



New South Wales

# **Investigative Bodies Legislation Amendment Bill 1997**

## **Explanatory note**

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

### **Overview of Bill**

The object of this Bill is to amend the *Police Integrity Commission Act 1996*, the *Royal Commission (Police Service) Act 1994*, the *New South Wales Crime Commission Act 1985* and the *Independent Commission Against Corruption Act 1988*. The amendments will:

- (a) enable the conditional release of witnesses who have been detained to ensure their appearance, and
  - (b) enable the conditional release of persons in custody awaiting the hearing of contempt charges against them under the *Police Integrity Commission Act 1996* and the *Independent Commission Against Corruption Act 1988*, and
  - (c) enable those witnesses and persons to appeal against their detention or against the terms of their release, and
  - (d) enable a wider range of orders to be made for the protection of witnesses, and
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- (e) ensure the continued protection of persons assisting the Police Royal Commissioner even after the Commissioner has discharged his or her functions (in the case of the amendments to the *Police Integrity Commission Act 1996* only), and
- (f) enable the Attorney General to delegate his or her functions concerning legal and financial assistance for witnesses under the *Police Integrity Commission Act 1996* and the *Independent Commission Against Corruption Act 1988* to the Director-General of the Attorney General's Department.

## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

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

**Clause 4** is a formal provision giving effect to the amendments to the *Royal Commission (Police Service) Act 1994* set out in Schedule 2.

**Clause 5** is a formal provision giving effect to the amendments to the *New South Wales Crime Commission Act 1985* set out in Schedule 3.

**Clause 6** is a formal provision giving effect to the amendments to the *Independent Commission Against Corruption Act 1988* set out in Schedule 4.

## Schedules 1–4

### Clarification of the term “custody” where witness arrested

### Conditional release of detained witness

### Appeal against conditions of release or continued detention

Presently, a person may be summoned as a witness before any of the four Commissions, but may in addition or instead be arrested, held in custody, and brought before the relevant Commission, in cases where it is feared that the person will not answer a summons.

**Schedule 1 [2]** makes it clear that the term “custody” in section 39 (6) of the *Police Integrity Commission Act 1996* means “in a prison or elsewhere”, as it does in section 120 (5) of that Act.

**Schedule 1 [4]** inserts proposed sections 39A and 39B in the *Police Integrity Commission Act 1996*. Proposed section 39A will enable the conditional release of a witness who has been detained. The conditions relate to ensuring the reappearance of the witness and may include the provision of sureties, the surrender of a passport and regular reporting. In cases where a detained witness is not released before giving evidence or is conditionally released, the witness will, under proposed section 39B, have a right of appeal to the Supreme Court.

Similar changes are made to the *Royal Commission (Police Service) Act 1994* by **Schedule 2 [1]** and **[2]**, the *New South Wales Crime Commission Act 1985* by **Schedule 3 [3]** and **[4]** and the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [1]** and **[2]**.

#### **Wider scope for protection orders**

Presently, the Commissions have certain powers to make arrangements for the protection of persons assisting them.

**Schedule 1 [6]** replaces section 51 (5) of the *Police Integrity Commission Act 1996* to enable protection orders to be made by the Commission that are wider in scope than at present.

Similar changes are made to the *Royal Commission (Police Service) Act 1994* by **Schedule 2 [3]** and the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [3]**. The *New South Wales Crime Commission Act 1985* is not amended (except for the sake of law revision: **Schedule 3 [5]**) because it has a different protection provision.

#### **Restrictions on publication of names and addresses**

Presently, the Commissions may restrict the publication of information that may reveal the identity of a person who has already given evidence before them.

**Schedule 1 [7]** amends section 52 of the *Police Integrity Commission Act 1996* to enable that Commission to restrict the publication also of information that may reveal the whereabouts of such persons and also to restrict the publication of information that may reveal the identities and whereabouts of persons who are about to give evidence.

Similar changes are made to the *Royal Commission (Police Service) Act 1994* by **Schedule 2 [4]**, the *New South Wales Crime Commission Act 1985* by **Schedule 3 [1]** and the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [12]**.



### **Consequential changes**

**Schedule 1 [10]** expands the offences in the *Police Integrity Commission Act 1996* relating to the non-attendance of witnesses to include a breach by a person of the conditions (imposed by virtue of proposed section 39A) on which the person has been released pending a hearing. Those conditions may include a requirement to appear at the hearing and, in the meantime, to report regularly to the Commission. The offence will carry a penalty of 20 penalty units or 2 years' imprisonment or both. **Schedule 1 [9]** amends the penalty relating to other offences by witnesses so that it will be the same.

Similar changes are made to the *New South Wales Crime Commission Act 1985* by **Schedule 3 [2]** and the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [5]** and [6]. In the case of the *Royal Commission (Police Service) Act 1994*, a similar offence is incorporated in proposed section 11A as inserted by **Schedule 2 [2]**.

**Schedule 1 [11]** extends section 112 of the *Police Integrity Commission Act 1996*, which creates an offence of obstructing or intimidating persons summoned as witnesses, to cover similar acts against persons who have been detained as witnesses (but not summoned) whether conditionally released or not.

A similar change is made to the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [7]**. The *Royal Commission (Police Service) Act 1994* and the *New South Wales Crime Commission Act 1985* have no parallel provisions.

**Schedule 1 [12]** and [13] consequentially expand the categories of contempt expressly set out in the *Police Integrity Commission Act 1996* to include the failure of a witness who is on conditional release to report to the Commission in accordance with those conditions.

