

First print



New South Wales

New South Wales Crime Commission Amendment Bill 1996

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *New South Wales Crime Commission Act 1985*.

Outline of provisions

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

Clause 2 provides that the proposed Act will commence on a day or days to be proclaimed.

Clause 3 gives effect to the schedule of amendments to the *New South Wales Crime Commission Act 1985*.

Clause 4 gives effect to the schedule of amendments to other Acts.

Membership of Commission and appointment of Commissioner and Assistant Commissioners

Schedule 1 [9] provides for the Commission to consist of one or more (instead of two or more) members. The members of the Commission are to be the Commissioner for the New South Wales Crime Commission (currently known as the Chairperson of the Commission) and, if any Assistant Commissioners are appointed, the Assistant Commissioners.

Schedule 1 [10] and [43] insert proposed sections 5A–5C and Schedule 1 into the Act to provide for the appointment of the Commissioner and Assistant Commissioners and make provision generally concerning those offices. Clause 1 of Schedule 1 makes it clear that only a person with special legal qualifications (see section 3 (4) of the Act) may be appointed as Commissioner or Assistant Commissioner. Schedule 1 also provides for the appointment of an acting Commissioner or Assistant Commissioner in the absence or illness of the Commissioner.

Schedule 1 [11] replaces section 9 of the Act (which relates to delegation of the functions of the Commission) with a new provision that enables functions to be delegated by the Commissioner, Assistant Commissioners and members of staff of the Commission. The power to delegate functions to members of staff excludes delegation of certain powers such as a power to issue a warrant for arrest of a person or to require a person to appear before the Commission and produce documents and things (proposed section 9 (4)).

Schedule 1 [1], [2], [4], [12], [16], [30], [35], [44] and [45] make consequential amendments to the Act, including alterations of references in the Act to the “Chairperson” to “Commissioner” and provisions relating to hearings of the Commission.

Schedule 2 makes consequential amendments to other Acts to alter references to the “Chairperson” to the “Commissioner”.

Schedule 1 [48] provides for the existing Chairperson of the Commission to be the Commissioner for the remainder of his or her term of office as Chairperson and includes provision to ensure that the alteration in the name of the office is reflected in references elsewhere in the law. It also makes it clear that the change in the number of members of the Commission does not affect any of its functions.

Review of police inquiries

Schedule 1 [3] amends the definition of *investigation* in section 3 to make it clear that the Commission's powers of investigation extend to the review of police inquiries into matters relating to criminal activities.

Criminal activities that may be investigated

Schedule 1 [5] and **[6]** redefine *relevant offence* to include within its ambit certain offences that involve fraud and that the Management Committee is satisfied are sufficiently serious to warrant investigation by the Commission or that should be investigated in the public interest.

Schedule 1 [7] sets out some of the matters that the Management Committee is to take into account in determining whether an offence that involves fraud is sufficiently serious to warrant its investigation by the Commission.

The proposed amendments do not alter the existing provisions of the definition that exclude from the ambit of the definition offences such as those for which the maximum penalty of imprisonment is a period of less than 3 years (see paragraphs (c)–(e) of the definition).

Under the Act, the Management Committee has the function of referring matters relating to relevant criminal activities to the Commission for investigation. Relevant criminal activities are circumstances implying, or any allegations, that a relevant offence may have been, or may be being, or may be about to be, committed. The Committee cannot refer such a matter to the Commission for investigation unless it is satisfied that ordinary police methods of investigation into the matter are unlikely to be effective.

The proposed amendments alter the definition as follows (matter to be omitted is shown struck through, and matter to be inserted is shown in square brackets):

relevant offence means:

- (a) a serious drug offence that ~~involves substantial planning and organisation~~, or

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(b) ~~any other offence that involves substantial planning and organisation and that involves, or is of a kind that ordinarily involves, the use of sophisticated methods and techniques,~~

[(a1) an offence that involves fraud and that the Management Committee is satisfied is sufficiently serious to warrant its investigation by the Commission, or

(b) any other offence for which the Management Committee is satisfied that:

- (i) the investigation of the offence by the Commission is in the public interest, and
- (ii) the use of the Commission's functions may be necessary to fully investigate the offence,]

but:

- (c) does not include an offence the time for the commencement of a prosecution for which has expired, and
- (d) does not include an offence for which there is no penalty of imprisonment, and
- (e) does not include an offence for which the maximum penalty of imprisonment is a period of less than 3 years.

Notes

Schedule 1 [8] inserts a machinery provision to make it clear that notes included in the Act are explanatory and do not form part of the Act.

Procedure at hearings

Schedule 1 [13] inserts proposed sections 13A and 13B into the Act. Proposed section 13A states that the Commission is not bound by the rules or practice of evidence. Proposed section 13B gives the Commission a limited power to refuse to allow a particular legal practitioner to represent a particular witness at a hearing conducted by the Commission for the purposes of an investigation.

Production of documents and attendance of witnesses

Schedule 1 [15] and **[18]** make amendments (proposed sections 16 (1A) and 17 (2B)) that will enable the Commission to require the immediate attendance of witnesses in certain circumstances and the immediate production of documents and things.

Schedule 1 [18] also inserts proposed section 17 (2A) into the Act to enable a notice requiring the production of documents to specify persons who may be required to comply with the requirement.

Schedule 1 [19] removes the existing provisions relating to the grounds on which a person may resist a requirement to produce a document or thing.

Schedule 1 [20] inserts proposed sections 17A and 17B. The proposed sections replace the existing procedure applying when a person claims an entitlement to refuse or fail to produce a document or thing with a new simplified procedure. Under the proposed sections, when such a claim is made the document or thing concerned must be deposited with the Commission so that it may immediately be sealed and retained in safe custody pending a hearing of the Commission and the person summoned to appear at the hearing. At the hearing, the Commission has the opportunity to withdraw the requirement to produce. If it insists and the person still refuses to produce the document or thing, the provisions of proposed section 18B (**Schedule 1 [24]**) and the existing provisions of section 19 relating to applications to the Supreme Court for review of decisions of the Commission concerning refusal to produce documents at a hearing will apply.

Schedule 1 [14] and **[25]–[29]** make consequential amendments.

Attendance of inmates before Commission

Schedule 1 [17] inserts proposed section 16A into the Act. Proposed section 16A simplifies the procedure for securing the attendance of inmates before the Commission by enabling the Commission to serve an order on the governor of a correctional centre directing the governor to produce the inmate. At present, the attendance of an inmate requires both the issue of a summons and the making of a separate order by the Commissioner of Corrective Services under section 29 of the *Correctional Centres Act 1952*.

An inmate was known as a prisoner until the commencement of Schedule 5 to the *Prisons Amendment Act 1996*, which also renamed the *Prisons Act 1952* as the *Correctional Centres Act 1952*.

Issue of arrest warrants

Schedule 1 [23] enables the Commissioner to issue a warrant for the arrest of a person who has failed to attend the Commission in answer to a summons or who has indicated by word or action an intention not to comply with such a summons.

Schedule 1 [38] requires the Commission to report the issue of warrants to the Management Committee and **Schedule 1 [39]** and **[40]** require particulars of the issue of warrants to be included in the Commission's annual report, but not particulars that would identify the persons against whom the warrants were issued.

Privilege

Schedule 1 [24] inserts proposed section 18B which recasts the provisions relating to the way in which a claim of privilege on the ground of self-incrimination is to be dealt with so as to bring them into substantial conformity with section 37 of the *Independent Commission Against Corruption Act 1988*. **Schedule 1 [21]** and **[22]** make consequential amendments.

Cabinet documents and proceedings

Schedule 1 [24] inserts proposed section 18C, which is a provision (based on section 22 of the *Ombudsman Act 1974*) that makes it clear that the Commission cannot require any person to produce a Cabinet document or answer any question relating to confidential proceedings of Cabinet.

Indemnities and undertakings

Schedule 1 [31] inserts proposed section 21A into the Act which enables the Commission to recommend to the Attorney General that a person be granted an indemnity from prosecution or that an undertaking be given that information in answers or documents will not be used in evidence against a person. The proposed section is in the same terms as section 49 of the *Independent Commission Against Corruption Act 1988*.

Membership of Management Committee

Schedule 1 [33] and **[36]** reduce the membership of the Management Committee from 5 to 4 by removing the Chairman of the Police Board of New South Wales from membership.

Schedule 1 [34] and **[35]** make consequential amendments.

Protection from liability

Schedule 1 [32] inserts proposed section 23 (4) and (5) into the Act to expand the protection from liability given to persons summoned to appear before the Commission or to produce documents or things to the Commission.

Secrecy

Schedule 1 [37] extends the secrecy provisions of the Act to apply them to persons outside the Commission who are lawfully given access to information by it on a confidential basis.

