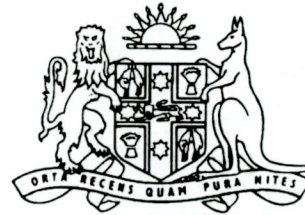


First print



New South Wales

# **Police Legislation Amendment Bill 1996**

## **Explanatory note**

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

This Bill is cognate with the *Police Integrity Commission Bill 1996*.

## **Overview of Bill**

The object of this Bill is to amend the *Police Service Act 1990* and various other Acts to make further provision for dealing with complaints about police and to make amendments consequent on the establishment of the Police Integrity Commission by the proposed *Police Integrity Commission Act 1996*.

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## Outline of provisions

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

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clauses 3–8** are formal provisions giving effect to the Schedules of amendments.

### **Schedule 1 Amendment of Police Service Act 1990**

**Schedule 1 [1] and [2]** insert definitions relating to the Police Integrity Commission.

**Schedule 1 [3]** repeals the existing Part 8A and inserts a new Part dealing with complaints about the conduct of police officers. The new Part 8A departs significantly from the provisions of the existing Part 8A. However, the section numbering of the Part has, as far as possible, been retained so as to follow the sequence of the existing Part.

Some of the features of the new Part 8A are as follows:

- Proposed section 121 sets out the nature of the conduct about which complaints can be made under the Part. This has been widened to include complaints about matters of administration.
- Proposed section 122A states that the Part will be subject to the proposed *Police Integrity Commission Act 1996*, as well as to the *Royal Commission (Police Service) Act 1994*. These Acts, together with the *Ombudsman Act 1974* and the *Police Service Act 1990* itself, provide the legislative scheme for police complaints.
- Division 7 provides for the establishment of a Complaints Information System. The system will make provision for the registration of all police complaints, subject only to matters being excluded for security or similar reasons. The Police Integrity Commission and the Ombudsman will have unrestricted access to the System.
- Complaints will be classified into four categories as follows:
  - Category 1 complaints, which will be as defined in section 67 of the proposed *Police Integrity Commission Act 1996*, and are intended to cover the more significant types of police corruption and misconduct.



Police Legislation Amendment Bill 1996

Explanatory note

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- Category 2 complaints, which will include complaints not covered in other categories.
- Category 3 complaints, which will cover complaints considered to be suitable for conciliation.
- Category 4 complaints, which will include complaints that are appropriate to be dealt with by managerial action.
- The general scheme for dealing with complaints is that Category 1 complaints will be investigated or managed by the Police Integrity Commission, while other categories will be dealt with by the police with oversight or audit by the Ombudsman. Some complaints will still be able to be dealt with by the Ombudsman.

The Police Integrity Commission will have authority to take over any complaint.

- Proposed section 172D allows the Ombudsman to initiate an investigation into police conduct on his or her own motion.

**Schedule 1 [3] and [4]** make consequential amendments.

**Schedule 1 [6], [7], [8] and [9]** extend the provisions that currently allow for the dismissal or acceptance of resignation of police officers on the basis of information arising out of the Royal Commission into the Police Service. These provisions will now be extended to information arising during the course of investigation by the Police Integrity Commission.

**Schedule 1 [10], [11] and [12]** increase the maximum penalties for bribery offences, in line with provisions in the proposed *Police Integrity Commission Act 1996*, and provide for the increased penalties to be imposed in proceedings on indictment.

**Schedule 1 [13]** enables regulations to be made in connection with the legislative scheme relating to police complaints.

**Schedule 2 Amendment of Confiscation of Proceeds of Crime Act 1989**

These amendments allow the Commissioner for the Police Integrity Commission to exercise functions under the Act.

### **Schedule 3 Amendment of Independent Commission Against Corruption Act 1988**

The amendments to the Act generally adopt a number of provisions contained in the proposed *Police Integrity Commission Act 1996*.

The Schedule also extends the time within which proceedings for offences under certain provisions of the Act may be commenced to 3 years after the commission of the alleged offences. The offences concerned deal with the making of false statements to the Independent Commission Against Corruption.

### **Schedule 4 Amendment of Ombudsman Act 1974**

The Schedule amends the Act to change the name and role of the Parliamentary Joint Committee established under the *Ombudsman Act 1974*. The Committee will now be known as the Committee on the Office of the Ombudsman and the Police Integrity Commission. Other amendments bring provisions of the Act into line with provisions in the proposed *Police Integrity Commission Act 1996*.

### **Schedule 5 Amendment of Royal Commission (Police Service) Act 1994**

Amendments to the Act bring provisions of the Act into line with provisions in the proposed *Police Integrity Commission Act 1996*.

### **Schedule 6 Amendment of other Acts**

Various other Acts are amended in connection with the Police Integrity Commission. These Acts are:

*Defamation Act 1974*

*Freedom of Information Act 1989*

*Protected Disclosures Act 1994*

*Public Sector Management Act 1988*

*Search Warrants Act 1985*

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

*Witness Protection Act 1995*.



New South Wales

# Police Legislation Amendment Bill 1996

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New South Wales

## **Police Legislation Amendment Bill 1996**

No. , 1996

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### **A Bill for**

An Act to amend the *Police Service Act 1990* and various other Acts to make further provision for dealing with complaints about police and to make amendments consequent on the establishment of the Police Integrity Commission; and for other purposes.

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

**1 Name of Act**

This Act is the *Police Legislation Amendment Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Police Service Act 1990 No 47**

The *Police Service Act 1990* is amended as set out in Schedule 1.

**4 Amendment of Confiscation of Proceeds of Crime Act 1989 No 90**

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The *Confiscation of Proceeds of Crime Act 1989* is amended as set out in Schedule 2.

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

The *Independent Commission Against Corruption Act 1988* is amended as set out in Schedule 3. 15

**6 Amendment of Ombudsman Act 1974 No 68**

The *Ombudsman Act 1974* is amended as set out in Schedule 4.

**7 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 5.

**8 Amendment of other Acts**

The Acts specified in Schedule 6 are amended as set out in that Schedule. 25



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**Schedule 1 Amendment of Police Service Act 1990**

(Section 3)

**[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

5

*PIC Commissioner* means the Commissioner for the Police Integrity Commission.

*Police Integrity Commission* means the body of that name constituted by the *Police Integrity Commission Act 1996*.

10

**[2] Section 3 (3)**

Insert after section 3 (2):

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

**[3] Section 94A Reports by police internal affairs for proposed police appointments**

15

Omit section 94A (3) (b). Insert instead:

(b) particulars of any complaint made against the person in accordance with Division 2 of Part 8A, other than complaints that have been resolved in favour of the person,

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**[4] Section 94A (3) (c) (i)**

Omit "Division 4". Insert instead "Division 5".

**[5] Part 8A**

Omit the Part. Insert instead:

**Part 8A Complaints about conduct of police officers**

25

**Division 1 Preliminary**

**121 Meaning of "conduct" of police officer**

(1) **Definition**

For the purposes of this Act, *conduct* of a police officer means any action or inaction (or alleged action or inaction) of a police officer:

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Police Legislation Amendment Bill 1996

Schedule 1 Amendment of Police Service Act 1990

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- (a) whether or not it also involves non-police participants, and
  - (b) whether or not it occurs while the police officer is officially on duty, and
  - (c) whether or not it occurred before the commencement of this subsection, and 5
  - (d) whether or not it occurred outside the State or outside Australia.
- (2) **Examples**
- Such conduct can involve (but is not limited to) any of the following: 10
- (a) police corruption,
  - (b) the commission of a criminal offence or disciplinary offence by a police officer,
  - (c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer, 15
  - (d) conduct of a police officer:
    - (i) that is otherwise contrary to law, or
    - (ii) that is unreasonable, unjust, oppressive or improperly discriminatory, or 20
    - (iii) that is in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory, or 25
    - (iv) that is based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations, or
    - (v) that is based wholly or partly on a mistake of law or fact, or 30
    - (vi) for which reasons should have been given but were not given,

- 
- (e) a matter of administration involving a police officer,
- (f) a matter that concerns the internal management of the Police Service.
- (3) **Former police officers** 5  
Conduct may be dealt with, or continue to be dealt with, under this Act even though any police officer involved has ceased to be a police officer. Accordingly, references in this Act to a police officer extend, where appropriate, to include a former police officer. 10

## 122 Other definitions

In this Part:

*category* means a category referred to in Division 7.

*complaint* means a complaint made in accordance with Division 2. 15

*conciliation* means conciliation under Division 3.

*investigation* means investigation under Division 5.

*Police Royal Commission* means a Royal Commission to which the *Royal Commission (Police Service) Act 1994* applies. 20

*telephone* includes facsimile.

## 122A Relationship with certain other Acts and bodies

- (1) The provisions of this Part are subject to the *Royal Commission (Police Service) Act 1994* and the *Police Integrity Commission Act 1996*. 25
- (2) The Police Royal Commission and the Police Integrity Commission are to enter into co-operative arrangements regarding the exercise of their respective functions concerning complaints. Any such arrangements have effect subject to any guidelines in force under subsection (3). 30



- (3) The regulations may make provision for or with respect to guidelines to be observed by the Police Royal Commission and the Police Integrity Commission regarding the exercise of their respective functions concerning complaints. 5

**Note.** Section 70 (8) of the *Police Integrity Commission Act 1996* provides as follows:

- (8) A Category 1 complaint, to the extent that it is taken over by the Commission, cannot be dealt with as a complaint under Part 8A of the *Police Service Act 1990* and for that purpose is taken not to be a police complaint, except as directed by the Commission either generally or in any particular case or as directed by the regulations. 10

## **Division 2      Complaints about police officers**

### **123 Right to make complaint** 15

- (1) Any person may make a complaint about the conduct of a police officer.
- (2) This Part does not affect any other right of a person to complain about the conduct of a police officer.