A similar change is made to the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [8]** and [9], but no such change is made to the *Royal Commission (Police Service) Act 1994* and the *New South Wales Crime Commission Act 1985*, which do not contain parallel enumerations of the categories of contempt.

### **Conditional release of persons in custody awaiting hearing of contempt charges**

**Schedule 1 [15]** inserts proposed sections 120A and 120B in the *Police Integrity Commission Act 1996*, provisions that are parallel to those relating to arrested witnesses. They provide for the conditional release of persons



detained and awaiting proceedings concerning contempt of the Police Integrity Commission, as well as providing for appeals against refusals to release them.

**Schedule 1 [14]** makes it clear that the term “custody” in section 120 (3) (a) of the *Police Integrity Commission Act 1996* means “in a prison or elsewhere”, as it does in section 120 (5) of that Act.

Similar changes are made to the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [10]** and **[11]**.

#### **Delegation of approval of witness assistance**

**Schedule 1 [5]** amends section 43 of the *Police Integrity Commission Act 1996* to enable the Attorney General to delegate his or her functions concerning legal and financial assistance for witnesses to the Director-General of the Attorney General's Department. **Schedule 4 [4]** similarly amends section 52 of the *Independent Commission Against Corruption Act 1988*.

#### **Law revision**

**Schedule 1 [1], [3], [8]** and **[16]** make amendments to the *Police Integrity Commission Act 1996* for the sake of law revision.

#### **Savings and transitional provisions**

**Schedule 1 [17]–[20]** insert savings and transitional provisions in the *Police Integrity Commission Act 1996*:

- (a) to ensure the continued operation of orders, arrangements and directions made under the *Royal Commission (Police Service) Act 1994* for the protection of persons assisting the Police Royal Commissioner under that Act after the discharge of his or her functions, and
- (b) to enable the PIC Commissioner to make such orders, arrangements and directions, and to vary and revoke them, both before and after the discharge of the Police Royal Commissioner's functions, and
- (c) as a consequence of the enactment of the proposed Act.

Savings and transitional provisions consequent on the enactment of the proposed Act are inserted in the *Royal Commission (Police Service) Act 1994* by **Schedule 2 [5]**, the *New South Wales Crime Commission Act 1985* by **Schedule 3 [6]** and **[7]** and the *Independent Commission Against Corruption Act 1988* by **Schedule 4 [13]–[16]**.







New South Wales

# Investigative Bodies Legislation Amendment Bill 1997

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New South Wales

## Investigative Bodies Legislation Amendment Bill 1997

No , 1997

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### **A Bill for**

An Act to amend the *Police Integrity Commission Act 1996*, the *Royal Commission (Police Service) Act 1994*, the *New South Wales Crime Commission Act 1985* and the *Independent Commission Against Corruption Act 1988* with respect to the conditional release of witnesses and contemnors, the protection of witnesses and other matters.

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

**1    Name of Act**

This Act is the *Investigative Bodies Legislation Amendment Act 1997*.

**2    Commencement**

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This Act commences on the date of assent.

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

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

**4    Amendment of Royal Commission (Police Service) Act 1994 No 60**

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The *Royal Commission (Police Service) Act 1994* is amended as set out in Schedule 2.

**5    Amendment of New South Wales Crime Commission Act 1985 No 117**

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The *New South Wales Crime Commission Act 1985* is amended as set out in Schedule 3.

**6    Amendment of Independent Commission Against Corruption Act 1988 No 35**

The *Independent Commission Against Corruption Act 1988* is amended as set out in Schedule 4.    20



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## **Schedule 1    Amendment of Police Integrity Commission Act 1996**

(Section 3)

**[1]    Section 11 Delegation**

Insert "or 5" after "Division 4" in section 11 (4) (b).

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**[2]    Section 39 Arrest of witness**

Omit "custody" from section 39 (6).

Insert instead "a prison or elsewhere".

**[3]    Section 39 (6)**

Omit "Commission" where secondly occurring.

Insert instead "Commissioner".

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**[4]    Sections 39A and 39B**

Insert after section 39:

**39A Conditional release of witness**

(1)    The release of a witness by order of the Commissioner under section 39 (6) may (but need not) be made subject to one or more of the following conditions (or to any other conditions):

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(a)    that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the person presiding at the relevant hearing of the Commission, and

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(b)    conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).

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

**39B Review by Supreme Court**

- (1) A witness who has not been released by the Commissioner under section 39 (6) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions. 5
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness. 10 15
- (3) Such an order is taken to be an order of the Commissioner.

**[5] Section 43 Legal and financial assistance for witness 20**

Insert after section 43 (4):

- (5) The Attorney General may delegate one or more of his or her functions under this section to the Director-General of the Attorney General's Department.

**[6] Section 51 Protection of witnesses and persons assisting Commission 25**

Omit section 51 (5). Insert instead:

- (5) **Orders**  
Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3). 30 35



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**[7] Section 52 Restriction on publication of evidence**

Omit section 52 (1) (c) and (d). Insert instead:

- (c) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or 5
  - (d) the fact that any person has given or may be about to give evidence before the Commission,
- must not be published except in such manner, and to such persons, as the Commission specifies.

**[8] Section 56 Secrecy** 10

Omit section 56 (2). Insert instead:

- (2) A person to whom this section applies must not, directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's functions under this Act: 15
    - (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 functions under this Act. 20
- Maximum penalty: 50 penalty units or imprisonment for 12 months, or both.

**[9] Section 106 Failure to attend etc**

Omit "50 penalty units or imprisonment for 12 months, or both" from section 106 (1). 25

Insert instead "20 penalty units or imprisonment for 2 years, or both".