Appointment of counsel

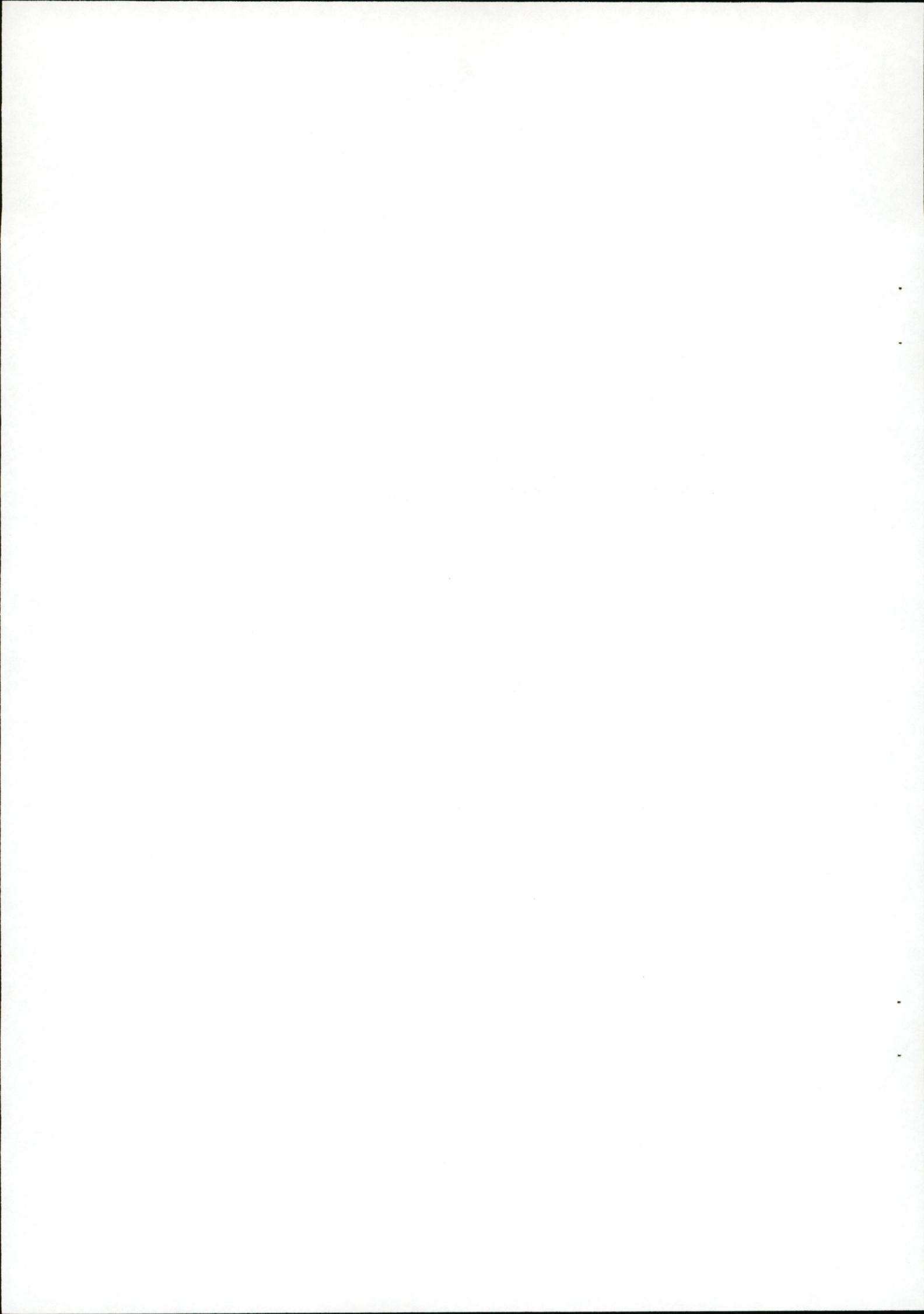
Schedule 1 [41] transfers from the Attorney General to the Commission the power to appoint counsel to assist the Commission in its investigations.

Service of documents

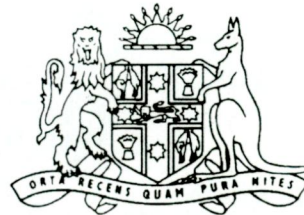
Schedule 1 [42] enables the Commission to serve documents by facsimile transmission.

Savings and transitional provisions

Schedule 1 [46]–[48] amends Schedule 4 to the Act. The amendments contain provisions of a savings and transitional nature that are consequential on the amendments made by the proposed Act, and include provision for the making of regulations of a savings or transitional nature.



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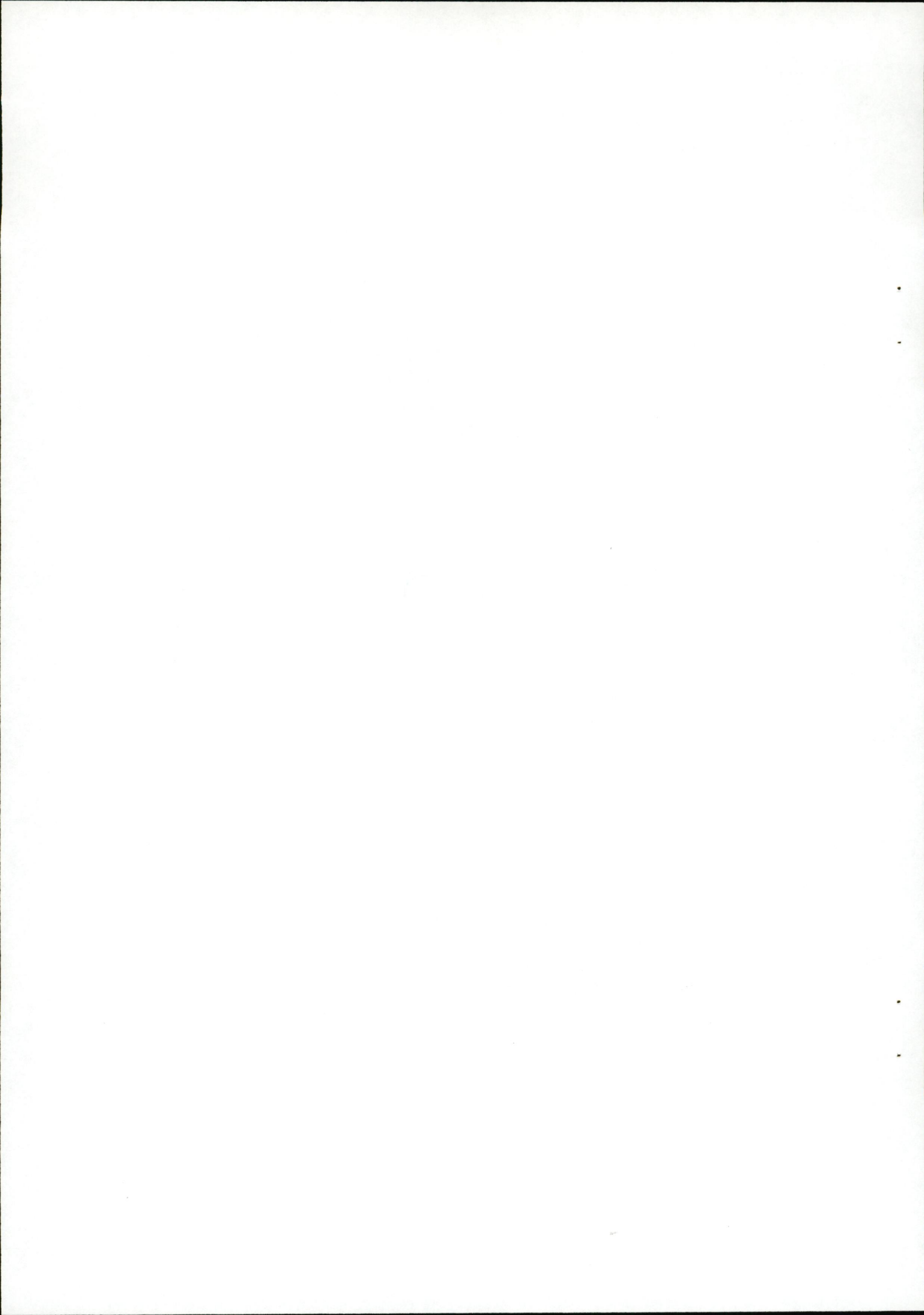
New South Wales Crime Commission Amendment Bill 1996

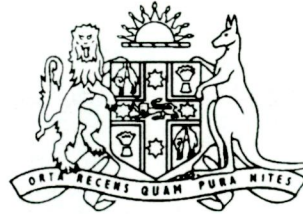
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New South Wales

New South Wales Crime Commission Amendment Bill 1996

No. , 1996

A Bill for

An Act to amend the *New South Wales Crime Commission Act 1985* with respect to the membership of the Commission and the conduct of hearings before the Commission; to make consequential amendments to various other Acts; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *New South Wales Crime Commission Amendment Act 1996*.

2 Commencement

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

3 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 1. 10

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

**Schedule 1 Amendment of New South Wales
 Crime Commission Act 1985**

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1): 5

Assistant Commissioner means an Assistant Commissioner for the Commission.

Commissioner means the Commissioner for the New South Wales Crime Commission.

[2] Section 3 (1) 10

Omit the definition of *Chairperson*.

[3] Section 3 (1)

Omit "this Act" from the definition of *investigation*.
Insert instead "section 25 (1) (a) or (a1)".

[4] Section 3 (1) 15

Omit "Chairperson" from the definition of *member*.
Insert instead "Commissioner".

