section 172A (Certain documents privileged) of the Police Service Act 1990.

*Royal Commission (Police Service) 1994*

---

**Telecommunications (Interception) (New South Wales) Act 1987**

34. Section 21 (Disclosure by persons under the Minister's administration) of the Telecommunications (Interception) (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. 5

**Legal Profession Act 1987**

35. Section 171R (Commissioner, Council etc. as witness) of the Legal Profession Act 1987 does not apply to proceedings for an offence under this Act. 10

**Note.** The section of the Legal Profession Act 1987 referred to here makes members of the Council and Tribunal under that Act (and certain other persons) not competent and not compellable to give evidence in legal proceedings. There is an exception for proceedings for an offence under the 1923 Act. Section 35 extends this exception to include proceedings for an offence under this Act. 15

**Privacy Committee Act 1975**

36. (1) Section 20 (Prohibition on disclosure by members and others) of the Privacy Committee Act 1975 does not apply to the disclosure of information for the purposes of any proceedings for an offence under this Act. 20

(2) Section 21 (Members and others as witnesses) of the Privacy Committee Act 1975 does not apply in respect of any proceedings for an offence under this Act.

**Note.** The sections of the Privacy Committee Act 1975 referred to here prevent disclosures by members and officers of the Privacy Committee and make those members and officers not competent and not compellable to give evidence in legal proceedings. There is an exception in each case in respect of proceedings for an offence under the 1923 Act. Section 36 extends this exception to include proceedings for an offence under this Act. 25

**Religious confessions** 30

37. Section 10 (Religious confessions) of the Evidence Act 1898 applies to any hearing or proceedings to which this Act applies.

**Note.** Section 10 of the Evidence Act 1898 protects religious confessions from disclosure in proceedings. The section specifically provides that the protection applies to a hearing or proceeding before a Royal Commission. Section 37 makes it clear that the protection extends to a hearing or proceeding under this Act. 35

**PART 7—MISCELLANEOUS****Effect of pending proceedings (s. 18 ICAC Act)**

5       **38. (1)** The Commissioner may do any or all of the following, despite any proceedings that may be in or before any court, tribunal, warden, coroner, Magistrate, justice of the peace or other person:

- (a) commence, continue, discontinue or complete the Commission's inquiry and any part or aspect of that inquiry;
- (b) furnish any report in connection with that inquiry or any part or aspect of that inquiry;
- 10       (c) all such acts and things as are necessary or expedient for those purposes.

15       **(2)** If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commissioner must, to the extent to which the Commissioner thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced:

- (a) ensure that, as far as practicable, any hearing or other matters relating to the inquiry are conducted in private during the currency of the proceedings; and
- 20       (b) give directions under section 27 (Publication of evidence etc.), having effect during the currency of the proceedings.

**(3)** Subsection (2) does not apply:

- (a) (in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings; and
- 25       (b) (in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.

30       **(4)** This section has effect whether or not the proceedings commenced before or after the Commission's inquiry commenced and has effect whether or not the Commission, the Commissioner or an officer of the Commission is a party to the proceedings.

**Delegation (s. 107 ICAC Act)**

35       **39.** The Commissioner may delegate any of the following functions of the Commissioner to the person appointed as Senior Counsel Assisting the Commission, to be exercisable only during the illness of the Commissioner or the absence of the Commissioner from Sydney or the State:

*Royal Commission (Police Service) 1994*

---

- (a) functions under section 6 (Power to obtain information) of this Act;
- (b) functions under section 7 (Power to obtain documents) of this Act;
- (c) functions under section 10 (Power to enter public premises) of this Act; 5
- (d) functions under section 14 (Attendance of prisoner before Commission) of this Act;
- (e) functions under section 8 (Witnesses) of the 1923 Act.