**Note.** Section 121 (3) extends the operation of this Part to former police officers. 20

### **124 Previous complaints excluded**

- (1) A complaint by a person about the conduct of a police officer is not to be dealt with under this Part if:
- (a) the person has already made another complaint in accordance with this Act about the same conduct of the police officer and that other complaint is being dealt with or has already been dealt with under this or any other Act, or 25
- (b) the person has already made another complaint (not being a complaint in accordance with this Act) about the same conduct of the police officer and the other complaint: 30
- (i) is being officially investigated, or
- (ii) has been dealt with after such an investigation, 35

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including, for example, an official investigation by a Royal Commission or by a Parliamentary Committee, but not including an investigation by the Commissioner of Police, the Independent Commission Against Corruption or the New South Wales Crime Commission, or

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(c) the person is not identified in the complaint and another complaint has already been made in accordance with this Act about the same conduct of the police officer.

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(2) Nothing in this section prevents a complaint from being dealt with if it contains new allegations or involves new evidence.

### 125 Making of complaints

(1) **In writing**

15

A complaint must be in writing.

(2) **How made**

A complaint is duly made if:

(a) it is delivered to a police officer personally or received by a member of the Police Service by post or by facsimile, or

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(b) it is lodged or received at the office of the Police Integrity Commission or of the Ombudsman while that office is open for business or it is received in that office by post or facsimile, or

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(c) it is addressed to the Police Integrity Commission or the Ombudsman and lodged at a Local Court, or

(d) it is referred to the Police Integrity Commission or the Ombudsman by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission.

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- (3) **Exceptional circumstances where unwritten complaint acceptable**  
However, the Police Integrity Commission or Ombudsman may, at discretion, in exceptional circumstances accept a complaint that is not in writing. If such an unwritten complaint is accepted, it must be reduced to writing by the Police Integrity Commission or Ombudsman as soon as practicable. 5
- (4) **Anonymous complaints**  
It is not necessary for the complainant to be identified in a complaint. 10
- (5) **MP may act for complainant**  
A complaint may, with the written consent of the complainant, be made on his or her behalf by a member of Parliament. 15
- (6) **Complaints by prisoners**  
If a prisoner informs a prison officer that the prisoner wishes to make a complaint to a police officer, or to the Police Integrity Commission, or to the Ombudsman, the prison officer must: 20
- (a) take all steps necessary to facilitate the making of the complaint, and
  - (b) send immediately to the addressee, unopened, any written matter addressed to a police officer (whether by name or by reference to an office held by the officer), or to the Police Integrity Commission, or to the Ombudsman. 25

In this subsection, *prisoner* means any person in lawful detention or custody, and *prison officer* means any person by whom the prisoner is detained, or in whose custody the prisoner is, or who is in charge of the prisoner. 30



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**125A Complaints received by PIC**

- (1) If the Police Integrity Commission receives a complaint, the Commission must, as soon as practicable, cause a copy of the complaint to be sent to:
- (a) the Ombudsman, if it is within a class or kind agreed on by the PIC Commissioner and the Ombudsman as requiring notification to the Ombudsman, and 5
  - (b) the Commissioner of Police, unless:
    - (i) it is a Category 1 complaint, or 10
    - (ii) it is within a class or kind agreed on by the PIC Commissioner and the Commissioner of Police as not requiring notification to the Commissioner of Police.
- (2) The Police Integrity Commission may, if of the opinion that there are reasonable grounds for not sending a copy of a complaint to the Commissioner of Police under this section, send instead a summary or appropriate details of the complaint. 15

**125B Complaints received by Ombudsman** 20

- (1) If the Ombudsman receives a complaint, the Ombudsman must, as soon as practicable, cause a copy of the complaint to be sent to:
- (a) the Police Integrity Commission, if it is a Category 1 complaint, or 25
  - (b) the Commissioner of Police, unless:
    - (i) it is a Category 1 complaint, or
    - (ii) it is within a class or kind agreed on by the Ombudsman and the Commissioner of Police as not requiring notification to the Commissioner of Police. 30
- (2) The Ombudsman may, if of the opinion that there are reasonable grounds for not sending a copy of a complaint to the Commissioner of Police under this section, send instead a summary or appropriate details of the complaint. 35

**125C Multiple handling of complaints**

- (1) Nothing in section 125A or 125B requires a copy of a complaint to be sent to an authority if the authority already has a copy (or a summary or appropriate details) of the complaint. 5
- (2) In this section, *authority* means the Ombudsman, the Commissioner of Police or the Police Integrity Commission.

**126 Complaints received by police to be forwarded to Commissioner** 10

A member of the Police Service who receives a complaint must, as soon as practicable, forward the complaint to the Commissioner of Police or a police officer nominated by the Commissioner of Police, unless it has previously been made to or forwarded to the Commissioner of Police or a nominated officer. 15

**127 Complaints received by police to be forwarded to PIC or Ombudsman**

If the Commissioner of Police or a nominated police officer receives a complaint, either directly or forwarded by another police officer, the Commissioner of Police or nominated officer must, as soon as practicable, cause a copy of the complaint to be sent to: 20

- (a) the Police Integrity Commission, in the case of a Category 1 complaint, and 25
- (b) the Ombudsman, unless:
  - (i) in the case of a Category 1 complaint—it is within a class or kind agreed on by the PIC Commissioner and the Ombudsman as not requiring notification to the Ombudsman, or 30
  - (ii) in the case of a complaint other than a Category 1 complaint—it is within a class or kind agreed on by the Ombudsman and the Commissioner of Police as not requiring notification to the Ombudsman. 35

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**128 Provisions relating to complaints lodged at Local Courts**

- (1) If a complaint is lodged at a Local Court, the Clerk of the Court must, by telephone, notify the Ombudsman as soon as practicable of brief details of the complaint.
- (2) The Clerk of the Court must, as soon as practicable, forward the complaint to the Ombudsman, unless otherwise directed by the Ombudsman. 5
- (3) If the Clerk of the Court is directed to do so by the Ombudsman, the Clerk must:
  - (a) forward the complaint to the Police Integrity Commission, and 10
  - (b) obtain a receipt for the complaint from the Commission, and
  - (c) retain such records of the complaint as the Ombudsman directs, and 15
  - (d) send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk.
- (4) If the Clerk of the Court is directed to do so by the Ombudsman, the Clerk must: 20
  - (a) forward the complaint to a police officer specified by the Ombudsman, and
  - (b) obtain a receipt for the complaint from that police officer, and
  - (c) retain such records of the complaint as the Ombudsman directs, and 25
  - (d) send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk.
- (5) The Ombudsman may give a direction to the Clerk of the Court under subsection (3) only if the complaint appears to the Ombudsman to be likely to be a Category 1 complaint or if the complaint is of a class or kind that the Police Integrity Commission and the Ombudsman have agreed should be sent to the Commission. 35



- (6) A reference in the above provisions of this section to the Ombudsman includes a reference to an officer of the Ombudsman nominated by the Ombudsman.
- (7) The Clerk of a Local Court is taken to be an officer of the Ombudsman in connection with any action of the Clerk under this section. 5

**129 Provisions relating to complaints referred by Minister, ICAC or Crime Commission or made by MP**

- (1) If:
- (a) the Minister refers a complaint to the Police Integrity Commission or the Ombudsman, or 10
- (b) a member of Parliament acts for a complainant, neither the Minister nor the member becomes the complainant, except for the purposes of any provision of this Act under which the complainant is informed or notified of any matter or given or sent any matter. 15
- (2) If:
- (a) the Minister publishes to a person whose complaint has been referred by the Minister any matter with respect to the complaint published to the Minister by the Police Integrity Commission, the Ombudsman or a police officer, or 20
- (b) a member of Parliament publishes to a person for whom the member acts any such matter published to the member, 25
- the publication to that person has, for all purposes, the same effect as it would have if it had been published to that person by the Commission, the Ombudsman or the police officer, as the case may be.
- (3) If the Independent Commission Against Corruption refers a complaint to the Police Integrity Commission or the Ombudsman, that Commission does not become the complainant. 30



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- (4) If the New South Wales Crime Commission refers a complaint to the Police Integrity Commission or the Ombudsman, the Crime Commission does not become the complainant.

**130 Intelligence matters**

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- (1) The Ombudsman and the Commissioner of Police may agree that a particular complaint relates to intelligence matters and be classified as an excluded complaint.

- (2) Before agreement is reached, the Commissioner of Police must advise the Ombudsman of the action that is proposed to be taken with respect to the subject-matter of the complaint.

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- (3) The Ombudsman may require the Commissioner of Police to advise the Ombudsman of action taken or progress on action being taken with regard to an excluded complaint.

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- (4) The complainant is to be informed that the complaint will not be investigated under this Act.

- (5) An excluded complaint is to be treated as excluded from this Part, but nothing in this section affects any power of the PIC with regard to it.

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- (6) The Ombudsman and the Commissioner of Police may agree, or the Ombudsman may direct, that an excluded complaint be no longer treated as excluded from this Part, and this Part applies to it accordingly.

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- (7) Without affecting the generality of section 70 (8) of the *Police Integrity Commission Act 1996*, this section does not apply to a Category 1 complaint, except to the extent that it has been referred or referred back under that Act to be dealt with in accordance with this Part.

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**Division 3 Conciliation**

**131 Nature of conciliation**

For the purposes of this Part, *conciliation* of a complaint about the conduct of a police officer means dealing with the complaint under this Division in a manner acceptable to the complainant.

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**132 Complaints where conciliation must be attempted**

An attempt must be made to deal with a complaint about the conduct of a police officer by conciliation if the complaint is of a class or kind that the Ombudsman and the Commissioner of Police have agreed may be suitable for conciliation. 5

**133 Other complaints where conciliation may be attempted**

- (1) An attempt may be made to deal with any other complaint about the conduct of a police officer by conciliation if the officer dealing with the complaint is satisfied that the conciliation may be successful. 10
- (2) This section does not apply to a complaint excluded by section 134.

**134 Complaints that may not be dealt with by conciliation**

A complaint about the conduct of a police officer may not be dealt with by conciliation if: 15

- (a) the conduct appears to have involved the commission of an indictable offence, or
- (b) the Commissioner has decided, or the Ombudsman has directed, that the complaint be investigated under Division 5, 20
- (c) the complainant is not identified.

**135 Who attempts conciliation**

- (1) A police officer is to make an attempt to deal with a complaint by conciliation if the complaint was received by a police officer or if it was referred by the Ombudsman to the Commissioner for conciliation. 25
- (2) If the complaint was received by the Ombudsman and not referred to the Commissioner, the attempt to conciliate is to be made by the Ombudsman or an officer of the Ombudsman. 30

- 
- (3) The person who is attempting to deal with a complaint by conciliation may, with the agreement of the complainant, arrange for a mediator to assist in the conciliation.