[5] Section 3 (1)

Omit "that involves substantial planning and organisation" from paragraph (a) of the definition of *relevant offence*. 20

[6] Section 3 (1)

Omit paragraph (b) from the definition of *relevant offence*.
Insert instead:

- (a1) an offence that involves fraud and that the Management Committee is satisfied is sufficiently serious to warrant its investigation by the Commission, or 5

Note. Section 3 (2A) sets out the matters that the Management Committee is to take into account in deciding whether an offence involving fraud is sufficiently serious to warrant investigation. 10

- (b) any other offence for which the Management Committee is satisfied that:
- (i) the investigation of the offence by the Commission is in the public interest, and
 - (ii) the use of the Commission's functions may be necessary to fully investigate the offence, 15

[7] Section 3 (2A)

Insert after section 3 (2):

(2A) Without limiting the matters that the Management Committee may take into account in deciding for the purposes of the definition of *relevant offence* whether an offence that involves fraud is sufficiently serious to warrant its investigation by the Commission, the Management Committee is to take into account: 20

- (a) the number of persons that may be involved in the offence, and 25
- (b) the degree of planning and organisation likely to be involved in the offence, and
- (c) the person or persons likely to be responsible for planning and organising the offence, and 30
- (d) the likely involvement of those persons in similar offences, and
- (e) the financial or other benefits likely to be derived by those or other persons from the offence.

[8] Section 3 (5)

Omit section 3 (5). Insert instead:

- (5) Notes in the text of this Act do not form part of this Act.

[9] Section 5 The Commission

Omit section 5 (3)–(7). Insert instead:

- (3) The Commission is to consist of one or more members, being:
- (a) the Commissioner, and
 - (b) if any Assistant Commissioners are appointed, the Assistant Commissioners.

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[10] Sections 5A–5C

Insert after section 5:

5A Commissioner

- (1) The Governor may appoint a Commissioner for the New South Wales Crime Commission.
- (2) The Commissioner has and may exercise the functions conferred or imposed on the Commissioner by or under this or any other Act.

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5B Assistant Commissioners

- (1) The Governor may, with the concurrence of the Commissioner, appoint one or more Assistant Commissioners for the New South Wales Crime Commission.
- (2) An Assistant Commissioner has and may exercise the functions conferred or imposed on an Assistant Commissioner by or under this or any other Act.
- (3) The Assistant Commissioner is to assist the Commissioner, as the Commissioner requires.

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5C Provisions relating to Commissioner and Assistant Commissioner

Schedule 1 has effect.

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[11] Section 9

Omit the section. Insert instead:

9 Delegation by Commission

- (1) The Commission may delegate to the Commissioner or an Assistant Commissioner or a member of the staff of the Commission any of its functions. 5
- (2) The Commissioner may delegate to an Assistant Commissioner or a member of the staff of the Commission any of his or her functions.
- (3) An Assistant Commissioner or member of staff of the Commission may delegate to a member of staff of the Commission any of the functions delegated to the Assistant Commissioner or member, subject to any conditions to which the delegation is subject. 10
- (4) The following functions may not be delegated: 15
 - (a) a power of delegation conferred by this section,
 - (b) a function of making a report under this Act,
 - (c) the power of a member to require the principal officer of an agency to furnish information under section 10, 20
 - (d) the power of a member to require a person to appear before the Commission and produce documents or things under section 16,
 - (e) the power of a member to require a person to attend and produce a document or thing under section 17, 25
 - (f) the power of the Commissioner to issue a warrant for the arrest of a person under section 18AA.

[12] Section 13 Hearings

Omit section 13 (3) and (3A). Insert instead: 30

- (3) At a hearing conducted by 2 or more members of the Commission:

-
- (a) the member presiding is to be the Commissioner or (if the Commissioner is not conducting the hearing) an Assistant Commissioner determined by the Commissioner, and
- (b) Schedule 2 is to apply, so far as it is capable of application, as if the hearing were a meeting of the Commission. 5

[13] Sections 13A, 13B

Insert after section 13:

13A Evidence 10

The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.

13B Legal representation of witnesses

Section 13 (4) does not prevent the Commission from refusing to permit a particular legal practitioner to represent a particular witness in an investigation if it believes on reasonable grounds and in good faith that to allow representation by the particular legal practitioner will, or is likely to, prejudice its investigation. 15
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[14] Section 15 Legal and financial assistance

Omit section 15 (2) (b).

[15] Section 16 Power to summon witnesses and take evidence

Insert after section 16 (1):

- (1A) A summons under subsection (1) may require the immediate attendance of a person before the Commission if the member who issues the summons believes on reasonable grounds that delay in attendance might result in: 25
- (a) the commission of an offence, or 30
- (b) the escape of an offender, or
- (c) the loss or destruction of evidence, or
- (d) serious prejudice to the conduct of an investigation.

[16] Section 16 (6)

Omit "Chairperson". Insert instead "Commissioner".

[17] Section 16A

Insert after section 16:

16A Appearance of inmate before Commission

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- (1) If the Commission requires an inmate to appear before it at a hearing, the Commission may, by order in writing served on the governor of the correctional centre in whose custody the inmate is, direct the governor to produce the inmate, or have the inmate produced, at the time and place stated in the order. 10
- (2) Such an order is sufficient authority to the governor of the correctional centre for producing the inmate or having the inmate produced, and the inmate must be produced accordingly. 15
- (3) An inmate is, when produced under this section in the actual custody of the governor of the correctional centre, a correctional officer or a police officer, taken to be in lawful custody.
- (4) The governor, correctional officer or police officer must in due course return the inmate to the correctional centre. 20
- (5) In this section, *correctional centre*, *governor of a correctional centre* and *inmate* have the same meanings as in the *Correctional Centres Act 1952*.

[18] Section 17 Power to obtain documents and things

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Insert after section 17 (2):

- (2A) A notice under this section may provide that the requirement 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. 30

(2B) A notice under this section may require the immediate production of a document or thing if the member who issues the notice believes on reasonable grounds that delay in the production of the document may result in:

- (a) its destruction, removal or concealment, or 5
- (b) serious prejudice to the conduct of an investigation.

[19] Section 17 (4), (5)

Omit the subsections.

[20] Sections 17A and 17B 10

Insert after section 17:

17A Refusal or failure of person to produce document or thing

- (1) This section applies if a person is required to produce a document or thing to a member of the Commission or member of the staff of the Commission in accordance with a notice under section 17. 15
- (2) A person may not claim that he or she is entitled to refuse or fail to produce the document or thing unless the claim is made personally to the member of the Commission or member of staff of the Commission to whom the person is required to produce the document or thing by the notice under section 17. 20
- (3) If the person makes such a claim the member of the Commission or member of staff of the Commission is to inform the person that, if the document or thing is not produced: 25
 - (a) he or she will be served with a summons requiring the person to appear as a witness at a hearing before the Commission and to produce the document or thing, and 30

- (b) the document or thing will be required to be deposited with the Commission so that it may be sealed and kept in safe custody pending the hearing.
- (4) If the document or thing is not produced after the person is so informed: 5
 - (a) a member of the Commission is to summon the person (in accordance with section 16) to appear as a witness at a hearing before the Commission and to produce the document or thing, and 10
 - (b) the person must deposit the document or thing with the Commission.
- (5) The Commission is to cause the document or thing to be sealed immediately after it is deposited with the Commission and is to retain it in safe custody pending the hearing. 15

17B Hearing following refusal or failure to produce document or thing

- (1) At a hearing referred to in section 17A, the Commission:
 - (a) may withdraw the requirement to produce the document or thing, or 20
 - (b) may insist that the document or thing be produced.
- (2) If the Commission withdraws the requirement to produce the document or thing, the document or thing must be delivered to the person who deposited it. 25

Note. See section 18B for the effect of the witness refusing or failing to produce a document or thing that the Commission insists be produced.

[21] Section 18 (2)

Insert "or 18B" after "section 18A". 30

[22] Section 18 (3)–(15)

Omit the subsections. Insert instead:

- (3) A person who contravenes subsection (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding 100 penalty units or imprisonment for a period not exceeding 2 years, or both. 5

[23] Section 18AA

Insert after section 18A:

18AA Arrest of witness

- (1) If a person served with a summons to appear as a witness at a hearing before the Commission fails to attend as required by 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. 10
- (2) If the Commissioner is satisfied: 15
- (a) by evidence on oath or affirmation that a person who has been served with a summons to appear as a witness at a hearing before the Commission has made a representation that the person intends not to appear at the hearing as required by the summons, and 20
- (b) that it is in the public interest that the person be compelled to do so to avoid serious prejudice to the conduct of an investigation,
- the Commissioner may issue a warrant for the arrest of the person. 25
- (3) The Commissioner may require a person to take an oath or affirmation for the purposes of this section.
- (4) A warrant may be issued under subsection (2) even though the time named in the summons for the person to attend has not yet passed. 30

- (5) A warrant issued 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.
- (6) A warrant issued under this section may be executed by any police officer or by any person to whom it is addressed. 5
- (7) A person executing a warrant issued under this section may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it. 10
- (8) The issue of a warrant or arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with the summons.
- (9) In this section: 15
- representation* includes:
- (a) an express or implied representation (whether oral or in writing), or
- (b) a representation to be inferred from conduct, or
- (c) a representation not intended by its maker to be communicated to or seen by another person, or 20
- (d) a representation that for any reason is not communicated.