**Protection from liability (s. 109 ICAC Act)**

**40. (1)** A matter or thing done by the Commission, the Commissioner or any person acting under the direction of the Commission or Commissioner which was done in good faith for the purposes of the Commission's inquiry or for the purpose of executing this or any other Act does not subject the Commissioner or the person so acting personally to any action, liability, claim or demand. 10

(2) Subsection (1) does not limit any protection or immunity afforded the Commissioner by section 6 (Protection of Commissioners) of the 1923 Act. 15

(3) A legal practitioner assisting the Commission or representing a person before the Commission has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court. 20

(4) Subject to this Act and the 1923 Act, a person summoned to attend or appearing before the Commission 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. 25

(5) No criminal or civil liability attaches to any person for compliance, or purported compliance in good faith, with any requirement made under this Act or the 1923 Act.

(6) In particular, if a person gives any statement of information or produces any document or other thing under section 6 or 7, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise. 30

(7) The reference to the 1923 Act in item 10 of Schedule 1 (Excluded conduct of public authorities) of the Ombudsman Act 1974 is taken to include a reference to this Act. 35

**Note.** Item 10 of Schedule 1 to the Ombudsman Act 1974 operates to exclude the conduct of a Royal Commissioner under the 1923 Act from investigation by the Ombudsman. Subsection (7) extends this to include conduct of the Royal Commissioner under this Act. 40

**Proceedings for offences**

41. Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

5 42. 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.

---



THIRD PRINT

## ROYAL COMMISSION (POLICE SERVICE) BILL 1994

NEW SOUTH WALES



### TABLE OF PROVISIONS

#### PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Act applies only to Police Royal Commission
4. Definitions
5. Relationship with 1923 Act

#### PART 2—OBTAINING INFORMATION, DOCUMENTS AND OTHER THINGS

6. Power to obtain information (s. 21 ICAC Act)
7. Power to obtain documents etc. (s. 22 ICAC Act)
8. Privilege as regards information, documents etc. (s. 24 ICAC Act)
9. Self-incrimination (s. 26 ICAC Act)
10. Power to enter public premises (ss. 23, 25 ICAC Act)

#### PART 3—ATTENDANCE BEFORE THE COMMISSION

11. Arrest of witness (s. 36 ICAC Act)
12. Declaration as to objection by witness (s. 38 ICAC Act)
13. Reimbursement of expenses of witnesses (s. 51 ICAC Act)
14. Attendance of prisoner before Commission (s. 39 ICAC Act)

#### PART 4—SEARCH AND LISTENING DEVICE WARRANTS

15. Issue of search warrant (s. 40 ICAC Act)
16. Authority conferred by warrant (s. 41 ICAC Act)
17. Duty to show warrant (s. 42 ICAC Act)
18. Use of force (s. 43 ICAC Act)
19. Use of assistants to execute warrant (s. 44 ICAC Act)
20. Execution of warrant by day or night (s. 45 ICAC Act)

*Royal Commission (Police Service) 1994*

---

21. Expiry of warrant (s. 46 ICAC Act)
22. Seizure of other documents and things (s. 47 (1) ICAC Act)
23. Application of provisions of the Search Warrants Act 1985 (s. 48 ICAC Act)
24. Obstruction of person executing search warrant (s. 84 ICAC Act)
25. Listening devices (s. 19 (2) ICAC Act)

**PART 5—PROTECTION OF WITNESSES AND EVIDENCE**

26. Protection of witnesses (s. 50 ICAC Act)
27. Publication of evidence etc. (s. 112 ICAC Act)
28. Disclosures prejudicing inquiry (s. 114 ICAC Act)
29. Indemnities and undertakings (s. 49 ICAC Act)

**PART 6—SECRECY, DISCLOSURE, ADMISSIBILITY**

30. Secrecy (s. 111 ICAC Act)
31. Disclosure of information and giving of evidence by Ombudsman
32. Secrecy provisions in other Acts
33. Admissibility of documents relating to complaints about police
34. Telecommunications (Interception) (New South Wales) Act 1987
35. Legal Profession Act 1987
36. Privacy Committee Act 1975
37. Religious confessions

**PART 7—MISCELLANEOUS**

38. Effect of pending proceedings (s. 18 ICAC Act)
  39. Delegation (s. 107 ICAC Act)
  40. Protection from liability (s. 109 ICAC Act)
  41. Proceedings for offences
  42. Regulations
-

*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly*

*Clerk of the Legislative Assembly.*

NEW SOUTH WALES



Act No. , 1994

An Act to confer additional powers on the Royal Commission of inquiry into the operations of the New South Wales Police Service and to assist the conduct of that inquiry; and for other purposes.