**[10]    Section 106 (3)**

Insert after subsection (2):

- (3)    A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 39 (6) or 120A is subject, is guilty of an offence.      5
- Maximum penalty: 20 penalty units or imprisonment for 2 years, or both.

**[11]    Section 112 Preventing witness from attending and threats to witnesses**

Insert after section 112 (2):      10

- (3)    A reference in subclause (1) to a person who has been summoned to attend as a witness before the Commission includes a reference to a person who is in detention under a warrant under section 39 (6) or who, having been released under that subsection on condition that the person appear and report himself or herself before the Commission, is still subject to that condition.      15

**[12]    Section 118 Contempt**

Insert after section 118 (1) (a):

- (aa)   having been released under section 39 (6) on condition (under section 39A (1) (a)) that the person appear and report himself or herself before the Commission, fails so to appear and report, or      20

**[13]    Section 119 Punishment of contempt**

Insert “(or failure to appear and report as a witness in accordance with a condition of release)” after “summons” in section 119 (5).      25

**[14]    Section 120 General provisions regarding contempt**

Insert “in a prison or elsewhere” after “custody” in section 120 (3) (a).

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**[15] Sections 120A and 120B**

Insert after section 120:

**120A Conditional release of offender**

- (1) The Commissioner may by order release an offender detained under section 120 at any time before the offender is brought before the Supreme Court. 5
- (2) The release must be subject to the condition that the offender appear before the Supreme Court.
- (3) The release may (but need not) be made subject to:
  - (a) one or more conditions for the purpose of ensuring the appearance of the offender before the Supreme Court (for example the provision of sureties by the offender, the surrender of any passport held by the offender, a requirement as to where the offender is to live and regular reporting by the offender to the Commission), and 10
  - (b) any other conditions. 15
- (4) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

**120B Review by Supreme Court** 20

- (1) An offender who has not been released by the Commissioner under section 120A or whose release under that section is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the offender or of the terms of one or more of those conditions. 25
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the offender or any condition imposed by the Commissioner on the release of the offender. The Supreme Court may also or instead make any order that the Commissioner may make in 30



relation to the detention or release of the offender. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the offender.

- (3) Such an order is taken to be an order of the Commissioner. 5

**[16] Section 130 Functions of PIC where other public officials involved**

Omit "public officials who are not" from section 130 (2).

**[17] Schedule 3 Savings, transitional and other provisions 10**

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act 15

*Police Legislation Amendment Act 1996*

*Investigative Bodies Legislation Amendment Act 1997*

**[18] Schedule 3, Part 2 heading**

Omit the heading. Insert instead:

**Part 2      Continuity with Police Royal Commission 20**

**[19] Schedule 3, clause 2A**

Insert after clause 2:

**2A Continuing protection of witnesses**

- (1) An order, arrangement or direction in force under section 26 (or a direction in force under section 27) of the *Royal Commission (Police Service) Act 1994* immediately before a Police Royal Commissioner discharges his or 25



her functions under the Royal Commission issued to him or her continues in force under that Act despite that discharge and without the need for a further Royal Commission that provides that that Act is to apply to the Commission.

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- (2) After the commencement of this subclause, whether or not there is a Royal Commission in force that provides that the *Royal Commission (Police Service) Act 1994* is to apply to the Commission, the PIC Commissioner has the same powers as a Police Royal Commissioner would have if a Police Royal Commissioner were to have functions under that Act:

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- (a) to make an order, arrangement or direction under section 26 of that Act or a direction under section 27 of that Act, and

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- (b) to vary or revoke such an order, arrangement or direction, whether made by a Police Royal Commissioner or the PIC Commissioner.

- (3) The PIC Commissioner has the powers referred to in subclause (2) in respect of a person whether or not an order, arrangement or direction was in force in respect of the person under the *Royal Commission (Police Service) Act 1994* before the commencement of that subclause.

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#### [20] Schedule 3, Part 4

Insert after Part 3:

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#### **Part 4 Provisions consequent on enactment of Schedule 1 to Investigative Bodies Legislation Amendment Act 1997**

##### **5 Definition**

In this Part, *amending Act* means the *Investigative Bodies Legislation Amendment Act 1997*.

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**6 Conditional release**

- (1) Section 39A only applies to any release ordered on or after the commencement of that section.
- (2) Section 39B only applies to any decision, failure or order made or occurring on or after the commencement of that section. 5

**7 Secrecy of identity and location of witness**

A reference in section 52, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment. 10

**8 Preventing witness from attending and threats to witnesses**

A reference in section 112 (3), as inserted by the amending Act, to a person who is in detention includes a reference to a person in detention at the commencement of that subsection even if the person was detained before that commencement. 15

**9 Release of contemnor**

- (1) The power, contained in section 120A, to release an offender detained under section 120 may be exercised in relation to an offender already in detention at the commencement of section 120A or detained at any time afterwards. 20
- (2) Section 120B only applies to any decision, failure or order made or occurring on or after the commencement of that section. 25

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## **Schedule 2    Amendment of Royal Commission (Police Service) Act 1994**

(Section 4)

### **[1]    Section 11 Arrest of witness**

Omit "custody" from section 11 (7).  
Insert instead "a prison or elsewhere".