[24] Sections 18B and 18C

Insert before section 19: 25

18B Privilege concerning answers and documents

- (1) A witness summoned to attend or appearing before the Commission at a hearing is not (except as provided by section 18A) excused from answering any question or producing any document or thing on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground. 30

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- (2) An answer made, or document or thing produced, by a witness at a hearing before the Commission is not (except as otherwise provided in this section) admissible in evidence against the person in any civil or criminal proceedings or in any disciplinary proceedings. 5
- (3) Nothing in this section makes inadmissible:
- (a) any answer, document or thing in proceedings for an offence against this Act or in proceedings for contempt under this Act, or
 - (b) any answer, document or thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (1), or 10 15
 - (c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or thing, or
 - (d) any answer made, or document or thing produced, by a corporation at a hearing before the Commission, or 20
 - (e) any answer, document or thing in a proceeding for the falsity of evidence given by the witness.
- (4) If:
- (a) a legal practitioner or other person is required to answer a question or produce a document or thing at a hearing before the Commission, and 25
 - (b) the answer to the question would disclose, or the document or thing contains, a privileged communication passing between a legal practitioner (in his or her capacity as a legal practitioner) and a person, 30
- the legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so. However, the legal practitioner must, if so required by the member presiding at the hearing, furnish to the Commission the name and address of the person to whom or by whom the communication was made. 35

- (5) The member presiding at the hearing 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. 5

18C Cabinet documents and proceedings

- (1) This Act does not enable the Commission:
- (a) to require any person to give any statement of information or answer any question, or 10
 - (b) to require any person to produce any Cabinet document or other thing, or
 - (c) to give a copy of any document, 15
- that relates to a Cabinet document or to confidential proceedings of Cabinet.
- (2) For the purposes of this section, a certificate of the head of The Cabinet Office that:
- (a) a document is a Cabinet document, or
 - (b) any information, document, thing or question relates to confidential proceedings of Cabinet, 20
- is conclusive of the matter certified.
- (3) In this section:
- Cabinet* includes a committee of Cabinet or a subcommittee of such a committee. 25
- Cabinet document* means a document that is an exempt document under the *Freedom of Information Act 1989*.

[25] Section 19 Applications to Supreme Court

Omit section 19 (1) (b).

[26] Section 19 (5)

Omit the subsection. Insert instead:

- (5) If the Supreme Court makes an order under subsection (4) setting aside a decision by the Commission that a claim by a person that the person was entitled to refuse to produce a document is not justified, the Supreme Court must make a further order directing that the document be delivered to the person.

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[27] Section 19 (8)–(12)

Omit the subsections.

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[28] Section 19 (13)

Omit the subsection. Insert instead:

- (13) An application by a person under subsection (2) must:
- (a) be made in such manner as is prescribed by rules of court, and
 - (b) set out the grounds of the application, and
 - (c) be lodged with the appropriate Registry of the Supreme Court within the period of 5 days (excluding days on which the Registry is closed) immediately after the date on which the Commission notified the person of the decision to which the application relates.

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[29] Section 19 (17)

Omit the subsection.

[30] Section 21 Protection of witnesses etc

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Omit "Chairperson" wherever occurring.
Insert instead "Commissioner".

[31] Section 21A

Insert after section 21:

21A Indemnities and undertakings

- (1) The Commission may recommend to the Attorney General that a person be granted (under section 13 of the *Criminal Procedure Act 1986*) an indemnity from prosecution. 5
- (2) The Commission may recommend to the Attorney General that a person be given (under section 14 of the *Criminal Procedure Act 1986*) an undertaking that: 10
 - (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. 15
- (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 a hearing before the Commission or any other investigative activity involving the Commission or a member of staff of the Commission. 20

[32] Section 23 Protection of members and others 25

Insert at the end of the section:

- (4) No criminal or civil liability (apart from this Act) attaches to a person for compliance, or purported compliance in good faith, with any requirement made under this Act. 30
- (5) In particular, if a person produces any document or other thing under section 17, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

[33] Section 24 The Management Committee

Omit "5 members" from section 24 (1). Insert instead "4 members".

[34] Section 24 (1) (a)–(c)

Insert "and" at the end of paragraphs (a), (b) and (c).

[35] Section 24 (1) (d)

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Omit the paragraph. Insert instead:

(d) one shall be the Commissioner.

[36] Section 24 (1) (e)

Omit the paragraph.

[37] Section 29 Secrecy

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Insert at the end of section 29 (1) (c):

, and

(d) a person to whom information is given either by the Commission or by a person referred to in paragraph (a), (b) or (c) on the understanding that the information is confidential.

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[38] Section 30 Furnishing of reports and information

Insert after section 30 (1):

(1A) In particular, the Commission must report to each meeting of the Management Committee the particulars of any warrants issued by the Commissioner under section 18AA that have not previously been reported to the Management Committee.

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[39] Section 31 Annual report

Insert after section 31 (2) (e):

- (e1) particulars of warrants issued by the Commissioner under section 18AA, including whether a warrant was issued for a failure to appear as a witness at a hearing before the Commission or because the Commissioner was satisfied that a person intended not to appear at such a hearing, 5

[40] Section 31 (4A)

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Insert after section 31 (4):

- (4A) A report by the Commission under this section that contains particulars of a warrant issued by the Commissioner under section 18AA must not reveal the identity of the person against whom the warrant was issued. 15

[41] Section 34 Counsel assisting Commission

Omit "Attorney General". Insert instead "Commission".

[42] Section 35 Service of documents

Insert at the end of the section: 20

- (2) In addition to the means of service provided for under subsection (1), service of a document on a person (whether a natural person or a body corporate) may be effected by facsimile transmission or other electronic means notified by the person as being an available means of communication. 25
- (3) Service of a facsimile copy of a document in accordance with subsection (1) is taken to be service of the document for the purposes of that subsection.

[43] Schedule 1

Omit the Schedule. Insert instead:

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

(Section 5C)

5

1 Eligibility for appointment

A person is not eligible to be appointed as Commissioner or Assistant Commissioner or to act in either of those offices unless the person has special legal qualifications.

2 Acting Commissioner or Assistant Commissioner

10

(1) **Long illness or absence.**

The Governor may, from time to time, appoint a person to act in the office of Commissioner or Assistant Commissioner during the illness or absence of the Commissioner or Assistant Commissioner.

15

(2) **Short illness or absence.**

The Minister may appoint a person to act in the office of Commissioner or Assistant Commissioner during the illness or absence of the Commissioner or Assistant Commissioner if the Minister has reason to believe that the duration of the illness or absence will not exceed 4 weeks. The Minister is not to make an appointment if there is a subsisting appointment under subclause (1).

20

(3) The person, while so acting, has all the functions of the Commissioner or Assistant Commissioner and is to be taken to be the Commissioner or Assistant Commissioner.

25

(4) The Governor or Minister may, at any time, remove a person from the office to which the person was appointed by the Governor or Minister under this clause.

30

(5) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor or Minister may from time to time determine.

- (6) For the purposes of this clause:
- (a) a vacancy in the office of Commissioner or Assistant Commissioner is to be taken to be an absence from office of the Commissioner or Assistant Commissioner, and 5
 - (b) an Assistant Commissioner is to be taken to be absent from office as an Assistant Commissioner during any period when the Assistant Commissioner acts in the office of the Commissioner pursuant to an appointment under this clause. 10

3 Basis of offices

- (1) The office of Commissioner is a full-time office.
- (2) The office of Assistant Commissioner may be a full-time office or a part-time office, according to the terms of appointment. 15
- (3) The holder of a full-time office referred to in subclause (1) or (2) is required to hold it on that basis, except to the extent permitted by the Governor.

4 Terms of office 20

Subject to this Schedule, the Commissioner or an Assistant Commissioner holds office for such term as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

5 Remuneration 25

- (1) The Commissioner or a full-time Assistant Commissioner is entitled to be paid:
 - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine. 30

(2) The Commissioner or a full-time Assistant Commissioner who is a Judge is not, while receiving remuneration as such a Judge, entitled to remuneration under this Act.

(3) A part-time Assistant Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Assistant Commissioner. 5

6 Provisions where Judge is holding office as Commissioner or Assistant Commissioner 10

(1) The appointment of a person who is the holder of a judicial office as Commissioner or Assistant Commissioner or service by a person who is the holder of a judicial office as Commissioner or Assistant Commissioner does not affect: 15

- (a) the person's tenure of that judicial office, or
- (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.