*Royal Commission (Police Service) 1994*

---

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

**PART 1—PRELIMINARY**

**Short title**

5       **1.** This Act may be cited as the Royal Commission (Police Service) Act 1994.

**Commencement**

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

**Act applies only to Police Royal Commission**

10       **3. (1)** This Act applies only to:

15           (a) the Royal Commission of inquiry issued by the Governor by letters patent under the Public Seal on 13 May 1994, appointing the Honourable James Roland Tomson Wood sole commissioner to make inquiry into, and report on, the operations of the New South Wales Police Service; and

20           (b) any further Royal Commission by which a commissioner is appointed as sole commissioner to exercise functions at the request of, or otherwise to assist, the Royal Commissioner under the Royal Commission referred to in paragraph (a), but only if the terms of that further Royal Commission provide that this Act is to apply to the Commission.

25       **(2)** If a Royal Commission to which this Act applies is altered, extended or continued by another Royal Commission, or is replaced by another Royal Commission on the same or similar terms as that Royal Commission, this Act extends to apply to the Royal Commission as so altered, extended, continued or replaced.

**Definitions**

30       **4. (1)** In this Act:

“**exercise**” a function includes perform a duty;

“**function**” includes a power, authority or duty;

“**ICAC Act**” means the Independent Commission Against Corruption Act 1988;

“**legal practitioner**” has the same meaning as in the Legal Profession Act 1987;

*Royal Commission (Police Service) 1994*

---

**“1923 Act”** means the Royal Commissions Act 1923;

**“officer of the Commission”** means any legal practitioner appointed by the Crown to assist the Commission or any other person employed, seconded or otherwise engaged to assist the Commission;

**“premises”** includes any structure, building, aircraft, vehicle, vessel and place (whether built or not), and any part thereof; 5

**“public authority”** and **“public official”** have the same meanings as in the ICAC Act;

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

(2) Notes included in this Act are explanatory notes and do not form part of this Act. 10

**Relationship with 1923 Act**

5. (1) This Act is to be read as if it formed part of the 1923 Act (but only for the purposes of the operation of this Act in relation to a Royal Commission to which this Act applies). A reference in any other Act to the 1923 Act does not include a reference to this Act, except as expressly provided by this Act. 15

(2) The provisions of this Act are in addition to and not in derogation of any provisions of the 1923 Act, except as specifically provided by this Act. In particular, Part 2 of this Act does not limit or otherwise affect the provisions of the 1923 Act with respect to a person summoned to attend or appearing as a witness before the Commission. 20

(3) Nothing in the 1923 Act operates to constrain or restrict the exercise of a function conferred or imposed by or under this Act.

**PART 2—OBTAINING INFORMATION, DOCUMENTS AND OTHER THINGS** 25

**Power to obtain information (ss. 21, 82 ICAC Act)**

6. (1) For the purposes of the Commission’s inquiry, the Commissioner may, by notice in writing served on a public authority or public official, require the authority or official to produce a statement of information. 30

(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 the Commissioner or an officer of the Commission) to whom the production is to be made. 35

*Royal Commission (Police Service) 1994*

---

(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.

5 (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.
- 10

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

**Power to obtain documents etc. (ss. 22, 83 ICAC Act)**

15 7. (1) For the purposes of the Commission's inquiry, the Commissioner 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 the Commissioner or an 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.
- 20

(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.

25

(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.

30 **Privilege as regards information, documents etc. (s. 24 ICAC Act)**

8. (1) This section applies where, under section 6 or 7, the Commissioner requires any person:

- (a) to produce any statement of information; or
- (b) to produce any document or other thing.