**136 Notification of outcome of conciliation**

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- (1) A police officer who attempts to deal with a complaint by conciliation must inform the Ombudsman of the outcome.
- (2) If the Ombudsman or an officer of the Ombudsman attempts to deal with a complaint by conciliation, the Ombudsman must inform the Commissioner of the outcome.

10

**137 Statements by police officer during conciliation not admissible in criminal or disciplinary proceedings**

- (1) If a complaint about the conduct of a police officer is being dealt with by conciliation under this Division, any statement made by that police officer in good faith for the purposes of the conciliation is not admissible in any civil, criminal or disciplinary proceedings against the police officer.
- (2) The statement is inadmissible only if the criminal or disciplinary proceedings relate to the conduct that is the subject of the complaint.

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**138 Audit by Ombudsman of conciliation by police officers**

- (1) The Ombudsman is to conduct random audits of complaints that police officers have dealt with by conciliation under this Division.
- (2) For the purposes of any such audit, the Ombudsman may:
- (a) inspect the records made by police officers of a conciliation, and

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- (b) interview any of the parties to the conciliation about the conduct of the conciliation, and
  - (c) interview any other person about matters related to the conciliation.
- (3) The Ombudsman may make recommendations to the Commissioner about the conciliation of complaints under this Division. 5

**139 Procedure where conciliation fails**

If an attempt under this Division to deal with a complaint by conciliation is unsuccessful, the complaint continues thereafter to be subject to the other provisions of this Part. 10

**Division 4 Managerial action**

**139A Application of Division**

This Division applies to: 15

- (a) a complaint that is of a class or kind that the Ombudsman and the Commissioner have agreed is appropriate to be dealt with by managerial action, whether because it relates to matters of management or administration or otherwise, or 20
- (b) a particular complaint that the Ombudsman and the Commission have agreed is appropriate to be dealt with under this Division.

**139B Application of Part to complaints under this Division**

Divisions 3, 5 and 6 do not apply to complaints to which this Division applies. 25

**139C Dealing with complaints under this Division**

Complaints to which this Division applies are to be dealt with by the Commissioner, in accordance with such guidelines (if any) as are agreed on by the Ombudsman and Commissioner. 30

**Division 5 Investigations**

**140 Investigation of complaints**

Complaints may be investigated under this Division.



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**140A Decisions of Commissioner about complaints received by police**

- (1) This section applies to a complaint received by the Commissioner or a nominated police officer as referred to in section 127 or otherwise. 5
- (2) The Commissioner may decide that a complaint be or not be investigated under this Division. The regulations may provide that the Commissioner is taken to have decided not to investigate a complaint under this Division if the Commissioner has not made a decision about it within the prescribed time. 10
- (3) If the Commissioner decides that a complaint be investigated under this Division, the Commissioner must notify the Ombudsman and the complainant (if identified) of the decision. 15
- (4) If the Commissioner decides that a complaint not be investigated under this Division, the Commissioner:
  - (a) must notify the Ombudsman of the decision, and
  - (b) must, if the Ombudsman ratifies the decision, notify the complainant (if identified) of the decision in terms approved by the Ombudsman, and 20
  - (c) may, if the Ombudsman ratifies the decision, and if the Commissioner considers it appropriate to do so, notify the police officer whose conduct is the subject of the complaint of the decision. 25
- (5) The Ombudsman may decide that a complaint referred to in subsection (4) should be investigated under this Division. In that case, the Ombudsman must notify the Commissioner and the complainant (if identified) of the Ombudsman's decision. 30
- (6) The Commissioner must cause a complaint to be investigated under this Division if the Ombudsman directs that it should be investigated under this Division.

**141 Decisions of Ombudsman about complaints received by Ombudsman**

- (1) This section applies to a complaint received by the Ombudsman (other than a complaint to which section 140A applies). 5
- (2) The Ombudsman may decide that a complaint be or not be investigated by the Commissioner under this Division. The regulations may provide that the Ombudsman is taken to have decided that a complaint not be investigated under this Division if the Ombudsman has not made a decision about it within the prescribed time. 10
- (3) The Commissioner must cause a complaint to be investigated under this Division if the Ombudsman decides that the complaint should be so investigated and duly notifies the Commissioner accordingly. 15
- (4) The notification to the Commissioner of a decision of the Ombudsman that a complaint be investigated under this Division:
- (a) is to be in writing, and
  - (b) as far as practicable, is to identify the police officer whose conduct is the subject of the complaint, and 20
  - (c) is to be accompanied by a copy of the complaint or (if the Ombudsman is of the opinion that there are reasonable grounds for not providing a copy of the complaint) by a summary or appropriate details of the complaint. 25
- (5) If the Ombudsman decides that a complaint be investigated by the Commissioner under this Division, the Ombudsman must notify the complainant (if identified) of the decision. 30
- (6) If the Ombudsman decides that a complaint not be investigated by the Commissioner under this Division:
- (a) the Ombudsman must notify the complainant (if identified) of the decision and of the Ombudsman's reasons for the decision, and 35

- 
- (b) the Ombudsman must send to the Commissioner a copy of the notification, accompanied by a copy of the complaint to which it relates or (if the Ombudsman is of the opinion that there are reasonable grounds for not providing a copy of the complaint) by a summary or appropriate details of the complaint, and 5
- (c) the Commissioner may, if the Commissioner considers it appropriate to do so, notify the police officer whose conduct is the subject of the complaint of the decision. 10

**141A Factors to be considered by Commissioner or Ombudsman**

- (1) In deciding under section 140A or 141 whether a complaint should be investigated by the Commissioner under this Division, the Commissioner or Ombudsman may have regard to such matters as he or she thinks fit, including whether, in his or her opinion: 15
- (a) action has been, is being or will be taken to remedy the subject-matter of the complaint without the need for an investigation by the Commissioner under this Division, or 20
- (b) the complaint is frivolous, vexatious or not made in good faith, or
- (c) the subject-matter of the complaint is trivial, or 25
- (d) the conduct complained of occurred at too remote a time to justify investigation, or
- (e) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress, or 30
- (f) the complainant does not or, where the complainant is not identified, the complainant could not have an interest, or a sufficient interest, in the conduct complained of.



- (2) Without affecting the generality of subsection (1), the Commissioner or Ombudsman is not to decide that a complaint, in which the complainant is not identified, be investigated under this Division, unless of the opinion:
- (a) that the complaint appears to contain sufficient information to enable an investigation to be carried out, and 5
  - (b) that the conduct the subject of the complaint would:
    - (i) if the conduct had occurred, provide reasonable grounds to believe that a criminal offence had been committed by a police officer, or 10
    - (ii) if a departmental charge were proved against a police officer in relation to the conduct, warrant the imposition of a substantial punishment on the police officer. 15

**141B Investigations not to proceed in certain circumstances**

- (1) The Ombudsman is not to determine that a complaint should be investigated under this Division if of the opinion that the conduct the subject of the complaint is unconnected with the fact that the person concerned is a police officer. 20
- (2) If the Ombudsman forms that opinion after an investigation has begun, the Ombudsman is to consent to or direct a discontinuation of the investigation under section 143. 25

**142 Conduct of investigation by Commissioner**

- (1) An investigation under this Division by the Commissioner is to be conducted by such police investigative staff as are selected by the Commissioner or in accordance with arrangements approved by the Commissioner. 30



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- (2) The police officer or police officers carrying out an investigation under this Division are to have regard to any matters specified by the Commissioner or Ombudsman as needing to be examined or taken into consideration. 5

**142A Identity of complainant not to be disclosed**

- (1) While investigating a complaint, a police officer must not, without the consent of the Commissioner or another police officer nominated by the Commissioner, disclose to any person (other than the Commissioner or a police officer so nominated) the identity of the complainant. This subsection does not apply to a disclosure in a report to the Commissioner under this Division of the progress or result of the investigation. 10
- (2) Consent to the disclosure of the identity of the complainant is not to be granted unless it is necessary for the effective conduct of the investigation of the complaint. 15

**143 Deferral or discontinuance of investigation**

- (1) The Commissioner may apply to the Ombudsman for consent: 20
- (a) to defer the commencement or continuation of the investigation of a complaint, or
  - (b) to discontinue the investigation of a complaint.
- (2) The Ombudsman may: 25
- (a) consent to the deferral of the commencement or continuation of the investigation of a complaint pending the conclusion of any relevant criminal proceedings or for any other good cause, or
  - (b) consent to the discontinuance of the investigation of a complaint if: 30
    - (i) the Ombudsman is of the opinion action has been, is being or will be taken to remedy the subject-matter of the complaint without the need for the investigation to continue, or 35

- (ii) continuation of the investigation would be, in the circumstances of the case, unreasonable or impracticable.
- (3) If the Ombudsman grants a consent and the complainant is identified, the Ombudsman is to notify the complainant in writing of that fact and of the reasons for granting the consent and is to send to the Commissioner a copy of the notification. 5
- (4) If the Ombudsman does not, within 28 days, grant a consent applied for under this section, the Commissioner may, within 14 days thereafter, notify the Ombudsman that the Commissioner will treat the consent as having been granted if the Ombudsman does not grant or refuse the application within 14 days after the date of the letter. 10
- (5) If the Ombudsman does not grant or refuse the consent within 14 days after the date of the letter referred to in subsection (4), the consent is taken to have been granted at the end of that period. 15
- (6) The Ombudsman may, if satisfied that it is in the public interest and without any application by the Commissioner for consent, direct the Commissioner that the investigation of a complaint under this Division be discontinued. 20
- (7) The commencement or continuation of the investigation of a complaint under this Division may not be deferred, and the investigation of a complaint under this Division may not be discontinued, except in accordance with a consent granted or direction given under this section. 25

**144 Monitoring of investigation by Ombudsman**

- (1) The Ombudsman may monitor the progress of the investigation of a complaint under this Division if the Ombudsman considers it is in the public interest to do so. 30
- (2) The Ombudsman or an officer of the Ombudsman may be present as an observer during interviews conducted by police officers for the purposes of an investigation and 35

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confer with those police officers about the conduct and progress of the investigation. The powers of the Ombudsman or an officer of the Ombudsman under this subsection may be exercised only in accordance with arrangements agreed to between the Ombudsman and the Commissioner as to the manner in which the powers are to be exercised.