(2) The person's service as Commissioner or Assistant Commissioner is, for all purposes, taken to be service as the holder of that judicial office. 20

(3) In this clause:

judicial office means an office of Judge of a court of New South Wales. 25

7 Vacancy in office

(1) The office of Commissioner or Assistant Commissioner becomes vacant if the holder:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or 30
- (c) resigns the office by instrument in writing addressed to the Minister, or

- (d) being full-time—is absent from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence results from illness or other unavoidable cause, or 5
 - (e) being full-time—engages in any paid employment outside the duties of his or her office, except with the consent of the Minister, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or 10
 - (g) becomes a mentally incapacitated person, or
 - (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or 20
 - (i) is removed from office under subclause (2) or (3).
- (2) The Governor may remove the Commissioner or an Assistant Commissioner from office for incapacity, incompetence or misbehaviour.
- (3) Without limiting subsection (2), the Governor may remove the Commissioner or Assistant Commissioner from office if he or she contravenes clause 8. 25

8 Disclosure of pecuniary interests

- (1) If:
 - (a) the Commissioner has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, and 30
 - (b) the interest appears to raise a conflict with the proper performance of the Commissioner's duties in relation to the consideration of the matter, 35

the Commissioner must, as soon as possible after the relevant facts have come to the Commissioner's knowledge, disclose the nature of the interest at a meeting of the Management Committee.

(2) If: 5

(a) an Assistant Commissioner has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, and

(b) the interest appears to raise a conflict with the proper performance of the Assistant Commissioner's duties in relation to the consideration of the matter, 10

the Assistant Commissioner must, as soon as possible after the relevant facts have come to the Assistant Commissioner's knowledge, disclose the nature of the interest to the Commissioner. 15

(3) A disclosure by the Commissioner or Assistant Commissioner that he or she:

(a) is a member, or is in the employment, of a specified company or other body, or 20

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person, 25

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1) or (2). 30

(4) Particulars of any disclosure made under this section must be recorded by the Commission in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Commission. 35

- (5) After a person has disclosed the nature of an interest in any matter under this clause, the person must not, unless the Minister otherwise determines:
- (a) be present during any deliberation of the Commission with respect to the matter, or 5
 - (b) take part in any decision of the Commission with respect to the matter, or
 - (c) exercise any functions under this Act with respect to that matter.
- (6) A contravention of this clause does not invalidate any decision of the Commission. 10

9 Filling of vacancy

- (1) If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.
- (2) If the office of Assistant Commissioner becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy. 15

10 Effect of certain other Acts

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of the Commissioner or an Assistant Commissioner, and the holder of either office is not, as holder, subject to that Act. 20
- (2) A provision made by or under any Act:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or 25
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- does not operate to disqualify the person from holding that office and also the office of a part-time Assistant Commissioner or from accepting and retaining any remuneration payable to the person under this Act as a part-time Assistant Commissioner. 30
- (3) The office of a part-time Assistant Commissioner is not, for the purposes of any Act, an office or place of profit under the Crown. 35

11 Personal liability

No matter or thing done or omitted by the Commission, the Commissioner or an Assistant Commissioner or any person acting under the direction of the Commission, the Commissioner or an Assistant Commissioner subjects the Commissioner or Assistant Commissioner personally to any liability if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act.

5

[44] Schedule 2 Provisions relating to the procedure of the Commission

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Omit "(Sec. 5 (8))". Insert instead "(Sections 5 (8), 13 (3), 28 (3))".

[45] Schedule 2

Omit "Chairperson" and "Chairperson's" wherever occurring. Insert instead "Commissioner" and "Commissioner's" respectively.

15

[46] Schedule 4

Omit the heading to the Schedule. Insert instead:

Schedule 4 Savings, transitional and other provisions

[47] Schedule 4

20

Renumber clause 1 as clause 1A. Insert before that clause (as so renumbered):

Part 1 Regulations

1 Savings and transitional regulations

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

25

New South Wales Crime Commission Amendment Act 1996

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate so as: 5
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or 10
- (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 publication. 15
- (4) A provision referred to in subclause (!) may, if the regulations so provide, have effect despite any other clause of this Schedule.

Part 2 Provisions relating to enactment of State Drug Crime Commission (Further Amendment) Act 1988 20

[48] Schedule 4, Part 3

Insert after clause 1A:

Part 3 Provisions relating to enactment of New South Wales Crime Commission Amendment Act 1996 25

2 Definitions

In this clause:

amending Act means the *New South Wales Crime Commission Amendment Act 1996*. 30

Chairperson means Chairperson within the meaning of this Act as in force immediately before the amendment to section 5 made by the amending Act.

3 Meaning of relevant offence

The amendment made by the amending Act to the definition of *relevant offence* in section 3 extends to offences that may have been committed before the commencement of the amendment.

5

4 Existing Chairperson

(1) A person who, immediately before the commencement of the amendment to section 5 made by the amending Act, held office as Chairperson:

(a) ceases to hold office as Chairperson on that commencement, and

10

(b) holds office, subject to this Act, as Commissioner for the remainder of the person's office as if appointed as Commissioner under section 5A.

(2) A reference in any other Act, in an instrument made under an Act or in any document, to the Chairperson (to the extent that it relates to acts, matters or things occurring after the commencement of the amendment to section 5 made by the amending Act) is to be read as a reference to the Commissioner.

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5 Existing members other than Chairperson

A person who, immediately before the commencement of the amendment to section 5 made by the amending Act, held office as a member of the Commission other than the Chairperson:

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(a) ceases to hold office as such on that commencement, and

(b) is not entitled to any remuneration or compensation because of the loss of that office.

6 Identity and status of Commission and certain acts not affected

30

(1) The amendment to section 5 made by the amending Act relating to the membership of the corporation constituted by this Act does not affect the identity or continuing status of that corporation.

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- (2) Sections 17A and 17B extend to a person:
 - (a) who was required to do any act by a notice under section 17 as in force immediately before the commencement of the amendments made to section 17 by the amending Act, and 5
 - (b) who had not, before that commencement, claimed to be entitled to refuse to produce a document or thing that the person was required to produce by that notice.
- (3) Except to the extent provided by this Part, a provision of this Act, as in force immediately before its amendment by the amending Act, continues to apply to and in respect of anything to which it then applied. 10

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Financial Transaction Reports Act 1992 No 99

[1] Section 6 Further reports of suspect transactions

Omit "Chairperson" from section 6 (1) (b). 5
Insert instead "Commissioner".

[2] Section 7 Reports of suspect transactions not reported under Commonwealth Act

Omit "Chairperson" from section 7 (6) (b). 10
Insert instead "Commissioner".

[3] Section 10 Secrecy

Omit "Chairperson" from section 10 (1) (b).
Insert instead "Commissioner".

2.2 Public Finance and Audit Act 1983 No 152

Omit the matter relating to the New South Wales Crime Commission 15
from Columns 1 and 2 of Schedule 3.
Insert instead:

New South Wales Crime
Commission

Commissioner of the New South
Wales Crime Commission

2.3 Public Sector Management Act 1988 No 33

Omit the matter relating to the New South Wales Crime Commission from Columns 1 and 2 of Schedule 1.

Insert instead:

New South Wales Crime Commission	Commissioner of the New South Wales Crime Commission	5
----------------------------------	--	---

2.4 Statutory and Other Offices Remuneration Act 1975 (1976 No 4)

[1] Schedule 1 Public Offices

Omit "Chairperson of the State Drug Crime Commission". 10
Insert instead "Commissioner of the New South Wales Crime Commission".

[2] Schedule 1 Public Offices

Omit "Full time member of the State Drug Crime Commission, other than the Chairperson". 15
Insert instead "Full-time Assistant Commissioner of the New South Wales Crime Commission".

2.5 Witness Protection Act 1995 No 87

Omit "Chairperson" from paragraph (d) of the definition of *approved authority* in section 3.

Insert instead "Commissioner".