*Royal Commission (Police Service) 1994*

---

(2) The Commissioner must set aside the requirement if it appears to the Commissioner that any person has a ground of privilege whereby, in proceedings in a court of law, the person might resist a like requirement and it does not appear to the Commissioner that the person consents to compliance with the requirement. 5

(3) The person must however comply with the requirement despite:

- (a) any rule which 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 which the authority or official could have claimed in a court of law; or 10
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

**Self-incrimination (s. 26 ICAC Act) 15**

9. (1) This section applies where, under section 6 or 7, the Commissioner requires any person:

- (a) to produce any statement of information; or
- (b) to produce 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, 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 or the 1923 Act). 20

(3) They may however be used for the purposes of the Commission's inquiry, despite any such objection. 25

**Power to enter public premises (ss. 23, 25 ICAC Act)**

10. (1) For the purposes of the Commission's inquiry, the Commissioner or an officer of the Commission authorised in writing by the Commissioner may, at any time: 30

- (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 powers conferred by this section must not be exercised other than for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve a criminal offence. 35

*Royal Commission (Police Service) 1994*

---

(3) 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.

5 (4) 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 whereby, 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.

10 (5) The powers may however be exercised despite:

(a) any rule of law which, 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

15 (b) any privilege of a public authority or public official in that capacity which 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.

20 **PART 3—ATTENDANCE BEFORE THE COMMISSION**

**Arrest of witness (s. 36 ICAC Act)**

25 **11. (1)** If a person served with a summons to attend the Commission as a witness fails to attend in answer to the summons, the Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness.

(2) The Commissioner may issue a warrant for the arrest of a person whose evidence is desired and is necessary and relevant to the Commission's inquiry if the Commissioner is satisfied by evidence on oath or affirmation that it is probable that the person:

30 (a) will not attend before the Commission 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 Commission if the person departs.



*Royal Commission (Police Service) 1994*

---

(3) The powers conferred by subsection (2) must not be exercised unless the Commissioner is satisfied that the evidence of the person concerned is required for the purpose of investigating any conduct of a person that constitutes or involves or may constitute or involve a criminal offence. 5

(4) The Commissioner is authorised to administer an oath or affirmation for the purposes of subsection (2).

(5) A warrant may be issued under subsection (2) without or before the issue of a summons to the person whose evidence is desired.

(6) A warrant may be issued under subsection (2) 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. 10

(7) A warrant under this section authorises the arrest of the witness and his or her being promptly brought before the Commission and detained in custody for that purpose until released by order of the Commissioner. 15

(8) 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.

(9) 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. 20

(10) This section operates in place of section 16 (Warrant) of the 1923 Act.

**Declaration as to objection by witness (s. 38 ICAC Act)** 25

12. The 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. 30

**Reimbursement of expenses of witnesses (s. 51 ICAC Act)**

13. (1) A witness attending or appearing before the Commission 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 for the purposes of section 51 of the Independent Commission Against Corruption Act 1988 or, if there is no such prescribed scale, such amount as the Royal Commissioner determines. 35

*Royal Commission (Police Service) 1994*

---

(2) Section 13 of the 1923 Act (Allowance to witnesses) does not apply in respect of witnesses attending or appearing before a Royal Commission to which this Act applies.

**Attendance of prisoner before Commission (s. 39 ICAC Act)**

5       **14. (1)** If the Commissioner requires the attendance before the Commission of a prisoner, the Commissioner may, by order in writing served on the governor of the prison in whose custody the prisoner is, direct the governor to produce the prisoner, or have the prisoner produced, at the time and place stated in the order.

10       (2) Such an order is sufficient authority to the governor of the prison for producing the prisoner or having the prisoner produced, and the prisoner must be produced accordingly.

15       (3) A prisoner is, when produced under this section in the actual custody of the governor of the prison, a prison officer or a police officer, taken to be in lawful custody.

(4) The governor, prison officer or police officer must in due course return the prisoner to the prison.

(5) In this section, “governor of a prison”, “prison” and “prisoner” have the same meanings as in the Prisons Act 1952.

20       **PART 4—SEARCH AND LISTENING DEVICE WARRANTS**

**Issue of search warrant (s. 40 ICAC Act)**

15       **15. (1)** An authorised justice to whom an application is made under subsection (4) may issue a search warrant if satisfied that there are reasonable grounds for doing so.

25       (2) The Commissioner, on application made to the Commissioner under subsection (4), may issue a search warrant if the Commissioner thinks fit in the circumstances and if satisfied that there are reasonable grounds for doing so.