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### **[2]    Sections 11A and 11B**

Insert after section 11:

#### **11A Conditional release of witness**

- (1)    The release of a witness by order of the Commissioner under section 11 (7) may (but need not) be made subject to one or more of the following conditions (or to any other conditions): 10
- (a)    that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the Commissioner or other officer of the Commission, and 15
- (b)    conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission). 20 25
- (2)    From time to time, the Commissioner may by order amend, revoke or add to those conditions.
- (3)    A witness who without reasonable excuse fails to comply with a condition to which the release of the witness under section 11 (7) is subject, is guilty of an offence. 30

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



**11B Review by Supreme Court**

- (1) A witness who has not been released by the Commissioner under section 11 (7) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions. 5
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness. 10  
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- (3) Such an order is taken to be an order of the Commissioner.

**[3] Section 26 Protection of witnesses and persons assisting Commission 20**

Omit section 26 (5). Insert instead:

- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3). 25

**[4] Section 27 Restriction on publication of evidence 30**

Omit section 27 (1) (c). Insert instead:

- (c) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or



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**[5] Section 43 and Schedule 1**

Insert at the end of the Act:

**43 Savings and transitional provisions**

Schedule 1 has effect.

**Schedule 1 Savings and transitional provisions** 5  
(Section 43)

**Part 1 Preliminary**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 10

*Investigative Bodies Legislation Amendment Act 1997*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 15

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 20

- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 25

**Part 2      Provisions consequent on enactment of  
Schedule 2 to Investigative Bodies  
Legislation Amendment Act 1997**

**2 Definition**

In this Part, *amending Act* means the *Investigative  
Bodies Legislation Amendment Act 1997*. 5

**3 Conditional release**

- (1) Section 11A only applies to any release ordered on or  
after the commencement of that section.
- (2) Section 11B only applies to any decision, failure or order 10  
made or occurring on or after the commencement of that  
section.

**4 Secrecy of identity and location of witness**

A reference in section 27, as amended by the amending  
Act, to a person who has given evidence includes a 15  
reference to a person who has given evidence before the  
commencement of that amendment.

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## **Schedule 3    Amendment of New South Wales Crime Commission Act 1985**

(Section 5)

### **[1]    Section 13 Hearings**

Omit section 13 (9) (c). Insert instead:

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- (c) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or

### **[2]    Section 18 Failure of witnesses to attend and answer questions etc**

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Omit section 18 (3). Insert instead:

- (3) A witness who without reasonable excuse fails to comply with a condition to which the release of the witness under section 18AA (5) is subject, is guilty of an offence.

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

### **[3]    Section 18AA Arrest of witness**

Omit "custody" from section 18AA (5).  
Insert instead "a prison or elsewhere".

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### **[4]    Sections 18AB and 18AC**

Insert after section 18AA:

#### **18AB Conditional release of witness**

- (1) The release of a witness by order of the Commissioner under section 18AA (5) may (but need not) be made subject to one or more of the following conditions (or to any other conditions):

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- (a) that the witness appear and report himself or herself before the Commission in accordance with

the terms of the order unless excused from attendance or until released from further attendance by a member, and

- (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission). 5

- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions. 10

#### 18AC Review by Supreme Court

- (1) A witness who has not been released by the Commissioner under section 18AA (5) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions. 15
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness. 20
- (3) Such an order is taken to be an order of the Commissioner. 25

#### [5] Section 21 Protection of witnesses

Insert at the end of section 21:

- (2) Nothing in this section affects the *Witness Protection Act 1995*. 35



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**[6] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Investigative Bodies Legislation Amendment Act 1997*

**[7] Schedule 4, Part 4**

Insert after Part 3:

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**Part 4 Provisions relating to enactment of  
Schedule 3 to Investigative Bodies  
Legislation Amendment Act 1997**

**7 Definition**

In this Part, *amending Act* means the *Investigative  
Bodies Legislation Amendment Act 1997*.

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**8 Secrecy of identity and location of witness**

A reference in section 13, as amended by the amending  
Act, to a person who has given evidence includes a  
reference to a person who has given evidence before the  
commencement of that amendment.

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**9 Conditional release**

- (1) Section 18AB only applies to any release ordered on or  
after the commencement of that section.
- (2) Section 18AC only applies to any decision, failure or  
order made or occurring on or after the commencement  
of that section.

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**Schedule 4      Amendment of Independent  
Commission Against Corruption Act  
1988**

(Section 6)

**[1]      Section 36 Arrest of witness      5**

Omit "custody" from section 36 (6).  
Insert instead "a prison or elsewhere".

**[2]      Sections 36A and 36B**

Insert after section 36:

**36A Conditional release of witness      10**

- (1) The release of a witness by order of the Commissioner under section 36 (6) may (but need not) be made subject to one or more of the following conditions (or any other conditions):
  - (a) that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the person presiding at the relevant hearing of the Commission, and      15
  - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).      20
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.      25

**36B Review by Supreme Court**

- (1) A witness who has not been released by the Commissioner under section 36 (6) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions. 5
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness. 10 15
- (3) Such an order is taken to be an order of the Commissioner.

**[3] Section 50 Protection of witnesses and persons assisting Commission 20**

Omit section 50 (5). Insert instead:

- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3). 25

**[4] Section 52 Legal and financial assistance for witness 30**

Insert after section 52 (4):

- (5) The Attorney General may delegate one or more of his or her functions under this section to the Director-General of the Attorney General's Department.

**[5]      Section 86 Failure to attend etc**

Omit "50 penalty units or imprisonment for 12 months, or both" from section 86 (1).

Insert instead "20 penalty units or imprisonment for 2 years, or both".

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**[6]      Section 86 (3)**

Insert after subsection (2):

- (3)      A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 36 (6) or 100A is subject, is guilty of an offence.