New South Wales

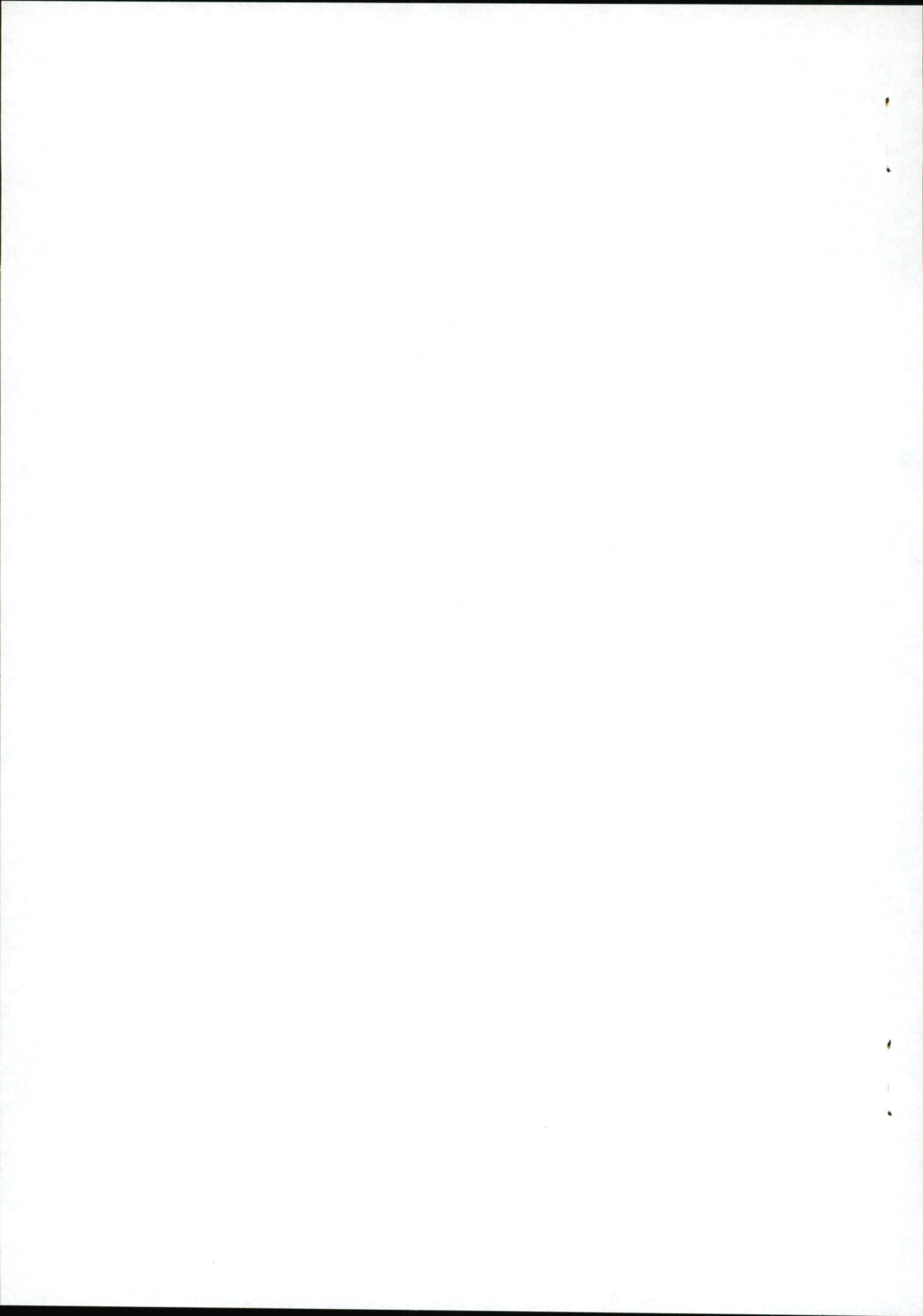
New South Wales Crime Commission Amendment Act 1996 No 104

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New South Wales

New South Wales Crime Commission Amendment Act 1996 No 104

Act No 104, 1996

An Act to amend the *New South Wales Crime Commission Act 1985* with respect to the membership of the Commission and the conduct of hearings before the Commission; to make consequential amendments to various other Acts; and for other purposes. [Assented to 26 November 1996]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *New South Wales Crime Commission Amendment Act 1996*.

2 Commencement

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

3 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 1.

4 Amendment of other Acts

The Acts specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of New South Wales Crime Commission Act 1985

(Section 3)

[1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

Assistant Commissioner means an Assistant Commissioner for the Commission.

Commissioner means the Commissioner for the New South Wales Crime Commission.

[2] Section 3 (1)

Omit the definition of *Chairperson*.

[3] Section 3 (1)

Omit "this Act" from the definition of *investigation*.
Insert instead "section 25 (1) (a) or (a1)".

[4] Section 3 (1)

Omit "Chairperson" from the definition of *member*.
Insert instead "Commissioner".

[5] Section 3 (1)

Omit "that involves substantial planning and organisation" from paragraph (a) of the definition of *relevant offence*.

[6] Section 3 (1)

Omit paragraph (b) from the definition of *relevant offence*.

Insert instead:

- (a1) an offence that involves fraud and that the Management Committee is satisfied is sufficiently serious to warrant its investigation by the Commission, or

Note. Section 3 (2A) sets out the matters that the Management Committee is to take into account in deciding whether an offence involving fraud is sufficiently serious to warrant investigation.

- (b) any other offence for which the Management Committee is satisfied that:
 - (i) the investigation of the offence by the Commission is in the public interest, and
 - (ii) the use of the Commission's functions may be necessary to fully investigate the offence,

[7] Section 3 (2A)

Insert after section 3 (2):

(2A) Without limiting the matters that the Management Committee may take into account in deciding for the purposes of the definition of *relevant offence* whether an offence that involves fraud is sufficiently serious to warrant its investigation by the Commission, the Management Committee is to take into account:

- (a) the number of persons that may be involved in the offence, and
- (b) the degree of planning and organisation likely to be involved in the offence, and
- (c) the person or persons likely to be responsible for planning and organising the offence, and
- (d) the likely involvement of those persons in similar offences, and
- (e) the financial or other benefits likely to be derived by those or other persons from the offence.

[8] Section 3 (5)

Omit section 3 (5). Insert instead:

- (5) Notes in the text of this Act do not form part of this Act.

[9] Section 5 The Commission

Omit section 5 (3)–(7). Insert instead:

- (3) The Commission is to consist of one or more members, being:
- (a) the Commissioner, and
 - (b) if any Assistant Commissioners are appointed, the Assistant Commissioners.

[10] Sections 5A–5C

Insert after section 5:

5A Commissioner

- (1) The Governor may appoint a Commissioner for the New South Wales Crime Commission.
- (2) The Commissioner has and may exercise the functions conferred or imposed on the Commissioner by or under this or any other Act.

5B Assistant Commissioners

- (1) The Governor may, with the concurrence of the Commissioner, appoint one or more Assistant Commissioners for the New South Wales Crime Commission.
- (2) An Assistant Commissioner has and may exercise the functions conferred or imposed on an Assistant Commissioner by or under this or any other Act.
- (3) The Assistant Commissioner is to assist the Commissioner, as the Commissioner requires.

5C Provisions relating to Commissioner and Assistant Commissioner

Schedule 1 has effect.

[11] Section 9

Omit the section. Insert instead:

9 Delegation by Commission

- (1) The Commission may delegate to the Commissioner or an Assistant Commissioner or a member of the staff of the Commission any of its functions.
- (2) The Commissioner may delegate to an Assistant Commissioner or a member of the staff of the Commission any of his or her functions.
- (3) An Assistant Commissioner or member of staff of the Commission may delegate to a member of staff of the Commission any of the functions delegated to the Assistant Commissioner or member, subject to any conditions to which the delegation is subject.
- (4) The following functions may not be delegated:
 - (a) a power of delegation conferred by this section,
 - (b) a function of making a report under this Act,
 - (c) the power of a member to require the principal officer of an agency to furnish information under section 10,
 - (d) the power of a member to require a person to appear before the Commission and produce documents or things under section 16,
 - (e) the power of a member to require a person to attend and produce a document or thing under section 17,
 - (f) the power of the Commissioner to issue a warrant for the arrest of a person under section 18AA.

[12] Section 13 Hearings

Omit section 13 (3) and (3A). Insert instead:

- (3) At a hearing conducted by 2 or more members of the Commission:
 - (a) the member presiding is to be the Commissioner or (if the Commissioner is not conducting the hearing) an Assistant Commissioner determined by the Commissioner, and
 - (b) Schedule 2 is to apply, so far as it is capable of application, as if the hearing were a meeting of the Commission.

[13] Sections 13A, 13B

Insert after section 13:

13A Evidence

The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.

13B Legal representation of witnesses

Section 13 (4) does not prevent the Commission from refusing to permit a particular legal practitioner to represent a particular witness in an investigation if it believes on reasonable grounds and in good faith that to allow representation by the particular legal practitioner will, or is likely to, prejudice its investigation.

[14] Section 15 Legal and financial assistance

Omit section 15 (2) (b).

[15] Section 16 Power to summon witnesses and take evidence

Insert after section 16 (1):

- (1A) A summons under subsection (1) may require the immediate attendance of a person before the Commission if the member who issues the summons believes on reasonable grounds that delay in attendance might result in:
- (a) the commission of an offence, or
 - (b) the escape of an offender, or
 - (c) the loss or destruction of evidence, or
 - (d) serious prejudice to the conduct of an investigation.

[16] Section 16 (6)

Omit "Chairperson". Insert instead "Commissioner".

[17] Section 16A

Insert after section 16:

16A Appearance of inmate before Commission

- (1) If the Commission requires an inmate to appear before it at a hearing, the Commission may, by order in writing served on the governor of the correctional centre in whose custody the inmate is, direct the governor to produce the inmate, or have the inmate produced, at the time and place stated in the order.
- (2) Such an order is sufficient authority to the governor of the correctional centre for producing the inmate or having the inmate produced, and the inmate must be produced accordingly.

- (3) An inmate is, when produced under this section in the actual custody of the governor of the correctional centre, a correctional officer or a police officer, taken to be in lawful custody.
- (4) The governor, correctional officer or police officer must in due course return the inmate to the correctional centre.
- (5) In this section, *correctional centre*, *governor of a correctional centre* and *inmate* have the same meanings as in the *Correctional Centres Act 1952*.

[18] Section 17 Power to obtain documents and things

Insert after section 17 (2):

- (2A) A notice under this section may provide that the requirement 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.
- (2B) A notice under this section may require the immediate production of a document or thing if the member who issues the notice believes on reasonable grounds that delay in the production of the document may result in:
 - (a) its destruction, removal or concealment, or
 - (b) serious prejudice to the conduct of an investigation.

[19] Section 17 (4), (5)

Omit the subsections.

[20] Sections 17A and 17B

Insert after section 17:

17A Refusal or failure of person to produce document or thing

- (1) This section applies if a person is required to produce a document or thing to a member of the Commission or member of the staff of the Commission in accordance with a notice under section 17.