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(3) The Commissioner is to provide the Ombudsman with such documentary and other information (including records of interviews) as the Ombudsman may from time to time request with respect to an investigation.

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(4) The Commissioner, and any police officers involved in conducting an investigation, are to comply with any arrangements agreed to between the Commissioner and the Ombudsman as to the monitoring of the investigation or of investigations generally.

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**145 Proceedings to be instituted if warranted**

(1) If it appears to a police officer conducting an investigation that sufficient evidence exists to warrant the prosecution of any person for an offence, the police officer is, subject to this Act, to cause appropriate proceedings to be instituted against the person.

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(2) The Commissioner must inform the Ombudsman of the institution of any such proceedings and of the particulars of the proceedings.

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(3) A police officer is not to institute proceedings against another police officer for an offence without the approval of the Commissioner.

**146 Result of investigation to be reported**

(1) A police officer conducting an investigation must, at the conclusion of the investigation, furnish to the Commissioner a report that:

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(a) gives appropriate details of the investigation (having regard to any guidelines issued by the Commissioner), and

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Police Legislation Amendment Bill 1996

Schedule 1 Amendment of Police Service Act 1990

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- (b) explains whether and why any matters specified by the Ombudsman as needing to be examined or taken into consideration were not examined or taken into consideration, and
  - (c) states the result of the investigation, including any adverse findings against any police officer, and 5
  - (d) recommends the appropriate action to be taken (where relevant):
    - (i) to correct unacceptable conduct, or
    - (ii) to prevent a recurrence of unacceptable conduct, or 10
    - (iii) to punish unacceptable conduct, and
  - (e) contains any comments that the police officer conducting the investigation considers appropriate. 15
- (2) The Commissioner is to cause the report to be examined, and to be altered or rewritten if necessary or appropriate, so that a finalised report of the investigation can be sent to the Ombudsman for review.

**147 Report etc to be sent to Ombudsman** 20

- (1) The Commissioner must, as soon as practicable after being satisfied that an investigation has been concluded and a report of the investigation has been finalised:
  - (a) send to the Ombudsman a copy of the finalised report and copies of all statements taken in the course of the investigation and of all other documents on which the report is based, and 25
  - (b) provide the Ombudsman with such comments on the report and statements as the Commissioner thinks fit, and 30
  - (c) specify what action should, in the opinion of the Commissioner, be taken as a result of the investigation.



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- (2) After receiving that material and information, the Ombudsman may require the Commissioner and any police officer who investigated the complaint to provide such additional information as the Ombudsman considers is necessary to enable the Ombudsman to determine whether the complaint was properly investigated. 5

**148 Investigation under Ombudsman Act 1974 where complaint not dealt with in time**

- (1) If the Ombudsman has not, in relation to a complaint, received from the Commissioner the material and information referred to in section 147 (1) within the relevant period referred to in this section, the Ombudsman may make the conduct to which the complaint relates the subject of an investigation pursuant to section 153. 10 15
- (2) The Ombudsman must notify the Commissioner in writing when the Ombudsman commences such an investigation.
- (3) The *relevant period* is the period of 180 days after: 20
- (a) the Commissioner notifies the Ombudsman pursuant to section 140A that the complaint is to be investigated, or
- (b) the Ombudsman notifies the Commissioner pursuant to section 141 of the Ombudsman's determination that the complaint should be investigated, 25
- or that period as extended under section 149 or 150.
- (4) However, the period of 180 days referred to in subsection (3) is to be a period of 90 days in the case of a complaint of a class or kind that the Ombudsman and the Commissioner have agreed should be subject to that shorter period. 30

**149 Extension of time where complaint not dealt with**

- (1) The Commissioner may apply to the Ombudsman for an extension of the relevant period referred to in section 148, and the Ombudsman may grant the extension.
- (2) More than one such application may be made, but no such application may be made after the relevant period has expired. 5
- (3) The Commissioner is to notify the police officer, whose conduct was the subject of the complaint, about the application. The police officer is to be given a reasonable opportunity to make written representations to the Ombudsman as to whether the extension should be granted. 10
- (4) If the Ombudsman grants the extension, the Ombudsman must, if the complainant is identified, notify the complainant in writing, giving the reasons for granting the extension, and must send to the Commissioner a copy of the notification. 15
- (5) If an extension is granted by the Ombudsman, the relevant period is extended by the period specified by the Ombudsman when granting the extension. 20

**150 Extension of time where application for deferral of investigation etc**

- (1) If an application for the Ombudsman's consent is made under section 143, the relevant period referred to in section 148 is extended until: 25
  - (a) the application is granted by the Ombudsman, or
  - (b) the application is withdrawn.
- (2) If an application for consent under section 143 to the deferral of the commencement or continuation of an investigation is granted by the Ombudsman, the relevant period is taken: 30
  - (a) to have ceased to run on the day the application was made, and
  - (b) to recommence to run from the day to which the commencement or continuation is deferred. 35

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**151 Further investigation if Ombudsman not satisfied about conduct of investigation**

- (1) If, after receiving the material and information referred to in section 147, the Ombudsman is not satisfied that a complaint was properly investigated under this Division, the Ombudsman may advise the Commissioner accordingly, specifying what are, in his or her opinion, the deficiencies in the investigation. 5
- (2) The Commissioner is, on receipt of the Ombudsman's advice, and if required to do so, to cause a further investigation to be conducted in order to remedy the deficiencies referred to in the advice. 10
- (3) The further investigation is to be conducted within such period (if any) as the Ombudsman specifies.
- (4) This Division (including this section, but excluding sections 140A, 141, 141A and 141B) applies to and in respect of a further investigation under this section in the same way as it applies to an initial investigation. 15

**152 Further consideration if Ombudsman not satisfied about outcome of investigation**

- (1) If, after receiving the material and information referred to in section 147, the Ombudsman is not satisfied with the outcome of an investigation (whether because of the quality of the investigation or report or for any other reason), the Ombudsman may request the Commissioner to reconsider the action that the Commissioner proposes should be taken as a result of the investigation. 20  
25
- (2) If the Ombudsman makes such a request, the Commissioner may revise the police report or may decide not to alter it. 30
- (3) Instead of or in addition to making such a request, or after consideration of a revised police report, the Ombudsman may prepare a report that contains such of the matters referred to in section 156 (1) (a)–(e) as appear to the Ombudsman to be relevant. 35



- (4)    The Ombudsman is to provide a copy of the report under subsection (3) to:
  - (a)    the complainant (if identified), and
  - (b)    the Minister, and
  - (c)    the Commissioner. 5
- (5)    The Commissioner is then to provide a copy of the report under subsection (3) to the police officer whose conduct was the subject of the complaint.
- (6)    The issue may be the subject of a special report to Parliament by the Ombudsman under section 161. 10

**153 Investigation under Ombudsman Act 1974**

- (1)    The Ombudsman may, if satisfied that it is in the public interest to do so, make a complaint, any investigation of the complaint, and any related issues, the subject of an investigation under the *Ombudsman Act 1974*. 15
- (2)    The Ombudsman may act under this section before the commencement of an investigation under this Division, during the progress of any such investigation or after the consideration by the Ombudsman of a report by the Commissioner under section 147 or 151. 20
- (3)    The Ombudsman must notify the Commissioner of any action under this section.
- (4)    On being so notified, the Commissioner is to discontinue any investigation under this Division.
- (5)    This section has effect despite anything to the contrary in this Part. 25

**154 Other police investigations not affected**

- (1)    The Commissioner or any other police officer is not prevented from investigating, otherwise than under this Division, a matter relating to a complaint even though an investigation under this Division is not made, is deferred 30

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or discontinued, is completed or is made the subject of an investigation under the *Ombudsman Act 1974* or any other Act.

- (2) Without affecting the generality of section 70 (8) of the *Police Integrity Commission Act 1996*, a matter that is the subject of a Category 1 complaint must not be investigated as referred to in subsection (1), unless: 5
- (a) it is referred or referred back under that Act to be dealt with in accordance with this Part, or
- (b) such an investigation is authorised to be carried out by the regulations or by the Commission either generally or in any particular case. 10

## **Division 6 Reports**

### **155 Reports following police investigation**

- (1) If the Ombudsman is, having regard to the finalised report provided by the Commissioner in relation to an investigation under Division 5 and having regard to such other matters as the Ombudsman thinks fit, satisfied that a complaint has, or matters arising out of the investigation have, been satisfactorily dealt with, the Ombudsman is to furnish a report to: 15
- (a) the complainant (if identified), and
- (b) the Commissioner,
- indicating that the Ombudsman is satisfied that the complaint has, or matters arising out of the investigation have, been satisfactorily dealt with. 20 25
- (2) The Commissioner is to furnish a report to the police officer whose conduct was the subject of the complaint.
- (3) A report furnished under this section is to contain an indication of the outcome of the investigation and may, if the Ombudsman or Commissioner thinks fit, be accompanied by a copy of or extracts from or a summary of the finalised report provided by the Commissioner. 30

- (4) A report furnished under subsection (1) may, if the Ombudsman thinks fit, be accompanied by a statement of reasons why the Ombudsman is satisfied that the complaint has, or matters arising out of the investigation have, been satisfactorily dealt with. 5

**156 Report following Ombudsman's investigation**

- (1) The Ombudsman must, at the conclusion of an investigation under the *Ombudsman Act 1974* of a complaint, prepare a report that:
- (a) gives appropriate details of the investigation, and 10
  - (b) states the result of the investigation, including any adverse findings against any police officer, and
  - (c) recommends the appropriate action to be taken (where relevant):
    - (i) to correct unacceptable conduct, or 15
    - (ii) to prevent a recurrence of unacceptable conduct, or
    - (iii) to punish unacceptable conduct, and
  - (d) identifies any unsatisfactory aspects of any report into the complaint prepared by a police officer under this Part, and 20
  - (e) includes any other comments that the Ombudsman considers appropriate.
- (2) The Ombudsman is to provide a copy of the report to:
- (a) the complainant (if identified), and 25
  - (b) the Minister, and
  - (c) the Commissioner.
- (3) The Commissioner is then to provide a copy of the report to the police officer whose conduct was the subject of the complaint. 30



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**157 Recommendation in report under section 156**

In a report under section 156, the Ombudsman may (where relevant) recommend:

- (a) that the conduct to which it relates be considered or reconsidered by the police officer whose conduct it was, or by any person in a position to supervise or direct that police officer in relation to the conduct or to review, rectify, mitigate or change the conduct or its consequences, or 5
- (b) that action be taken to rectify, mitigate or change the conduct or its consequences, or 10
- (c) that reasons be given for the conduct, or
- (d) that any law or practice relating to the conduct be changed, or
- (e) that any other action be taken. 15

**158 Notification of proposed action on reports**

- (1) The Commissioner must, as soon as practicable after receiving a report under this Division, notify the Ombudsman of the nature of the action (if any) proposed to be taken by the Commissioner as a result of the report. 20
- (2) The nature of the action that the Commissioner may propose in the notification includes:
  - (a) that the police officer be admonished, or
  - (b) that a departmental charge be preferred against the police officer, or 25
  - (c) that consideration be given to the police officer being charged with a criminal offence.