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

**[7]      Section 92 Preventing witness from attending**

Insert after section 92 (2):

- (3)      A reference in subsection (1) to a person who has been summoned to attend as a witness before the Commission includes a reference to a person who is in detention under a warrant under section 36 (6) or who, having been released under that subsection on condition that the person appear and report himself or herself before the Commission, is still subject to that condition.

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**[8]      Section 98 Contempt**

Insert after section 98 (a):

- (aa)      having been released under section 36 (6) on condition (under section 36A (1) (a)) that the person appear and report himself or herself before the Commission, fails so to appear and report, or

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**[9]      Section 99 Punishment of contempt**

Insert "or (aa)" after "section 98 (a)" in section 99 (5).

**[10]      Section 100 General provisions regarding contempt**

Insert "in a prison or elsewhere" after "custody" in section 100 (3).

**[11]      Sections 100A and 100B**

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Insert after section 100:

**100A Conditional release of offender**

- (1) The Commissioner may by order release an offender detained under section 100 at any time before the offender is brought before the Supreme Court. 10
- (2) The release must be subject to the condition that the offender appear before the Supreme Court.
- (3) The release may (but need not) be made subject to:
  - (a) one or more conditions for the purpose of ensuring the appearance of the offender before the Supreme Court (for example the provision of sureties by the offender, the surrender of any passport held by the offender, a requirement as to where the offender is to live and regular reporting by the offender to the Commission), and 15
  - (b) any other conditions. 20
- (4) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

**100B Review by Supreme Court**

- (1) An offender who has not been released by the Commissioner under section 100A or whose release under that section is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the offender or of the terms of one or more of those conditions. 25  
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- (2)      The Supreme Court may affirm or set aside a decision by the Commissioner not to release the offender or any condition imposed by the Commissioner on the release of the offender. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the offender. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the offender. 5
- (3)      Such an order is taken to be an order of the Commissioner. 10

**[12]      Section 112 Restriction on publication of evidence**

Omit section 112 (1) (c). Insert instead:

- (c)      any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or 15

**[13]      Schedule 4 Savings, transitional and other provisions**

Omit "*Independent Commission Against Corruption (Amendment) Act 1990*" appearing before the heading to clause 1.

**[14]      Schedule 4, Parts 1 and 2 20**

Omit clause 1. Insert instead:

**Part 1      Preliminary**

**1 Regulations**

- (1)      The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 25

*Independent Commission Against Corruption  
(Amendment) Act 1990*

*Investigative Bodies Legislation Amendment Act 1997*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Part 2      Provisions consequent on enactment of  
Independent Commission Against  
Corruption (Amendment) Act 1990**

**1A Definition**

In this Part, *amending Act* means the *Independent Commission Against Corruption (Amendment) Act 1990*.

**[15]      Schedule 4, Part 3 heading**

Insert before clause 5:

**Part 3      Provision consequent on enactment of  
Statute Law Revision (Local Government)  
Act 1995**



**[16] Schedule 4, Part 4**

Insert at the end of the Schedule:

**Part 4      Provisions consequent on the enactment of  
Schedule 4 to Investigative Bodies  
Legislation Amendment Act 1997** 5

**6 Definition**

In this Part, *amending Act* means the *Investigative Bodies Legislation Amendment Act 1997*.

**7 Conditional release**

- (1) Section 36A only applies to any release ordered on or after the commencement of that section. 10
- (2) Section 36B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

**8 Preventing witness from attending** 15

A reference in section 92 (3), as inserted by the amending Act, to a person who is in detention includes a reference to a person in detention at the commencement of that subsection even if the person was detained before that commencement. 20

**9 Release of contemnor**

- (1) The power, contained in section 100A, to release an offender detained under section 100 may be exercised in relation to an offender already in detention at the commencement of section 100A or detained at any time afterwards. 25
- (2) Section 100B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

**10 Secrecy of identity and location of witness**

A reference in section 112, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment.

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New South Wales

# **Investigative Bodies Legislation Amendment Act 1997 No 60**

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Investigative Bodies Legislation Amendment Act 1997 No 60

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New South Wales

## **Investigative Bodies Legislation Amendment Act 1997 No 60**

Act No 60, 1997

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An Act to amend the *Police Integrity Commission Act 1996*, the *Royal Commission (Police Service) Act 1994*, the *New South Wales Crime Commission Act 1985* and the *Independent Commission Against Corruption Act 1988* with respect to the conditional release of witnesses and contemnors, the protection of witnesses and other matters. [Assented to 2 July 1997]

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

**1 Name of Act**

This Act is the *Investigative Bodies Legislation Amendment Act 1997*.

**2 Commencement**

This Act commences on the date of assent.

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

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

**4 Amendment of Royal Commission (Police Service) Act 1994 No 60**

The *Royal Commission (Police Service) Act 1994* is amended as set out in Schedule 2.

**5 Amendment of New South Wales Crime Commission Act 1985 No 117**

The *New South Wales Crime Commission Act 1985* is amended as set out in Schedule 3.

**6 Amendment of Independent Commission Against Corruption Act 1988 No 35**

The *Independent Commission Against Corruption Act 1988* is amended as set out in Schedule 4.

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## **Schedule 1    Amendment of Police Integrity Commission Act 1996**

(Section 3)

**[1]    Section 11 Delegation**

Insert "or 5" after "Division 4" in section 11 (4) (b).

**[2]    Section 39 Arrest of witness**

Omit "custody" from section 39 (6).  
Insert instead "a prison or elsewhere".