- (2) A person may not claim that he or she is entitled to refuse or fail to produce the document or thing unless the claim is made personally to the member of the Commission or member of staff of the Commission to whom the person is required to produce the document or thing by the notice under section 17.
- (3) If the person makes such a claim the member of the Commission or member of staff of the Commission is to inform the person that, if the document or thing is not produced:
 - (a) he or she will be served with a summons requiring the person to appear as a witness at a hearing before the Commission and to produce the document or thing, and
 - (b) the document or thing will be required to be deposited with the Commission so that it may be sealed and kept in safe custody pending the hearing.
- (4) If the document or thing is not produced after the person is so informed:
 - (a) a member of the Commission is to summon the person (in accordance with section 16) to appear as a witness at a hearing before the Commission and to produce the document or thing, and
 - (b) the person must deposit the document or thing with the Commission.
- (5) The Commission is to cause the document or thing to be sealed immediately after it is deposited with the Commission and is to retain it in safe custody pending the hearing.

17B Hearing following refusal or failure to produce document or thing

- (1) At a hearing referred to in section 17A, the Commission:
 - (a) may withdraw the requirement to produce the document or thing, or
 - (b) may insist that the document or thing be produced.

- (2) If the Commission withdraws the requirement to produce the document or thing, the document or thing must be delivered to the person who deposited it.

Note. See section 18B for the effect of the witness refusing or failing to produce a document or thing that the Commission insists be produced.

[21] Section 18 (2)

Insert "or 18B" after "section 18A".

[22] Section 18 (3)–(15)

Omit the subsections. Insert instead:

- (3) A person who contravenes subsection (1) or (2) is guilty of an offence punishable, on conviction, by a fine not exceeding 100 penalty units or imprisonment for a period not exceeding 2 years, or both.

[23] Section 18AA

Insert after section 18A:

18AA Arrest of witness

- (1) If a person served with a summons to appear as a witness at a hearing before the Commission fails to attend as required by 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) If the Commissioner is satisfied:
- (a) by evidence on oath or affirmation that a person who has been served with a summons to appear as a witness at a hearing before the Commission has made a representation that the person intends not to appear at the hearing as required by the summons, and

- (b) that it is in the public interest that the person be compelled to do so to avoid serious prejudice to the conduct of an investigation,
- the Commissioner may issue a warrant for the arrest of the person.
- (3) The Commissioner may require a person to take an oath or affirmation for the purposes of this section.
- (4) A warrant may be issued under subsection (2) even though the time named in the summons for the person to attend has not yet passed.
- (5) A warrant issued 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.
- (6) A warrant issued under this section may be executed by any police officer or by any person to whom it is addressed.
- (7) A person executing a warrant issued under this section may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it.
- (8) The issue of a warrant or arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with the summons.
- (9) In this section:
- representation** includes:
- (a) an express or implied representation (whether oral or in writing), or
- (b) a representation to be inferred from conduct, or
- (c) a representation not intended by its maker to be communicated to or seen by another person, or
- (d) a representation that for any reason is not communicated.

[24] Section 18B

Insert before section 19:

18B Privilege concerning answers and documents

- (1) A witness summoned to attend or appearing before the Commission at a hearing is not (except as provided by section 18A) excused from answering any question or producing any document or thing on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure, or on any other ground.
- (2) An answer made, or document or thing produced, by a witness at a hearing before the Commission is not (except as otherwise provided in this section) admissible in evidence against the person in any civil or criminal proceedings or in any disciplinary proceedings.
- (3) Nothing in this section makes inadmissible:
 - (a) any answer, document or thing in proceedings for an offence against this Act or in proceedings for contempt under this Act, or
 - (b) any answer, document or thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (1), or
 - (c) any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or thing, or
 - (d) any answer made, or document or thing produced, by a corporation at a hearing before the Commission, or
 - (e) any answer, document or thing in a proceeding for the falsity of evidence given by the witness.

- (4) If:
- (a) a legal practitioner or other person is required to answer a question or produce a document or thing at a hearing before the Commission, and
 - (b) the answer to the question would disclose, or the document or thing contains, a privileged communication passing between a legal practitioner (in his or her capacity as a legal practitioner) and a person,

the legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so. However, the legal practitioner must, if so required by the member presiding at the hearing, furnish to the Commission the name and address of the person to whom or by whom the communication was made.

- (5) The member presiding at the hearing 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.

[25] Section 19 Applications to Supreme Court

Omit section 19 (1) (b).

[26] Section 19 (5)

Omit the subsection. Insert instead:

- (5) If the Supreme Court makes an order under subsection (4) setting aside a decision by the Commission that a claim by a person that the person was entitled to refuse to produce a document is not justified, the Supreme Court must make a further order directing that the document be delivered to the person.

[27] Section 19 (8)–(12)

Omit the subsections.

[28] Section 19 (13)

Omit the subsection. Insert instead:

- (13) An application by a person under subsection (2) must:
- (a) be made in such manner as is prescribed by rules of court, and
 - (b) set out the grounds of the application, and
 - (c) be lodged with the appropriate Registry of the Supreme Court within the period of 5 days (excluding days on which the Registry is closed) immediately after the date on which the Commission notified the person of the decision to which the application relates.

[29] Section 19 (17)

Omit the subsection.

[30] Section 21 Protection of witnesses etc

Omit "Chairperson" wherever occurring.
Insert instead "Commissioner".

[31] Section 21A

Insert after section 21:

21A Indemnities and undertakings

- (1) The Commission 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 Commission may recommend to the Attorney General that a person be given (under section 14 of the *Criminal Procedure Act 1986*) an undertaking that:
 - (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 a hearing before the Commission or any other investigative activity involving the Commission or a member of staff of the Commission.

[32] Section 23 Protection of members and others

Insert at the end of the section:

- (4) No criminal or civil liability (apart from this Act) attaches to a person for compliance, or purported compliance in good faith, with any requirement made under this Act.
- (5) In particular, if a person produces any document or other thing under section 17, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

[33] Section 24 The Management Committee

Omit "5 members" from section 24 (1). Insert instead "4 members".

[34] Section 24 (1) (a)–(c)

Insert “and” at the end of paragraphs (a), (b) and (c).

[35] Section 24 (1) (d)

Omit the paragraph. Insert instead:

(d) one shall be the Commissioner.

[36] Section 24 (1) (e)

Omit the paragraph.

[37] Section 29 Secrecy

Insert at the end of section 29 (1) (c):

, and

(d) a person to whom information is given either by the Commission or by a person referred to in paragraph (a), (b) or (c) on the understanding that the information is confidential.

[38] Section 30 Furnishing of reports and information

Insert after section 30 (1):

(1A) In particular, the Commission must report to each meeting of the Management Committee the particulars of any warrants issued by the Commissioner under section 18AA that have not previously been reported to the Management Committee.

[39] Section 31 Annual report

Insert after section 31 (2) (e):

(e1) particulars of warrants issued by the Commissioner under section 18AA, including whether a warrant was issued for a failure to appear as a witness at a hearing before the Commission or because the Commissioner was satisfied that a person intended not to appear at such a hearing,

[40] Section 31 (4A)

Insert after section 31 (4):

- (4A) A report by the Commission under this section that contains particulars of a warrant issued by the Commissioner under section 18AA must not reveal the identity of the person against whom the warrant was issued.

[41] Section 34 Counsel assisting Commission

Omit "Attorney General". Insert instead "Commission".

[42] Section 35 Service of documents

Insert at the end of the section:

- (2) In addition to the means of service provided for under subsection (1), service of a document on a person (whether a natural person or a body corporate) may be effected by facsimile transmission or other electronic means notified by the person as being an available means of communication.
- (3) Service of a facsimile copy of a document in accordance with subsection (1) is taken to be service of the document for the purposes of that subsection.

[43] Schedule 1

Omit the Schedule. Insert instead:

Schedule 1 Provisions relating to Commissioner and Assistant Commissioners

(Section 5C)

1 Eligibility for appointment

A person is not eligible to be appointed as Commissioner or Assistant Commissioner or to act in either of those offices unless the person has special legal qualifications.

2 Acting Commissioner or Assistant Commissioner

(1) **Long illness or absence**

The Governor may, from time to time, appoint a person to act in the office of Commissioner or Assistant Commissioner during the illness or absence of the Commissioner or Assistant Commissioner.

(2) **Short illness or absence**

The Minister may appoint a person to act in the office of Commissioner or Assistant Commissioner during the illness or absence of the Commissioner or Assistant Commissioner if the Minister has reason to believe that the duration of the illness or absence will not exceed 4 weeks. The Minister is not to make an appointment if there is a subsisting appointment under subclause (1).

(3) The person, while so acting, has all the functions of the Commissioner or Assistant Commissioner and is to be taken to be the Commissioner or Assistant Commissioner.

(4) The Governor or Minister may, at any time, remove a person from the office to which the person was appointed by the Governor or Minister under this clause.

(5) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor or Minister may from time to time determine.