30       (3) Search warrants should, as far as practicable, be issued by authorised justices, but nothing in this subsection affects the discretion of the Commissioner to issue them.

(4) An authorised person may apply to an authorised justice or the Commissioner for a search warrant if the person has reasonable grounds for believing that:

*Royal Commission (Police Service) 1994*

---

- (a) there is in or on any premises a document or other thing connected with any matter that is the subject of the Commission's inquiry or that such a document or other thing may, within the next following 72 hours, be brought into or onto the premises; and
- (b) the matter involves any conduct of a person that constitutes or involves or may constitute or involve a criminal offence. 5

(5) In this section:

**"authorised justice"** has the same meaning as in the Search Warrants Act 1985;

**"authorised person"** means an officer of the Commission and, in relation to an application to an authorised justice for a search warrant, includes the Commissioner. 10

**Authority conferred by warrant (s. 41 ICAC Act)**

16. (1) A search warrant authorises any police officer, or any other person, named in the warrant: 15

- (a) to enter the premises; and
- (b) to search the premises for documents or other things connected with any matter that is the subject of the Commission's inquiry; and
- (c) to seize any such documents or other things found in or on the premises and deliver them to the Commission. 20

(2) A police officer executing a search warrant may search a person found in or on the premises whom the police officer reasonably suspects of having a document or other thing mentioned in the warrant.

(3) If the person executing a search warrant is a police officer under the law of another State or of a Territory or the Commonwealth, he or she may exercise the functions of a police officer under subsection (2). 25

(4) Section 12 (Inspection and copies of documents) of the 1923 Act extends to apply to a document or other thing seized pursuant to a search warrant. 30

**Duty to show warrant (s. 42 ICAC Act)**

17. A person executing a search warrant must produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

**Use of force (s. 43 ICAC Act)**

18. (1) A person authorised to enter premises under a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

5 (2) A person authorised to enter premises under a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or on the premises for the purposes of the search.

**Use of assistants to execute warrant (s. 44 ICAC Act)**

10 19. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

**Execution of warrant by day or night (s. 45 ICAC Act)**

20. (1) A search warrant may be executed by day, but must not be executed by night unless the person issuing the warrant, by the warrant, authorises its execution by night.

15 (2) The person issuing a search warrant is not to authorise the execution of the warrant by night unless satisfied that there are reasonable grounds for doing so. Those grounds include (but are not limited to) the following:

20 (a) the execution of the warrant by day is unlikely to be successful because, for example, it is issued to search for a thing which is likely to be on the premises only at night or other relevant circumstances will only exist at night;

(b) there is likely to be less risk to the safety of any person if it is executed at night;

25 (c) an occupier is likely to be on the premises only at night to allow entry without the use of force.

(3) In this section:

“by day” means during the period between 6 a.m. and 9 p.m. on any day;

30 “by night” means during the period between 9 p.m. on any day and 6 a.m. on the following day.

**Expiry of warrant (s. 46 ICAC Act)**

21. A search warrant ceases to have effect:

35 (a) one month after its issue; or

(b) if it is withdrawn by the person who issued the warrant; or

(c) when it is executed,

whichever first occurs.

*Royal Commission (Police Service) 1994***Seizure of other documents and things (s. 47 (1) ICAC Act)**

22. 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 the law of the Commonwealth, a State or a Territory; and 5
- (b) the first-mentioned person 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, 10

that 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. 15

**Application of provisions of the Search Warrants Act 1985 (s. 48 ICAC Act)**

23. (1) Part 3 of the Search Warrants Act 1985 (other than sections 16–20) applies to a search warrant issued under this Act.

(2) Part 3 of the Search Warrants Act 1985 so applies as if references in that Part to an authorised justice to whom an application for a search warrant is made or by whom a search warrant is issued included (where relevant) references to the Commissioner, where such an application is made to the Commissioner or a search warrant is issued by the Commissioner. 20  
25

**Obstruction of person executing search warrant (s. 84 ICAC Act)**

24. 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. 30

**Listening devices (s. 19 (2) ICAC Act)**

25. The Commissioner or an officer of the Commission may seek the issue of a warrant under the Listening Devices Act 1984.