**[3]    Section 39 (6)**

Omit "Commission" where secondly occurring.  
Insert instead "Commissioner".

**[4]    Sections 39A and 39B**

Insert after section 39:

**39A Conditional release of witness**

- (1) The release of a witness by order of the Commissioner under section 39 (6) may (but need not) be made subject to one or more of the following conditions (or to any other conditions):
  - (a) that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the person presiding at the relevant hearing of the Commission, and
  - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

### **39B Review by Supreme Court**

- (1) A witness who has not been released by the Commissioner under section 39 (6) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness.
- (3) Such an order is taken to be an order of the Commissioner.

### **[5] Section 43 Legal and financial assistance for witness**

Insert after section 43 (4):

- (5) The Attorney General may delegate one or more of his or her functions under this section to the Director-General of the Attorney General's Department.

### **[6] Section 51 Protection of witnesses and persons assisting Commission**

Omit section 51 (5). Insert instead:

- (5) **Orders**  
Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3).



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**[7] Section 52 Restriction on publication of evidence**

Omit section 52 (1) (c) and (d). Insert instead:

- (c) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or
  - (d) the fact that any person has given or may be about to give evidence before the Commission,
- must not be published except in such manner, and to such persons, as the Commission specifies.

**[8] Section 56 Secrecy**

Omit section 56 (2). Insert instead:

- (2) A person to whom this section applies must not, directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's functions under this Act:
  - (a) make a record of any information, or
  - (b) 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 functions under this Act.

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

**[9] Section 106 Failure to attend etc**

Omit "50 penalty units or imprisonment for 12 months, or both" from section 106 (1).

Insert instead "20 penalty units or imprisonment for 2 years, or both".

**[10] Section 106 (3)**

Insert after subsection (2):

- (3) A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 39 (6) or 120A is subject, is guilty of an offence.

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

**[11] Section 112 Preventing witness from attending and threats to witnesses**

Insert after section 112 (2):

- (3) A reference in subclause (1) to a person who has been summoned to attend as a witness before the Commission includes a reference to a person who is in detention under a warrant under section 39 (6) or who, having been released under that subsection on condition that the person appear and report himself or herself before the Commission, is still subject to that condition.

**[12] Section 118 Contempt**

Insert after section 118 (1) (a):

- (aa) having been released under section 39 (6) on condition (under section 39A (1) (a)) that the person appear and report himself or herself before the Commission, fails so to appear and report, or

**[13] Section 119 Punishment of contempt**

Insert “(or failure to appear and report as a witness in accordance with a condition of release)” after “summons” in section 119 (5).

**[14] Section 120 General provisions regarding contempt**

Insert “in a prison or elsewhere” after “custody” in section 120 (3) (a).

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**[15] Sections 120A and 120B**

Insert after section 120:

**120A Conditional release of offender**

- (1) The Commissioner may by order release an offender detained under section 120 at any time before the offender is brought before the Supreme Court.
- (2) The release must be subject to the condition that the offender appear before the Supreme Court.
- (3) The release may (but need not) be made subject to:
  - (a) one or more conditions for the purpose of ensuring the appearance of the offender before the Supreme Court (for example the provision of sureties by the offender, the surrender of any passport held by the offender, a requirement as to where the offender is to live and regular reporting by the offender to the Commission), and
  - (b) any other conditions.
- (4) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

**120B Review by Supreme Court**

- (1) An offender who has not been released by the Commissioner under section 120A or whose release under that section is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the offender or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the offender or any condition imposed by the Commissioner on the release of the offender. The Supreme Court may also or instead make any order that the Commissioner may make in

relation to the detention or release of the offender. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the offender.

- (3) Such an order is taken to be an order of the Commissioner.

**[16] Section 130 Functions of PIC where other public officials involved**

Omit "public officials who are not" from section 130 (2).

**[17] Schedule 3 Savings, transitional and other provisions**

Omit clause 1 (1). Insert instead:

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

this Act

*Police Legislation Amendment Act 1996*

*Investigative Bodies Legislation Amendment Act 1997*

**[18] Schedule 3, Part 2 heading**

Omit the heading. Insert instead:

**Part 2      Continuity with Police Royal Commission**

**[19] Schedule 3, clause 2A**

Insert after clause 2:

**2A Continuing protection of witnesses**

- (1) An order, arrangement or direction in force under section 26 (or a direction in force under section 27) of the *Royal Commission (Police Service) Act 1994* immediately before a Police Royal Commissioner discharges his or



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her functions under the Royal Commission issued to him or her continues in force under that Act despite that discharge and without the need for a further Royal Commission that provides that that Act is to apply to the Commission.

- (2) After the commencement of this subclause, whether or not there is a Royal Commission in force that provides that the *Royal Commission (Police Service) Act 1994* is to apply to the Commission, the PIC Commissioner has the same powers as a Police Royal Commissioner would have if a Police Royal Commissioner were to have functions under that Act:
  - (a) to make an order, arrangement or direction under section 26 of that Act or a direction under section 27 of that Act, and
  - (b) to vary or revoke such an order, arrangement or direction, whether made by a Police Royal Commissioner or the PIC Commissioner.
- (3) The PIC Commissioner has the powers referred to in subclause (2) in respect of a person whether or not an order, arrangement or direction was in force in respect of the person under the *Royal Commission (Police Service) Act 1994* before the commencement of that subclause.

**[20] Schedule 3, Part 4**

Insert after Part 3:

**Part 4 Provisions consequent on enactment of  
Schedule 1 to Investigative Bodies  
Legislation Amendment Act 1997**

**5 Definition**

In this Part, *amending Act* means the *Investigative Bodies Legislation Amendment Act 1997*.