(6) For the purposes of this clause:

(a) a vacancy in the office of Commissioner or Assistant Commissioner is to be taken to be an absence from office of the Commissioner or Assistant Commissioner, and

(b) an Assistant Commissioner is to be taken to be absent from office as an Assistant Commissioner during any period when the Assistant Commissioner acts in the office of the Commissioner pursuant to an appointment under this clause.

3 Basis of offices

- (1) The office of Commissioner is a full-time office.
- (2) The office of Assistant Commissioner may be a full-time office or a part-time office, according to the terms of appointment.
- (3) The holder of a full-time office referred to in subclause (1) or (2) is required to hold it on that basis, except to the extent permitted by the Governor.

4 Terms of office

Subject to this Schedule, the Commissioner or an Assistant Commissioner holds office for such term as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

5 Remuneration

- (1) The Commissioner or a full-time Assistant Commissioner is entitled to be paid:
 - (a) remuneration in accordance with the *Statutory and Other Offices Remuneration Act 1975*, and
 - (b) such travelling and subsistence allowances as the Minister may from time to time determine.
- (2) The Commissioner or a full-time Assistant Commissioner who is a Judge is not, while receiving remuneration as such a Judge, entitled to remuneration under this Act.
- (3) A part-time Assistant Commissioner is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the Assistant Commissioner.

6 Provisions where Judge is holding office as Commissioner or Assistant Commissioner

- (1) The appointment of a person who is the holder of a judicial office as Commissioner or Assistant Commissioner or service by a person who is the holder of a judicial office as Commissioner or Assistant Commissioner does not affect:

- (a) the person's tenure of that judicial office, or
 - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as Commissioner or Assistant Commissioner is, for all purposes, taken to be service as the holder of that judicial office.
- (3) In this clause:

judicial office means an office of Judge of a court of New South Wales.

7 Vacancy in office

- (1) The office of Commissioner or Assistant Commissioner becomes vacant if the holder:
- (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) being full-time—is absent from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence results from illness or other unavoidable cause, or
 - (e) being full-time—engages in any paid employment outside the duties of his or her office, except with the consent of the Minister, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person, or

- (h) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (i) is removed from office under subclause (2) or (3).
- (2) The Governor may remove the Commissioner or an Assistant Commissioner from office for incapacity, incompetence or misbehaviour.
- (3) Without limiting subsection (2), the Governor may remove the Commissioner or Assistant Commissioner from office if he or she contravenes clause 8.

8 Disclosure of pecuniary interests

- (1) If:
- (a) the Commissioner has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, and
 - (b) the interest appears to raise a conflict with the proper performance of the Commissioner's duties in relation to the consideration of the matter,
- the Commissioner must, as soon as possible after the relevant facts have come to the Commissioner's knowledge, disclose the nature of the interest at a meeting of the Management Committee.
- (2) If:
- (a) an Assistant Commissioner has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission, and
 - (b) the interest appears to raise a conflict with the proper performance of the Assistant Commissioner's duties in relation to the consideration of the matter,

the Assistant Commissioner must, as soon as possible after the relevant facts have come to the Assistant Commissioner's knowledge, disclose the nature of the interest to the Commissioner.

- (3) A disclosure by the Commissioner or Assistant Commissioner that he or she:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1) or (2).

- (4) Particulars of any disclosure made under this section must be recorded by the Commission in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Commission.
- (5) After a person has disclosed the nature of an interest in any matter under this clause, the person must not, unless the Minister otherwise determines:
- (a) be present during any deliberation of the Commission with respect to the matter, or
 - (b) take part in any decision of the Commission with respect to the matter, or
 - (c) exercise any functions under this Act with respect to that matter.
- (6) A contravention of this clause does not invalidate any decision of the Commission.

9 Filling of vacancy

- (1) If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.
- (2) If the office of Assistant Commissioner becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.

10 Effect of certain other Acts

- (1) The *Public Sector Management Act 1988* does not apply to the appointment of the Commissioner or an Assistant Commissioner, and the holder of either office is not, as holder, subject to that Act.
- (2) A provision made by or under any Act:
 - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,does not operate to disqualify the person from holding that office and also the office of a part-time Assistant Commissioner or from accepting and retaining any remuneration payable to the person under this Act as a part-time Assistant Commissioner.
- (3) The office of a part-time Assistant Commissioner is not, for the purposes of any Act, an office or place of profit under the Crown.

11 Personal liability

No matter or thing done or omitted by the Commission, the Commissioner or an Assistant Commissioner or any person acting under the direction of the Commission, the Commissioner or an Assistant Commissioner subjects the Commissioner or Assistant Commissioner personally to any liability if the matter or thing was done or omitted in good faith for the purpose of executing this or any other Act.

[44] Schedule 2 Provisions relating to the procedure of the Commission

Omit "(Sec. 5 (8))". Insert instead "(Sections 5 (8), 13 (3), 28 (3))".

[45] Schedule 2

Omit "Chairperson" and "Chairperson's" wherever occurring. Insert instead "Commissioner" and "Commissioner's" respectively.

[46] Schedule 4

Omit the heading to the Schedule. Insert instead:

Schedule 4 Savings, transitional and other provisions

[47] Schedule 4

Renumber clause 1 as clause 1A. Insert before that clause (as so renumbered):

Part 1 Regulations

1 Savings and transitional regulations

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

New South Wales Crime Commission Amendment Act 1996

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.

- (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of 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 the person existing before the date of 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 publication.
- (4) A provision referred to in subclause (1) may, if the regulations so provide, have effect despite any other clause of this Schedule.

Part 2 Provisions relating to enactment of State Drug Crime Commission (Further Amendment) Act 1988

[48] Schedule 4, Part 3

Insert after clause 1A:

Part 3 Provisions relating to enactment of New South Wales Crime Commission Amendment Act 1996

2 Definitions

In this clause:

amending Act means the *New South Wales Crime Commission Amendment Act 1996*.

Chairperson means Chairperson within the meaning of this Act as in force immediately before the amendment to section 5 made by the amending Act.

3 Meaning of relevant offence

The amendment made by the amending Act to the definition of *relevant offence* in section 3 extends to offences that may have been committed before the commencement of the amendment.

4 Existing Chairperson

- (1) A person who, immediately before the commencement of the amendment to section 5 made by the amending Act, held office as Chairperson:
 - (a) ceases to hold office as Chairperson on that commencement, and
 - (b) holds office, subject to this Act, as Commissioner for the remainder of the person's office as if appointed as Commissioner under section 5A.
- (2) A reference in any other Act, in an instrument made under an Act or in any document, to the Chairperson (to the extent that it relates to acts, matters or things occurring after the commencement of the amendment to section 5 made by the amending Act) is to be read as a reference to the Commissioner.

5 Existing members other than Chairperson

A person who, immediately before the commencement of the amendment to section 5 made by the amending Act, held office as a member of the Commission other than the Chairperson:

- (a) ceases to hold office as such on that commencement, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

6 Identity and status of Commission and certain acts not affected

- (1) The amendment to section 5 made by the amending Act relating to the membership of the corporation constituted by this Act does not affect the identity or continuing status of that corporation.
- (2) Sections 17A and 17B extend to a person:
 - (a) who was required to do any act by a notice under section 17 as in force immediately before the commencement of the amendments made to section 17 by the amending Act, and
 - (b) who had not, before that commencement, claimed to be entitled to refuse to produce a document or thing that the person was required to produce by that notice.
- (3) Except to the extent provided by this Part, a provision of this Act, as in force immediately before its amendment by the amending Act, continues to apply to and in respect of anything to which it then applied.

Schedule 2 Amendment of other Acts

(Section 4)

2.1 Financial Transaction Reports Act 1992 No 99

[1] Section 6 Further reports of suspect transactions

Omit "Chairperson" from section 6 (1) (b).
Insert instead "Commissioner".

[2] Section 7 Reports of suspect transactions not reported under Commonwealth Act

Omit "Chairperson" from section 7 (6) (b).
Insert instead "Commissioner".

[3] Section 10 Secrecy

Omit "Chairperson" from section 10 (1) (b).
Insert instead "Commissioner".

2.2 Public Finance and Audit Act 1983 No 152

Omit the matter relating to the New South Wales Crime Commission from Columns 1 and 2 of Schedule 3.

Insert instead:

New South Wales Crime
Commission

Commissioner of the New South
Wales Crime Commission

2.3 Public Sector Management Act 1988 No 33

Omit the matter relating to the New South Wales Crime Commission from Columns 1 and 2 of Schedule 1.

Insert instead:

New South Wales Crime
Commission

Commissioner of the New South
Wales Crime Commission

**2.4 Statutory and Other Offices Remuneration Act 1975
(1976 No 4)**

[1] Schedule 1 Public Offices

Omit "Chairperson of the State Drug Crime Commission".
Insert instead "Commissioner of the New South Wales Crime Commission".

[2] Schedule 1 Public Offices

Omit "Full time member of the State Drug Crime Commission, other than the Chairperson".
Insert instead "Full-time Assistant Commissioner of the New South Wales Crime Commission".

2.5 Witness Protection Act 1995 No 87

Omit "Chairperson" from paragraph (d) of the definition of *approved authority* in section 3.
Insert instead "Commissioner".

[Minister's second reading speech made in—
Legislative Assembly on 31 October 1996
Legislative Council on 13 November 1996]

BY AUTHORITY