**PART 5—PROTECTION OF WITNESSES AND EVIDENCE****Protection of witnesses (s. 50 ICAC Act)**

5       **26. (1)** If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary to avoid prejudice to the safety of any such person or to protect any such person from intimidation or harassment.

10       **(2)** In this section, a reference to a person who is assisting the Commission is a reference to a person who:

- 15       (a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing; or
- (b) has produced or proposes to produce a document or other thing to the Commission under this Act or the 1923 Act, otherwise than by attending before the Commission; or
- (c) has assisted, is assisting or is to assist the Commission in some other manner.

**Publication of evidence etc. (s. 112 ICAC Act)**

20       **27. (1)** The Commissioner may direct that:

- (a) any evidence given before the Commission; or
- (b) the contents of any document, or a description of any thing, produced to the Commission, or seized under a search warrant issued under this Act; or
- 25       (c) any information that might enable a person who has given evidence before the Commission to be identified; or
- (d) the fact that any person has given or may be about to give evidence before the Commission,

      must not be published or must not be published except in such manner, and to such persons, as the Commissioner specifies.

30       **(2)** The Commissioner is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

**(3)** A person must not make a publication in contravention of a direction given under this section.

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

*Royal Commission (Police Service) 1994*

---

**Disclosures prejudicing inquiry (s. 114 ICAC Act)**

28. (1) A person who is required by a notice under section 6 or 7 to produce a statement of information or to attend and produce a document or other thing, or by a summons to attend the Commission and give evidence or produce a document or other thing, must not disclose any information about the notice or summons that is likely to prejudice the Commission's inquiry or any part or aspect of the Commission's inquiry to which it relates. 5

Maximum penalty: 50 penalty units or imprisonment for 12 months, or both. 10

(2) Subsection (1) does not apply to a notice or summons unless it specifies that information about the notice or summons must not be disclosed.

(3) A person does not contravene this section if:

- (a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter; or 15
- (b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons; or 20
- (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.

(4) A reference in this section to the disclosure of any information about a notice or summons includes a reference to:

- (a) a disclosure about the existence or nature of the notice or summons or of the part or aspect of the Commission's inquiry to which it relates; and 25
- (b) a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the notice or summons or of the part or aspect of the Commission's inquiry to which it relates. 30

**Indemnities and undertakings (s. 49 ICAC Act)**

29. (1) The Commissioner may recommend to the Attorney General that a person be granted (under section 13 of the Criminal Procedure Act 1986) an indemnity from prosecution. 35

(2) The Commissioner may recommend to the Attorney General that a person be given (under section 14 of the Criminal Procedure Act 1986) an undertaking that:

*Royal Commission (Police Service) 1994*

(a) an answer, statement or disclosure in proceedings before the Commission; or

(b) the fact of a disclosure or production of a document in proceedings before the Commission,

5 will not be used in evidence against the person.

(3) Section 14 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.

10 (4) A reference in this section to proceedings before the Commission includes a reference to any activity in connection with the Commission's inquiry involving the Commission, the Commissioner or an officer of the Commission.

#### **PART 6—SECRECY, DISCLOSURE, ADMISSIBILITY**

##### **Secrecy (s. 111 ICAC Act)**

15 **30. (1)** This section applies to:

(a) a person who is or was the Commissioner or an officer of the Commission; and

20 (b) a person who is or was a person who assists, or performs services for or on behalf of, a legal practitioner appointed by the Crown to assist the Commission in the exercise of the legal practitioner's functions as counsel to the Commission.

25 (2) A person to whom this section applies must not, directly or indirectly, except for the purposes of this Act or the 1923 Act or the person's Royal Commission functions or otherwise in connection with the exercise of the person's Royal Commission functions:

(a) make a record of any information; or

(b) divulge 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 Royal Commission functions.