The notification may contain particulars of any penalty proposed to be imposed.

- (3) Where the Ombudsman has given a copy of a report under section 156 to the Commissioner and the Ombudsman is of the opinion: 30

- (a) that the Commissioner has unreasonably delayed notifying the Ombudsman under this section with respect to the report, or
  - (b) that the nature of the proposed action notified under this section by the Commissioner is, in the circumstances of the case, unreasonable or inadequate, or 5
  - (c) that the Commissioner has unreasonably delayed taking action as a result of the report, 10
- the Ombudsman is to advise the Commissioner accordingly by notice in writing served on the Commissioner.
- (4) If the Ombudsman and the Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (3), either or both of them may notify the Minister that the issue is unresolved. The issue may be the subject of a special report to Parliament by the Ombudsman under section 161. 15

**159 Notification of action taken on report**

- (1) The Commissioner must, as soon as practicable after taking action as the result of a report under this Division (being action with respect to a police officer whose conduct is the subject of a complaint), notify the Ombudsman of the nature of the action so taken. 20
- (2) The notification must, if the action taken consists of or includes the imposition of a penalty, contain particulars of the nature and quantum of the penalty imposed. 25
- (3) The Ombudsman is to determine whether, in the circumstances of the case, action so notified was, in the opinion of the Ombudsman: 30
  - (a) appropriate, and
  - (b) taken within a reasonable time.

**160 Progress report to complainant**

The Ombudsman may from time to time report to the complainant (if identified) on the progress of an investigation under Division 5 into a complaint. 35

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**161 Special report to Parliament**

- (1) The Ombudsman may, at any time, make a special report to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report on any matter arising in connection with the exercise of his or her functions under this Part. 5
- (2) The Ombudsman may include in such a report a recommendation that the report be made public as soon as practicable.

**162 Special report about serious misconduct** 10

If the Ombudsman is of the opinion that a police officer is guilty of such serious misconduct as may warrant dismissal or punishment, the Ombudsman may report his or her opinion and the reasons for that opinion to the Minister and the Commissioner. 15

**Division 7 Complaints Information System**

**162A Complaints Information System**

- (1) The regulations may make provision for or with respect to a Complaints Information System, including:
- (a) the establishment, control, operation and maintenance of the System, and 20
- (b) the registration of complaints in the System, and
- (c) the nature of the information about complaints that is to be registered in the System, and
- (d) access to information in the System, and 25
- (e) retention, amendment and deletion of material in the System, and
- (f) security arrangements for the System, and
- (g) mechanisms for identifying, preventing and detecting abuse, misuse or corrupt use of the System or information in the System. 30



- (2) Protocols and memoranda of understanding may be entered into by the PIC Commissioner, the Ombudsman and the Commissioner of Police regarding any matter for or with respect to which regulations can be made under this section. Any such protocol or memorandum is subject to the provisions of the regulations and cannot create an offence. 5
- (3) A regulation made for the purposes of this section may create an offence punishable by a penalty not exceeding 50 penalty units. 10

**162B Registration of complaints**

- (1) Information about all complaints received by members of the Police Service, the PIC or the Ombudsman must be registered in the Complaints Information System.
- (2) Despite subsection (1), the PIC may direct that information about a Category 1 complaint (or a specified class of Category 1 complaints): 15
  - (a) not be entered in the System, or
  - (b) be removed from the System, or
  - (c) be entered or re-entered in the System. 20
- (3) The PIC and officers of the PIC approved by the PIC Commissioner are to have unrestricted access to all information in the System.
- (4) The Ombudsman and officers of the Ombudsman are to have unrestricted access to all information in the System, subject however to the terms of any caveat under this section. 25
- (5) The PIC may place a caveat on particular information registered in the System. Access to this information by other agencies and other persons is to be restricted in accordance with the terms of the caveat. 30
- (6) The Ombudsman may place a caveat on particular information registered in the System in relation to an

excluded complaint under section 130. Access to this information by agencies and persons (other than the PIC and officers of the PIC approved by the PIC Commissioner) is to be restricted in accordance with the terms of the caveat.

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### 162C Classification of complaints

- (1) Complaints are classified as follows:
  - (a) Category 1 complaints,
  - (b) Category 2 complaints,
  - (c) Category 3 complaints, 10
  - (d) Category 4 complaints.
- (2) A Category 1 complaint is a Category 1 complaint as defined in section 67 of the *Police Integrity Commission Act 1996*.
 

**Note.** The definition of that expression is as follows: 15

**Category 1 complaint** means a police complaint:

  - (a) that is of a class or kind that the PIC Commissioner and the Ombudsman have agreed should be referred to the Commission, or
  - (b) that the PIC Commissioner has requested should be referred to the Commission, or 20
  - (c) that is of a class or kind prescribed by the regulations.
- (3) A Category 2 complaint is a complaint that does fall within Category 1, 3 or 4.
- (4) A Category 3 complaint is a complaint that is of a class or kind referred to in section 132. 25
- (5) A Category 4 complaint is a complaint that is of a class or kind referred to in section 139A.

### 162D Assignment to categories

- (1) On receiving a complaint, the Ombudsman or the Commissioner of Police is to make an initial decision as to the category into which the complaint falls, based on this Act, the regulations and any agreements under this Act. 30

- (2) On receiving a complaint, the PIC is to make an initial decision as to whether or not the complaint falls within Category 1, based on this Act, the regulations and any guidelines issued by the PIC.
- (3) A complaint that involves conduct that could involve two or more categories is to be treated as falling within the higher or highest of them (Category 1 being treated as the highest category). 5
- (4) A complaint may be treated as a Category 2 complaint if there is doubt as to the category into which it falls. 10

**162E Reclassification of inappropriately classified complaints**

- (1) The Commissioner of Police may direct the reclassification of a Category 3 or 4 complaint at any time, if it appears that the complaint was inappropriately classified. This power is subject to any direction under subsection (2) or (3). 15
- (2) The Ombudsman may direct the reclassification of a Category 2, 3 or 4 complaint at any time, if it appears that the complaint was inappropriately classified. This is subject to any direction under subsection (3). 20
- (3) The PIC may direct the reclassification of a Category 2, 3 or 4 complaint as a Category 1 complaint at any time, if it appears that the complaint was inappropriately classified.
- (4) Nothing in this section prevents a direction being given under section 162F or 162G that a particular complaint be treated as a Category 1 or 2 complaint. 25

**162F Ombudsman may take over complaint**

- (1) The Ombudsman may at any time direct that a Category 3 or 4 complaint be treated as a Category 2 complaint. This power has effect subject to a direction under section 162G. 30
- (2) The complaint is then to be treated as a Category 2 complaint, even though it would not or may not otherwise fall within that category. 35



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**162G Police Integrity Commission may take over complaint**

- (1) The Police Integrity Commission may at any time direct that a Category 2, 3 or 4 complaint be treated as a Category 1 complaint.
- (2) The complaint is then to be treated as a Category 1 complaint, even though it would not or may not otherwise fall within that category. 5

**162H No review of classification**

Judicial review of or involving the classification or reclassification of a complaint into a category (whether by way of appeal or otherwise) is not available. 10

**Division 8 Miscellaneous**

**163 Ombudsman may require further information from complainant**

- (1) For the purposes of the conciliation of a complaint under Division 3 or for the purpose of determining whether a complaint should be investigated under Division 5, the Ombudsman may, if the complainant is identified, do any one or more of the following: 15
  - (a) request a complainant to attend before the Ombudsman for the purpose of providing further information concerning the complaint, 20
  - (b) request the complainant to provide further written particulars concerning the complaint,
  - (c) request the complainant to verify by statutory declaration his or her complaint, or any particulars given by the complainant concerning his or her complaint. 25
- (2) The Ombudsman may withdraw the request if the complainant objects and the Ombudsman is satisfied that the grounds of the objection are well-founded. 30

- (3) If the Ombudsman makes a request (and it is not withdrawn), the Ombudsman is to take no further action in connection with the complaint concerned until the request is complied with or a reasonable time for compliance with the request has elapsed. 5
- (4) If the request is not complied with within a reasonable time, the Ombudsman may treat the complaint concerned as having been dealt with under Division 3 in a manner acceptable to the complainant. If the Ombudsman does so, the Ombudsman is to inform the Commissioner and the complainant accordingly. 10

**164 Ombudsman may request further information from other persons**

- (1) For the purpose of determining whether a complaint should be investigated under Division 5, the Ombudsman may also request information from persons other than the complainant. 15
- (2) However, this section does not authorise the Ombudsman:
  - (a) to investigate the complaint or to collect information for the purposes of the investigation of the complaint or of a report under this Part, or 20
  - (b) to interview the police officer the subject of the complaint, or
  - (c) to require persons to provide information. 25