## **6 Conditional release**

- (1) Section 39A only applies to any release ordered on or after the commencement of that section.
- (2) Section 39B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

## **7 Secrecy of identity and location of witness**

A reference in section 52, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment.

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

A reference in section 112 (3), as inserted by the amending Act, to a person who is in detention includes a reference to a person in detention at the commencement of that subsection even if the person was detained before that commencement.

## **9 Release of contemnor**

- (1) The power, contained in section 120A, to release an offender detained under section 120 may be exercised in relation to an offender already in detention at the commencement of section 120A or detained at any time afterwards.
- (2) Section 120B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

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## **Schedule 2    Amendment of Royal Commission (Police Service) Act 1994**

(Section 4)

### **[1]    Section 11 Arrest of witness**

Omit "custody" from section 11 (7).

Insert instead "a prison or elsewhere".

### **[2]    Sections 11A and 11B**

Insert after section 11:

#### **11A Conditional release of witness**

- (1) The release of a witness by order of the Commissioner under section 11 (7) may (but need not) be made subject to one or more of the following conditions (or to any other conditions):
  - (a) that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the Commissioner or other officer of the Commission, and
  - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.
- (3) A witness who without reasonable excuse fails to comply with a condition to which the release of the witness under section 11 (7) is subject, is guilty of an offence.

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



### **11B Review by Supreme Court**

- (1) A witness who has not been released by the Commissioner under section 11 (7) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness.
- (3) Such an order is taken to be an order of the Commissioner.

### **[3] Section 26 Protection of witnesses and persons assisting Commission**

Omit section 26 (5). Insert instead:

- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3).

### **[4] Section 27 Restriction on publication of evidence**

Omit section 27 (1) (c). Insert instead:

- (c) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or



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**[5] Section 43 and Schedule 1**

Insert at the end of the Act:

**43 Savings and transitional provisions**

Schedule 1 has effect.

**Schedule 1 Savings and transitional provisions**

(Section 43)

**Part 1 Preliminary**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Investigative Bodies Legislation Amendment Act 1997*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Part 2      Provisions consequent on enactment of  
Schedule 2 to Investigative Bodies  
Legislation Amendment Act 1997**

**2 Definition**

In this Part, *amending Act* means the *Investigative Bodies Legislation Amendment Act 1997*.

**3 Conditional release**

- (1) Section 11A only applies to any release ordered on or after the commencement of that section.
- (2) Section 11B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

**4 Secrecy of identity and location of witness**

A reference in section 27, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment.

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## **Schedule 3    Amendment of New South Wales Crime Commission Act 1985**

(Section 5)

### **[1]    Section 13 Hearings**

Omit section 13 (9) (c). Insert instead:

- (c) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or

### **[2]    Section 18 Failure of witnesses to attend and answer questions etc**

Omit section 18 (3). Insert instead:

- (3) A witness who without reasonable excuse fails to comply with a condition to which the release of the witness under section 18AA (5) is subject, is guilty of an offence.

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

### **[3]    Section 18AA Arrest of witness**

Omit "custody" from section 18AA (5).  
Insert instead "a prison or elsewhere".

### **[4]    Sections 18AB and 18AC**

Insert after section 18AA:

#### **18AB Conditional release of witness**

- (1) The release of a witness by order of the Commissioner under section 18AA (5) may (but need not) be made subject to one or more of the following conditions (or to any other conditions):
  - (a) that the witness appear and report himself or herself before the Commission in accordance with

the terms of the order unless excused from attendance or until released from further attendance by a member, and

- (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

#### **18AC Review by Supreme Court**

- (1) A witness who has not been released by the Commissioner under section 18AA (5) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness.
- (3) Such an order is taken to be an order of the Commissioner.

#### **[5] Section 21 Protection of witnesses**

Insert at the end of section 21:

- (2) Nothing in this section affects the *Witness Protection Act 1995*.



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**[6] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Investigative Bodies Legislation Amendment Act 1997*

**[7] Schedule 4, Part 4**

Insert after Part 3:

**Part 4 Provisions relating to enactment of  
Schedule 3 to Investigative Bodies  
Legislation Amendment Act 1997**

**7 Definition**

In this Part, *amending Act* means the *Investigative Bodies Legislation Amendment Act 1997*.

**8 Secrecy of identity and location of witness**

A reference in section 13, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment.

**9 Conditional release**

- (1) Section 18AB only applies to any release ordered on or after the commencement of that section.
- (2) Section 18AC only applies to any decision, failure or order made or occurring on or after the commencement of that section.

## **Schedule 4      Amendment of Independent Commission Against Corruption Act 1988**

(Section 6)

### **[1]      Section 36 Arrest of witness**

Omit "custody" from section 36 (6).

Insert instead "a prison or elsewhere".

### **[2]      Sections 36A and 36B**

Insert after section 36:

#### **36A Conditional release of witness**

- (1) The release of a witness by order of the Commissioner under section 36 (6) may (but need not) be made subject to one or more of the following conditions (or any other conditions):
  - (a) that the witness appear and report himself or herself before the Commission in accordance with the terms of the order unless excused from attendance or until released from further attendance by the person presiding at the relevant hearing of the Commission, and
  - (b) conditions for the purpose of ensuring the further attendance of the witness before the Commission (for example the provision of sureties by the witness, the surrender of any passport held by the witness, a requirement as to where the witness is to live and regular reporting by the witness to the Commission).
- (2) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

### **36B Review by Supreme Court**

- (1) A witness who has not been released by the Commissioner under section 36 (6) or whose release under that subsection is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the witness or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the witness or any condition imposed by the Commissioner on the release of the witness. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the witness. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the witness.
- (3) Such an order is taken to be an order of the Commissioner.