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

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

35 (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 Royal Commission functions; or



*Royal Commission (Police Service) 1994*

---

- (b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's Royal Commission functions,  
 except for the purposes of a prosecution or disciplinary proceedings instituted as a result of the Commission's inquiry. 5
- (4) Despite this section, a person to whom this section applies may divulge any such information:
- (a) for the purposes of the Commission's inquiry and report or otherwise for the purposes of and in accordance with this Act or the 1923 Act; or 10
  - (b) for the purposes of a prosecution or disciplinary proceedings instituted as a result of the Commission's inquiry; or
  - (c) in accordance with a direction of the Commissioner, if the Commissioner certifies that it is necessary to do so in the public interest; or 15
  - (d) to any prescribed authority or person.
- (5) An authority or person to whom information is divulged under subsection (4), and any person or employee under the control of that authority or person, is subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) 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 the person's Royal Commission functions. 20
- (6) In this section:
- "court" includes any tribunal, authority or person having power to require the production of documents or the answering of questions; 25
  - "produce" includes permit access to;
  - "Royal Commission functions" means functions arising under or in connection with this Act or the 1923 Act or any commission establishing or conferring functions on the Commission or conferring functions on the Commission or the Commissioner. 30
- Disclosure of information and giving of evidence by Ombudsman**
31. (1) The Ombudsman, and any officer of the Ombudsman acting with the approval of the Ombudsman, may:
- (a) furnish to the Commission information obtained by the Ombudsman or officer in exercising functions under the Ombudsman Act 1974, Part 8A (Complaints about conduct of police officers) of the Police Service Act 1990 or any other Act; or 35

*Royal Commission (Police Service) 1994*

---

(b) give evidence before the Commission and produce any document to the Commission, in respect of any such information.

5 (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).

10 (3) This section applies despite sections 34 (Disclosure by Ombudsman or officer) and 35 (Ombudsman or officer as witness) of the Ombudsman Act 1974 and section 169 (Ombudsman or officer as witness) of the Police Service Act 1990, and any other law.

(4) Section 35 of the Ombudsman Act 1974 and section 169 of the Police Service Act 1990 do not apply in respect of any proceedings for an offence under this Act.

15 (5) In this section, a reference to an officer of the Ombudsman includes a reference to an acting Ombudsman, a Deputy Ombudsman, an Assistant Ombudsman and a special officer of the Ombudsman.

**Secrecy provisions in other Acts**

20 **32. (1)** The following provisions do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under this Act or the 1923 Act:

- 25 (a) section 15 (Secrecy) of the Companies (Administration) Act 1981;  
(b) section 155A (Secrecy) of the Liquor Act 1982;  
(c) section 206 (Disclosure of information relating to Police Board functions) of the Police Service Act 1990;  
(d) section 72C (Secrecy) of the Registered Clubs Act 1976.

(2) For the purposes of section 13 (Unlawful disclosure of information concerning spent convictions) of the Criminal Records Act 1991, the Commission is taken to be a law enforcement agency.

30 **Admissibility of documents relating to complaints about police**

**33. (1)** A document brought into existence for the purposes of Part 8A (Complaints about conduct of police officers) of the Police Service Act 1990 is admissible in evidence before the Commission.

35 (2) This section applies despite section 172A (Certain documents privileged) of the Police Service Act 1990.

*Royal Commission (Police Service) 1994*

---

**Telecommunications (Interception) (New South Wales) Act 1987**

**34.** Section 21 (Disclosure by persons under the Minister's administration) of the Telecommunications (Interception) (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. 5

**Legal Profession Act 1987**

**35.** Section 171R (Commissioner, Council etc. as witness) of the Legal Profession Act 1987 does not apply to proceedings for an offence under this Act. 10

**Note.** The section of the Legal Profession Act 1987 referred to here makes members of the Council and Tribunal under that Act (and certain other persons) not competent and not compellable to give evidence in legal proceedings. There is an exception for proceedings for an offence under the 1923 Act. Section 35 extends this exception to include proceedings for an offence under this Act. 15

**Privacy Committee Act 1975**

**36. (1)** Section 20 (Prohibition on disclosure by members and others) of the Privacy Committee Act 1975 does not apply to the disclosure of information for the purposes of any proceedings for an offence under this Act. 20

**(2)** Section 21 (Members and others as witnesses) of the Privacy Committee Act 1975 does not apply in respect of any proceedings for an offence under this Act.