**165 Ombudsman may require Commissioner to provide information etc**

- (1) For the purposes of a conciliation of a complaint or for the purpose of determining whether a complaint should be investigated under Division 5, the Commissioner must, at the request of the Ombudsman, provide the Ombudsman:
    - (a) with an explanation of the policies, procedures and practices of the Police Service relevant to the conduct complained of, and 30
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- (b) with such documentary and other information (including records of interviews) as the Ombudsman requests with respect to any inquiries made by the Commissioner or other police officers into the complaints, and 5
- (c) to the extent to which the Commissioner is able to do so, with any explanation, comment or information sought by the Ombudsman in connection with the complaint.
- (2) The Ombudsman may withdraw any such request if the Commissioner objects and the Ombudsman is satisfied that the grounds of the objection are well-founded. 10
- (3) The Ombudsman may, instead of making any such request, seek the information concerned from other police officers in accordance with arrangements agreed to by the Commissioner and the Ombudsman. 15

**166 Certain information to be confidential**

- (1) If the Commissioner is of the opinion that publication of any material or information:
- (a) which, under this Part, the Commissioner or any other police officer is required to provide for the Ombudsman, or 20
- (b) which, under the *Ombudsman Act 1974*, the Commissioner or any other police officer is required, in the course of an investigation under that Act of the conduct to which a complaint relates, to provide for the Ombudsman, 25
- might prejudice the investigation or prevention of crime, or otherwise be contrary to the public interest, the Commissioner is to inform the Ombudsman accordingly, giving the reasons for his or her opinion. 30
- (2) If the Ombudsman, pursuant to a requirement made under the *Ombudsman Act 1974* in the course of an investigation under that Act of the conduct to which a



complaint relates, receives material or information from a police officer, the Ombudsman may not, except as provided in subsection (3) (b) or with the consent of the Commissioner, publish that material or information, otherwise than to the Commissioner, until the expiration of 21 days after that receipt. 5

- (3) If the Ombudsman is provided with material or information in respect of which the Commissioner has given the opinion referred to in subsection (1), the Ombudsman: 10
- (a) may not, except as provided in paragraph (b), publish that material or information, and
  - (b) may, if in his or her opinion the circumstances so warrant, make in relation to that material or information a report to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report. 15

**167 Certain provisions of Ombudsman Act 1974 to apply**

Sections 17, 18 and 23 of the *Ombudsman Act 1974* apply to and in respect of the exercise by the Ombudsman of the functions conferred and imposed by this Part in the same way as they apply to and in respect of an investigation by the Ombudsman under the *Ombudsman Act 1974*. 20

**168 Information to be confidential** 25

Without limiting the operation of section 34 (1) (a) of the *Ombudsman Act 1974*, in the application of section 34 (1) of that Act to and in respect of information received in the course of the administration or execution of this Part, the reference in that subsection: 30

- (a) to a public authority—is to be construed as a reference to a police officer, and
- (b) to the head of that authority—is to be construed as a reference to the Commissioner, and
- (c) to the responsible Minister—is to be construed as a reference to the Minister administering this Act. 35

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**169 Ombudsman or officer as witness**

- (1) Neither the Ombudsman, nor an officer or special officer of the Ombudsman who is not a police officer, is competent or compellable, in any legal proceedings or in any proceedings before the Police Tribunal, to give evidence or produce documents in respect of any matter in which he or she is or was involved in the course of the administration or execution of this Part. 5
- (2) Subsection (1) does not apply to or in respect of any proceedings under section 37 of the *Ombudsman Act 1974* or under Part 3 of the *Royal Commissions Act 1923*. 10
- (3) Subsections (1) and (2) do not prejudice or affect the operation of section 35 of the *Ombudsman Act 1974* in relation to the administration and execution of this Act. 15

**170 Limitation on delegation of functions by Ombudsman**

- (1) The functions of the Ombudsman that may, under section 10 of the *Ombudsman Act 1974*, be delegated to a special officer of the Ombudsman (other than an Assistant Ombudsman) do not include: 20
- (a) any power or duty to make a report under this Act, or
- (b) the power to require additional information referred to in section 147 (2) of this Act.
- (2) The functions of the Ombudsman that may, under section 10 of the *Ombudsman Act 1974*, be delegated to an Assistant Ombudsman do not include any power or duty to make a report under this Act (other than a report under section 155, 156 or 160). 25

**170A Provisions relating to reports** 30

- (1) **Tabling**
- A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this Act must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer. 35

- (2)    **Public reports**  
If a report includes a recommendation by the Ombudsman that the report be made public forthwith, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House. 5
- (3)    **Privileges and immunities**  
A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House. 10
- (4)    **Report procedures**  
A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act. 15

**171 Liability to do duty continues**

This Part does not operate to absolve a police officer who receives a complaint from liability to perform any duty imposed on the police officer otherwise than by this Part. 20

**172 Publicity**

- (1)    The Ombudsman is to cause to be prepared pamphlets briefly explaining the rights and duties of police officers and the public under this Part. 25
- (2)    The pamphlets are to be written in the English language and in such other languages as the Ombudsman considers necessary.
- (3)    The Ombudsman must: 30
- (a)    supply the Commissioner with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at each police station in the State, and the Commissioner is to distribute the pamphlets accordingly, and 35



- 
- (b) supply the Director-General of the Attorney General's Department with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at the office of each Local Court in the State, and the Director-General is to distribute the pamphlets accordingly, and 5
  - (c) make such arrangements as the Ombudsman thinks fit with any government department or instrumentality or with any other body or organisation for making the pamphlets available, or distributing them, to any interested person, and 10
  - (d) take such further or other action as the Ombudsman considers necessary to bring the provisions of this Part to the attention of interested persons. 15

**172A Certain documents privileged**

- (1) A document brought into existence for the purposes of this Part is not admissible in evidence in any proceedings other than an inquiry under section 197 or proceedings which concern the discipline of police officers and which are dealt with by: 20
  - (a) the Commissioner, or
  - (b) the Police Tribunal, or
  - (c) GREAT.
- (2) Subsection (1) does not apply to or in respect of: 25
  - (a) a document comprising a complaint, or
  - (b) a document published by order of, or under the authority of, the Presiding Officer of a House of Parliament or either House, or both Houses, of Parliament, or 30
  - (c) a document published under section 197 (5), or
  - (d) a document that a witness is willing to produce.
- (3) Subsections (1) and (2) do not operate to render admissible in evidence in any proceedings any document that would not have been so admissible if this section had not been enacted. 35

**172B Consultation with Minister**

The Ombudsman may consult with the Minister about a complaint at any stage and may for that purpose disclose to the Minister any information relating to or arising in connection with the complaint, including: 5

- (a) any matters arising from an investigation of the complaint, and
- (b) any report or proposed report relating to the complaint, and
- (c) any action taken or proposed to be taken in connection with the complaint. 10

**172C Action may be taken before report finalised**

- (1) Action (including disciplinary or criminal action) may be taken in relation to a complaint before the investigation of, or report by the Commissioner or Ombudsman relating to, the complaint has been finalised under this Part. 15
- (2) The views of the Ombudsman should, as far as practicable, be sought and taken into account before any such action is so taken. 20
- (3) This section has effect despite any other provision of this Part.

**172D Investigation on Ombudsman's own motion**

- (1) Where it appears to the Ombudsman that any conduct of a police officer could be but is not the subject of a complaint under this Part, the Ombudsman may make the conduct the subject of an investigation under the *Ombudsman Act 1974*. 25
- (2) The Ombudsman may make preliminary inquiries for the purpose of deciding whether to make any such conduct the subject of an investigation under the *Ombudsman Act 1974*. 30
- (3) Section 156 applies to such an investigation as if the Ombudsman had made a complaint about the conduct.

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**[6] Part 9, Division 1A, heading**

Insert “or Police Integrity Commission” after “Police Royal Commission”.

**[7] Section 181A Definition and operation of Division**

Omit the definition of *Police Royal Commission*. Insert instead: 5

*Police Royal Commission* means a Royal Commission to which the *Royal Commission (Police Service) Act 1994* applies.

**[8] Section 181B Dismissal of police officers—information arising out of Police Royal Commission or Police Integrity Commission** 10

Insert “or the Police Integrity Commission” after “Police Royal Commission” in section 181B (1).

**[9] Section 181C Acceptance of resignation of police officers in certain cases**

Insert “or the Police Integrity Commission” after “Police Royal Commission” in section 181C (b). 15

**[10] Section 200 Bribery or corruption**

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

Insert instead: 20

(4) An offence under this section is an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 7 years, or both.



**[11] Section 207 Proceedings for offences**

Omit "Proceedings" from section 207 (1).  
Insert instead "Except where otherwise expressly provided by this Act, proceedings".

**[12] Section 207 (3) and (4)**

5

Insert after section 207 (2):

- (3) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent. 10
- (4) If, in accordance with subsection (3), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is 50 penalty units or imprisonment for 2 years, or both. 15

**[13] Section 219 Regulations**

Insert after section 219 (2):

- (2A) The regulations may make provision for or with respect to the functions of the Commissioner, the Ombudsman, the Police Integrity Commission and other persons in connection with the handling of complaints against police officers under the legislative scheme constituted by this Act, the *Ombudsman Act 1974* and the *Police Integrity Commission Act 1996*. 20

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## Schedule 2 Amendment of Confiscation of Proceeds of Crime Act 1989

(Section 4)

**[1] Section 4 Definitions**

Insert “or Commissioner for the Police Integrity Commission” after “Director of Public Prosecutions” in paragraph (a) of the definition of *appropriate officer* in section 4 (1).

5

**[2] Section 4**

Re-number paragraph (e) of the definition of *prescribed authority* as paragraph (f), and insert before that paragraph:

10

(e) the Police Integrity Commission, or

**[3] Section 88A**

Insert after section 88:

**88A Commissioner for the Police Integrity Commission**

(1) The Commissioner for the Police Integrity Commission may exercise any function under this Act only:

15

(a) after consultation with the Director of Public Prosecutions, or

(b) in conformity with an arrangement referred to in section 84 of the *Police Integrity Commission Act 1996*,

20

and must consider whether any such function should instead be exercised by the Director.

(2) It is intended that the Commissioner for the Police Integrity Commission will exercise a function under this Act only in connection with matters arising during or out of the Police Integrity Commission’s own investigations. However, this subsection does not provide any grounds for an appeal against or any other challenge to the exercise by the Commissioner of any such function.