### **[3] Section 50 Protection of witnesses and persons assisting Commission**

Omit section 50 (5). Insert instead:

- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person for the purpose of protecting the safety of a person referred to in subsection (1) or of protecting such a person from intimidation or harassment. Such an order is not limited to directions of a kind referred to in subsection (3).

### **[4] Section 52 Legal and financial assistance for witness**

Insert after section 52 (4):

- (5) The Attorney General may delegate one or more of his or her functions under this section to the Director-General of the Attorney General's Department.

**[5]      Section 86 Failure to attend etc**

Omit "50 penalty units or imprisonment for 12 months, or both" from section 86 (1).

Insert instead "20 penalty units or imprisonment for 2 years, or both".

**[6]      Section 86 (3)**

Insert after subsection (2):

- (3)      A person who without reasonable excuse fails to comply with a condition to which the release of the person under section 36 (6) or 100A is subject, is guilty of an offence.

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

**[7]      Section 92 Preventing witness from attending**

Insert after section 92 (2):

- (3)      A reference in subsection (1) to a person who has been summoned to attend as a witness before the Commission includes a reference to a person who is in detention under a warrant under section 36 (6) or who, having been released under that subsection on condition that the person appear and report himself or herself before the Commission, is still subject to that condition.

**[8]      Section 98 Contempt**

Insert after section 98 (a):

- (aa)      having been released under section 36 (6) on condition (under section 36A (1) (a)) that the person appear and report himself or herself before the Commission, fails so to appear and report, or



**[9]      Section 99 Punishment of contempt**

Insert “or (aa)” after “section 98 (a)” in section 99 (5).

**[10]     Section 100 General provisions regarding contempt**

Insert “in a prison or elsewhere” after “custody” in section 100 (3).

**[11]     Sections 100A and 100B**

Insert after section 100:

**100A Conditional release of offender**

- (1) The Commissioner may by order release an offender detained under section 100 at any time before the offender is brought before the Supreme Court.
- (2) The release must be subject to the condition that the offender appear before the Supreme Court.
- (3) The release may (but need not) be made subject to:
  - (a) one or more conditions for the purpose of ensuring the appearance of the offender before the Supreme Court (for example the provision of sureties by the offender, the surrender of any passport held by the offender, a requirement as to where the offender is to live and regular reporting by the offender to the Commission), and
  - (b) any other conditions.
- (4) From time to time, the Commissioner may by order amend, revoke or add to those conditions.

**100B Review by Supreme Court**

- (1) An offender who has not been released by the Commissioner under section 100A or whose release under that section is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the offender or of the terms of one or more of those conditions.

- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the offender or any condition imposed by the Commissioner on the release of the offender. The Supreme Court may also or instead make any order that the Commissioner may make in relation to the detention or release of the offender. The Court may do so also where the Commissioner has not made any decision within a reasonable time on the release of the offender.
- (3) Such an order is taken to be an order of the Commissioner.

**[12] Section 112 Restriction on publication of evidence**

Omit section 112 (1) (c). Insert instead:

- (c) any information that might enable a person who has given or may be about to give evidence before the Commission to be identified or located, or

**[13] Schedule 4 Savings, transitional and other provisions**

Omit "*Independent Commission Against Corruption (Amendment) Act 1990*" appearing before the heading to clause 1.

**[14] Schedule 4, Parts 1 and 2**

Omit clause 1. Insert instead:

**Part 1 Preliminary**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Independent Commission Against Corruption  
(Amendment) Act 1990*

*Investigative Bodies Legislation Amendment Act 1997*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**Part 2      Provisions consequent on enactment of  
Independent Commission Against  
Corruption (Amendment) Act 1990**

**1A Definition**

In this Part, *amending Act* means the *Independent Commission Against Corruption (Amendment) Act 1990*.

**[15]      Schedule 4, Part 3 heading**

Insert before clause 5:

**Part 3      Provision consequent on enactment of  
Statute Law Revision (Local Government)  
Act 1995**

**[16] Schedule 4, Part 4**

Insert at the end of the Schedule:

**Part 4      Provisions consequent on the enactment of  
Schedule 4 to Investigative Bodies  
Legislation Amendment Act 1997**

**6 Definition**

In this Part, *amending Act* means the *Investigative Bodies Legislation Amendment Act 1997*.

**7 Conditional release**

- (1) Section 36A only applies to any release ordered on or after the commencement of that section.
- (2) Section 36B only applies to any decision, failure or order made or occurring on or after the commencement of that section.

**8 Preventing witness from attending**

A reference in section 92 (3), as inserted by the amending Act, to a person who is in detention includes a reference to a person in detention at the commencement of that subsection even if the person was detained before that commencement.

**9 Release of contemnor**

- (1) The power, contained in section 100A, to release an offender detained under section 100 may be exercised in relation to an offender already in detention at the commencement of section 100A or detained at any time afterwards.
- (2) Section 100B only applies to any decision, failure or order made or occurring on or after the commencement of that section.



### **10 Secrecy of identity and location of witness**

A reference in section 112, as amended by the amending Act, to a person who has given evidence includes a reference to a person who has given evidence before the commencement of that amendment.

[Minister's second reading speech made in—  
Legislative Assembly on 18 June 1997  
Legislative Council on 26 June 1997]

BY AUTHORITY