**Note.** The sections of the Privacy Committee Act 1975 referred to here prevent disclosures by members and officers of the Privacy Committee and make those members and officers not competent and not compellable to give evidence in legal proceedings. There is an exception in each case in respect of proceedings for an offence under the 1923 Act. Section 36 extends this exception to include proceedings for an offence under this Act. 25

**Religious confessions** 30

**37.** Section 10 (Religious confessions) of the Evidence Act 1898 applies to any hearing or proceedings to which this Act applies.

**Note.** Section 10 of the Evidence Act 1898 protects religious confessions from disclosure in proceedings. The section specifically provides that the protection applies to a hearing or proceeding before a Royal Commission. Section 37 makes it clear that the protection extends to a hearing or proceeding under this Act. 35

**PART 7—MISCELLANEOUS****Effect of pending proceedings (s. 18 ICAC Act)**

5       **38. (1)** The Commissioner may do any or all of the following, despite any proceedings that may be in or before any court, tribunal, warden, coroner, Magistrate, justice of the peace or other person:

- (a) commence, continue, discontinue or complete the Commission's inquiry and any part or aspect of that inquiry;
- (b) furnish any report in connection with that inquiry or any part or aspect of that inquiry;
- 10       (c) all such acts and things as are necessary or expedient for those purposes.

15       **(2)** If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commissioner may, to the extent to which the Commissioner thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced:

- (a) order any hearing or other matters relating to the inquiry are conducted in private during the currency of the proceedings; and
- (b) give directions under section 27 (Publication of evidence etc.), having effect during the currency of the proceedings.

20       **(3)** Subsection (2) does not apply:

- (a) (in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings; and
- 25       (b) (in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.

30       **(4)** This section has effect whether or not the proceedings commenced before or after the Commission's inquiry commenced and has effect whether or not the Commission, the Commissioner or an officer of the Commission is a party to the proceedings.

**Delegation (s. 107 ICAC Act)**

35       **39.** The Commissioner may delegate any of the following functions of the Commissioner to the person appointed as Senior Counsel Assisting the Commission, to be exercisable only during the illness of the Commissioner or the absence of the Commissioner from Sydney or the State:

*Royal Commission (Police Service) 1994*

---

- (a) functions under section 6 (Power to obtain information) of this Act;
- (b) functions under section 7 (Power to obtain documents) of this Act;
- (c) functions under section 10 (Power to enter public premises) of this Act;
- (d) functions under section 14 (Attendance of prisoner before Commission) of this Act;
- (e) functions under section 8 (Witnesses) of the 1923 Act.

5

**Protection from liability (s. 109 ICAC Act)**

**40. (1)** A matter or thing done by the Commission, the Commissioner or any person acting under the direction of the Commission or Commissioner which was done in good faith for the purposes of the Commission's inquiry or for the purpose of executing this or any other Act does not subject the Commissioner or the person so acting personally to any action, liability, claim or demand.

10

15

**(2)** Subsection (1) does not limit any protection or immunity afforded the Commissioner by section 6 (Protection of Commissioners) of the 1923 Act.

**(3)** A legal practitioner assisting the Commission or representing a person before the Commission has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.

20

**(4)** Subject to this Act and the 1923 Act, a person summoned to attend or appearing before the Commission 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.

25

**(5)** No criminal or civil liability attaches to any person for compliance, or purported compliance in good faith, with any requirement made under this Act or the 1923 Act.

**(6)** In particular, if a person gives any statement of information or produces any document or other thing under section 6 or 7, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

30

**(7)** The reference to the 1923 Act in item 10 of Schedule 1 (Excluded conduct of public authorities) of the Ombudsman Act 1974 is taken to include a reference to this Act.

35

**Note.** Item 10 of Schedule 1 to the Ombudsman Act 1974 operates to exclude the conduct of a Royal Commissioner under the 1923 Act from investigation by the Ombudsman. Subsection (7) extends this to include conduct of the Royal Commissioner under this Act.

40

**Proceedings for offences**

41. Proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**Regulations**

- 5      42. 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.
-