25

30

**Schedule 3 Amendment of Independent  
Commission Against Corruption Act  
1988**

(Section 5)

- [1] Section 3 Definitions** 5
- Insert in alphabetical order in section 3 (1):
- hearing* means a hearing under this Act.
- [2] Section 3 (1)**
- Insert “, and (without limitation) includes a preliminary investigation referred to in section 20A” after “Act” in the definition of *investigation*. 10
- [3] Section 20A**
- Insert after section 20:
- 20A Preliminary investigations**
- (1) An investigation may be in the nature of a preliminary investigation. 15
- (2) A preliminary examination can be conducted, for example, for the purpose of assisting the Commission:
- (a) to discover or identify conduct that might be made the subject of a more complete investigation under this Act, or 20
- (b) to decide whether to make particular conduct the subject of a more complete investigation under this Act.
- (3) Nothing in this section affects any other provision of this Act. 25



**[4] Section 41 Authority conferred by warrant**

Insert “, or a senior Commission investigator, named in and” after “Force” where firstly occurring in section 41 (2).

**[5] Section 41 (2)**

Insert “or senior Commission investigator” after “Force” where secondly occurring. 5

**[6] Section 41 (3)**

Insert after section 41 (2):

(3) In this section:

*senior Commission investigator* means an officer of the Commission who is designated by the Commissioner as a senior investigator and who is issued by the Commissioner with means of identification as such a senior Commission investigator. 10

**[7] Section 50**

15

Omit the section. Insert instead:

**50 Protection of witnesses and persons assisting Commission**

(1) If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary: 20

(a) to protect the safety of any such person, or 25

(b) to protect any such person from intimidation or harassment.

- (2) In this section, a reference to a person who is assisting the Commission is a reference to a person who:
- (a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing, or 5
  - (b) has produced or proposes to produce a document or other thing to the Commission under this Act, or
  - (c) has assisted, is assisting or is to assist the Commission in some other manner. 10
- (3) Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public official:
- (a) to provide any protection referred to in subsection (1), or 15
  - (b) to provide personnel or facilities or both to assist in providing that protection, or
  - (c) to otherwise assist in the provision of that protection.
- (4) The Commissioner of Police, or such a public authority or public official, is under a duty to comply with any such direction as far as reasonably possible. 20
- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person and containing directions of a kind or kinds referred to in subsection (3). 25
- (6) A person who contravenes an order applying to the person under subsection (5) without reasonable excuse is guilty of an indictable offence.
- Maximum penalty: 200 penalty units or imprisonment for 5 years, or both. 30
- (7) Nothing in this section affects the *Witness Protection Act 1995*.

**[8] Section 82 Offences relating to obtaining information**

Insert "in a material particular" after "false or misleading".

**[9] Section 93**

Omit the section. Insert instead:

**93 Injury to witness or person assisting Commission**

5

(1) A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of:

(a) his or her assisting the Commission, or

(b) any evidence given by him or her before the Commission,

10

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

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

15

(a) has appeared, is appearing or is to appear as a witness before the Commission, or

(b) has complied with or proposes to comply with a requirement under section 21 or 22, or

20

(c) has assisted, is assisting or is to assist the Commission in some other manner.

**[10] Section 94**

Omit the section. Insert instead:

**94 Dismissal of witness, or person assisting Commission, by employer**

25

(1) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Commission is guilty of an indictable offence.

30

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.



- (2) In this section, a reference to a person assisting the Commission is a reference to a person who:
- (a) has appeared, is appearing or is to appear as a witness before the Commission, or
  - (b) has complied with or proposes to comply with a requirement under section 21 or 22, or 5
  - (c) has assisted, is assisting or is to assist the Commission in some other manner.
- (3) In any proceedings for an offence against this section, it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1). 10

**[11] Section 96 Bribery of officer of Commission** 15  
Omit "5 years" wherever occurring. Insert instead "7 years".

**[12] Part 10A**

Insert after Part 10:

**Part 10A Special powers**

**101A Definitions** 20

In this Part:

*Commission investigator* means an officer of the Commission who is designated by the Commissioner as an investigator and who is issued by the Commissioner with means of identification as such an investigator. 25

*Commission surveillance officer* means an officer of the Commission who is designated by the Commissioner as a surveillance officer and who is issued by the Commissioner with means of identification as such an officer. 30

*seconded police officer* means:

- (a) a member of the Australian Federal Police, or
- (b) a member of the Police Force of another State or Territory, or
- (c) a member of the Police Force of any country prescribed by the regulations for the purposes of this Part, 5

who is seconded or otherwise engaged to assist the Commission.

**101B Commission investigator who is seconded police officer to have all powers of NSW police officer** 10

- (1) A Commission investigator who is a seconded police officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Service Act 1990* has and may exercise under any law of the State (including the common law and this Act). 15
- (2) Those functions extend to functions conferred after the commencement of this Part. 20
- (3) A Commission investigator has and may exercise those functions by virtue of this section only when acting in the person's capacity as an officer of the Commission.
- (4) This section does not operate to subject a Commission investigator to the control and direction of the Commissioner of Police or any other police officer when acting in the person's capacity as an officer of the Commission. 25
- (5) A complaint about the conduct of a Commission investigator when exercising the functions of a police officer may not be made under Part 8A of the *Police Service Act 1990*. 30

**[13] Section 111 Secrecy**

Insert "or disciplinary proceedings" after "prosecution" wherever occurring in section 111 (3) and (4) (b). 35

**[14] Section 111A, 111B**

Insert after section 111:

**111A Secrecy provisions in other Acts**

The following provisions do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under this Act: 5

- (a) section 15 (Secrecy) of the *Companies (Administration) Act 1981*,
- (b) section 206 (Disclosure of information relating to Police Board functions) of the *Police Service Act 1990*. 10

**111B Privacy Committee Act 1975**

- (1) **Disclosure of information by members or officers of Privacy Committee** 15

Section 20 of the *Privacy Committee Act 1975* does not apply to the disclosure of information for the purposes of any proceedings for an offence under this Act.

- (2) **Members or officers of Privacy Committee as witnesses** 20

Section 21 of the *Privacy Committee Act 1975* does not apply in respect of any proceedings for an offence under this Act.

**[15] Section 112 Publication of evidence etc**

Insert after section 112 (1): 25

- (1A) The Commission is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.



**[16] Section 116 Proceedings for offences**

Insert after section 116 (3):

- (4) Proceedings for an alleged offence under section 80 (c) or 81 may be commenced within 3 years after the commission of the alleged offence.

5

## Schedule 4 Amendment of Ombudsman Act 1974

(Section 6)

### [1] Section 5 Definitions

Omit the definition of *Joint Committee* from section 5 (1).

Insert instead:

5

*Joint Committee* means the joint committee called the Committee on the Office of the Ombudsman and the Police Integrity Commission, constituted under this Act.

### [2] Section 31A Constitution of Joint Committee

Insert "and the Police Integrity Commission" after "Ombudsman".

10

### [3] Section 31A (2)

Insert at the end of section 31A:

- (2) The Joint Committee has and may exercise the functions conferred or imposed on it by or under this Act, the *Police Integrity Commission Act 1996*, or any other Act.

15

### [4] Section 31B Functions

Omit "The functions of the Joint Committee are as follows" from section 31B (1).

Insert instead "The Joint Committee has the following functions under this Act".

20

### [5] Section 35A Immunity of Ombudsman and others

Omit "this Act" from section 35A (1).

Insert instead "this or any other Act".

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**[6] Section 37 Offences**

Insert after section 37 (3):

- (4) A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of:
- (a) his or her making a complaint to the Ombudsman, or
  - (b) his or her assisting the Ombudsman, or
  - (c) any evidence given by him or her to the Ombudsman,

5

10

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (5) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Ombudsman is guilty of an indictable offence.

15

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

20

- (6) In any proceedings for an offence against subsection (5), it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (5).

25

- (7) In this section, a reference to a person assisting the Ombudsman is a reference to a person who:

- (a) has appeared, is appearing or is to appear as a witness before the Ombudsman, or
- (b) has complied with or proposes to comply with a requirement under section 18, or
- (c) has assisted, is assisting or is to assist the Ombudsman in some other manner.

30



**[7] Section 38**

Omit the section. Insert instead:

**38 Proceedings for offences**

- (1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. 5
- (2) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent. 10
- (3) If, in accordance with subsection (2), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is: 15
  - (a) in the case of an individual—the smaller of:
    - (i) a fine of 50 penalty units or imprisonment for 2 years, or both, or
    - (ii) the maximum penalty otherwise applicable to the offence when committed by an individual, or 20
  - (b) in the case of a corporation—the smaller of:
    - (i) a fine of 100 penalty units, or
    - (ii) the maximum penalty otherwise applicable to the offence when committed by a corporation. 25

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**Schedule 5 Amendment of Royal Commission  
(Police Service) Act 1994**

(Section 7)

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

5

Omit section 26 (1). Insert instead:

- (1) If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary:

10

- (a) to protect the safety of any such person, or  
(b) to protect any such person from intimidation or harassment.

15

**[2] Section 26 (3)–(7)**

Insert after section 26 (2):

- (3) Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public official:

20

- (a) to provide any protection referred to in subsection (1), or  
(b) to provide personnel or facilities or both to assist in providing that protection, or  
(c) to otherwise assist in the provision of that protection.

25

- (4) The Commissioner of Police, or such a public authority or public official, is under a duty to comply with any such direction as far as reasonably possible.

- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person and containing directions of a kind or kinds referred to in subsection (3).
- (6) A person who contravenes an order applying to the person under subsection (5) without reasonable excuse is guilty of an indictable offence.      5  
Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.
- (7) Nothing in this section affects the *Witness Protection Act 1995*.      10

**[3] Section 41 Proceedings for offences**

Omit "Proceedings".

Insert instead "Except where otherwise expressly provided by this Act, proceedings".

15

**[4] Section 41 (2) and (3)**

Insert at the end of section 41:

- (2) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.      20
- (3) If, in accordance with subsection (2), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is 50 penalty units or imprisonment for 2 years, or both.      25



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**Schedule 6 Amendment of other Acts**

(Section 8)

**6.1 Defamation Act 1974 No 18**

**[1] Section 17S**

Insert after section 17R: 5

**17S Matters arising under the Police Integrity Commission Act 1996**

- (1) There is a defence of absolute privilege for a publication:
  - (a) to or by the Police Integrity Commission, or
  - (b) to or by the Commissioner for the Police Integrity Commission as Commissioner, or 10
  - (c) to or by the Inspector of the Police Integrity Commission as Inspector, or
  - (d) to any officer of the Commission or officer of the Inspector (within the meaning of the *Police Integrity Commission Act 1996*) as such an officer. 15
- (2) This section applies in relation to any hearing before the Police Integrity Commission or Inspector of the Police Integrity Commission or any other matter relating to the powers, authorities, duties or functions of the Commission or Inspector. 20

**[2] Schedule 2 Proceedings of Public Concern and Official and Public Documents and Records**

Insert at the end of clause 2 (inserting the appropriate item number):

- ( ) proceedings at a hearing held in public by the Police Integrity Commission or Inspector of the Police Integrity Commission. 25

**6.2 Freedom of Information Act 1989 No 5**

**Schedule 2 Exempt bodies and offices**

Insert at the end of the Schedule:

The Police Integrity Commission—corruption prevention, complaint handling, investigative and report functions. 5

The office of Inspector of the Police Integrity Commission—operational auditing, complaint handling, investigative and report functions.

**6.3 Protected Disclosures Act 1994 No 92** 10

**[1] Section 4 Definitions**

Insert in alphabetical order:

*PIC* means the Police Integrity Commission constituted under the *Police Integrity Commission Act 1996*.

*PIC Inspector* means the Inspector of the Police Integrity Commission appointed under the *Police Integrity Commission Act 1996*. 15

*PIC officer* means an officer of the Commission, as defined in the *Police Integrity Commission Act 1996*.

*PICI officer* means an officer of the Inspector, as defined in the *Police Integrity Commission Act 1996*. 20

**[2] Section 4**

Insert at the end of paragraph (c) of the definition of *investigating authority*:

, or 25

(d) the PIC, or

(e) the PIC Inspector.

---

**[3] Section 4**

Insert at the end of paragraph (c) of the definition of *investigation Act*:

, or

(d) the *Police Integrity Commission Act 1996*.

5

**[4] Section 4**

Insert “, and (without limitation), includes a PIC officer or a PICI officer” after “investigating authority” in the definition of *public official*.

**[5] Section 5 Relationship of this Act and other Acts**

10

Omit “13 (2) and (4)”. Insert instead “13 (2), (4) and (4B)”.

**[6] Section 12A**

Insert after section 12:

**12A Disclosure concerning police**

(1) To be protected by this Act, a disclosure by a public official to the PIC must:

15

(a) be made in accordance with the *Police Integrity Commission Act 1996*, and

(b) be a disclosure that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by a police officer.

20

(2) To be protected by this Act, a disclosure by a public official to the PIC Inspector must:

(a) be made in accordance with the *Police Integrity Commission Act 1996*, and

25



- (b) be a disclosure of information that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the PIC, a PIC officer or a PICI officer.
- (3) To be protected by this Act, a disclosure by a public official to an investigating authority (being the Auditor-General, the Commission or the Ombudsman) concerning the PIC or a PIC officer must relate to a matter referred by the PIC Inspector to the investigating authority under section 95 of the *Police Integrity Commission Act 1996*. 5  
10

**[7] Section 13 Disclosures about investigating authorities**

Insert after section 13 (4):

- (4A) Despite section 10, a disclosure by a public official to the Commission that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the PIC Inspector, the PIC Inspector or a PICI officer has engaged or proposes to engage in conduct of a kind that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act. 15  
20
- (4B) The Commission may investigate, and report, in accordance with the *Independent Commission Against Corruption Act 1988* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (4A). 25

**6.4 Public Sector Management Act 1988 No 33**

**Schedule 1 Departments**

Insert in alphabetical order of Departments:

Police Integrity Commission      \*Commissioner for the Police Integrity Commission 30

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**6.5 Search Warrants Act 1985 No 37**

**Section 10 Definitions**

Insert in alphabetical order of Acts in the definition of *search warrant*:

section 45 of the *Police Integrity Commission Act 1996*, 5

**6.6 Telecommunications (Interception) (New South Wales) Act 1987 No 290**

**[1] Section 3 Definitions**

Omit “or” from paragraph (e) of the definition of *agency* in section 3 (1) and insert after that paragraph: 10

(e1) the Police Integrity Commission,

(e2) the Police Royal Commission, or

**[2] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *certifying officer*: 15

, or

(d) in the case of the Police Integrity Commission—the Commissioner or an Assistant Commissioner of that Commission, or

(e) in the case of the Police Royal Commission—the Police Royal Commissioner. 20

**[3] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *chief officer*:

, or

(d) in the case of the Police Integrity Commission—the Commissioner of that Commission, 25

(e) in the case of the Police Royal Commission—the Police Royal Commissioner.

**[4] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *eligible authority*:

, or

- (d) the Police Integrity Commission, or 5
- (e) the Police Royal Commission.

**[5] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *officer*:

, or

- (d) in the case of the Police Integrity Commission— 10  
an officer of the Commission (as defined in the *Police Service Act 1990*), or
- (e) in the case of the Police Royal Commission—an 15  
officer of the Police Royal Commission as defined in the *Police Integrity Commission Act 1996*.

**[6] Section 3 (1)**

Insert in alphabetical order in section 3 (1):

*Police Royal Commission* and *Police Royal Commissioner* have the same meanings as in the *Police Integrity Commission Act 1996*. 20

**[7] Section 21 Disclosure by persons under the Minister's administration**

Omit "or" at the end of paragraph (b) (iv), and insert after paragraph (b) (v):

- (vi) the *Police Integrity Commission Act 1996*, 25  
or
- (vii) the *Royal Commission (Police Service) Act 1994*, or



**6.7 Witness Protection Act 1995 No 87**

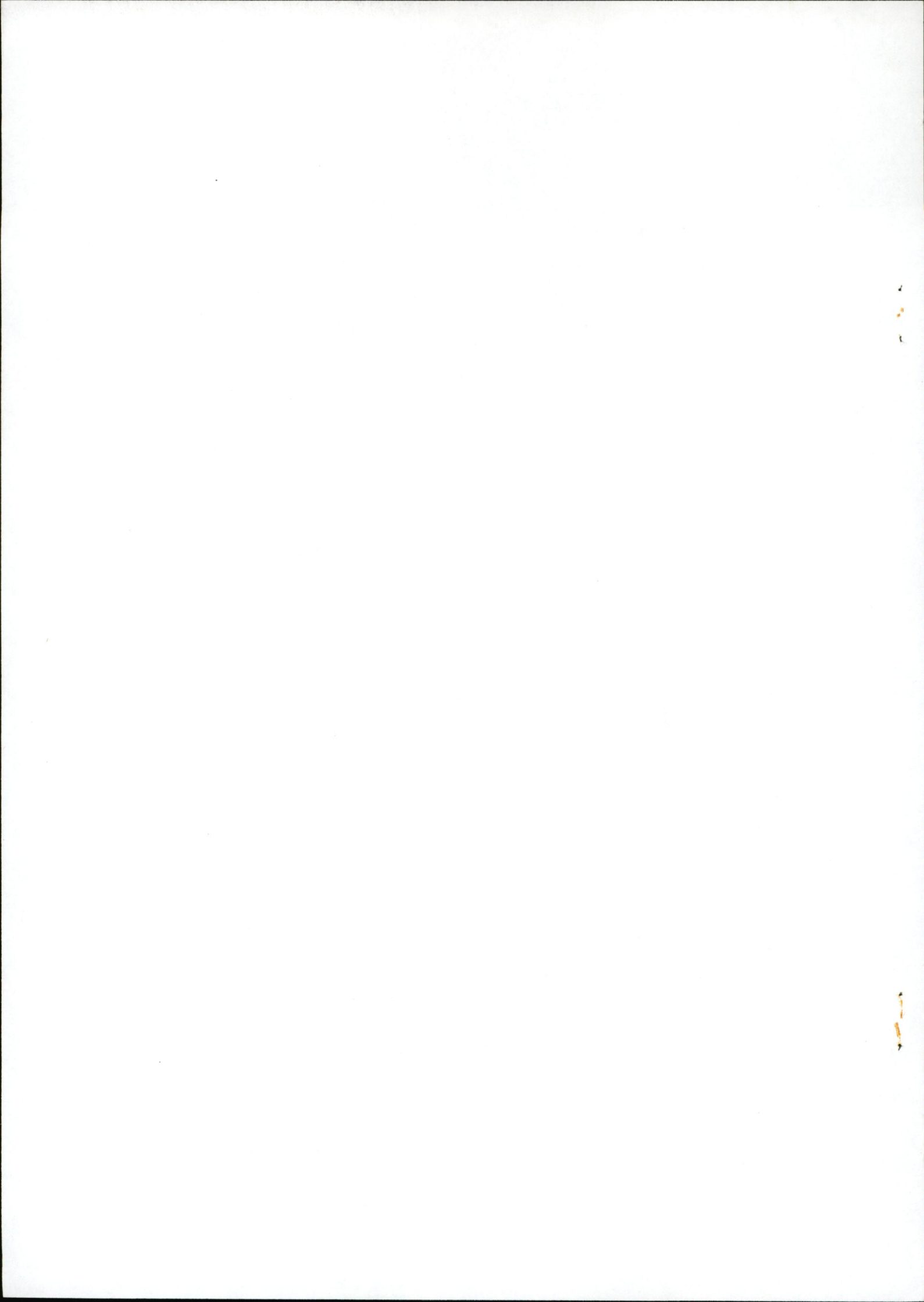
**Section 44 Relationship with other witness protection arrangements**

Insert at the end of paragraph (b):

, or

5

- (c) section 26 of the *Royal Commission (Police Service) Act 1994*, or
- (d) section 51 of the *Police Integrity Commission Act 1996*.



Second print



New South Wales

# Police Legislation Amendment Bill 1996

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Police Legislation Amendment Bill 1996

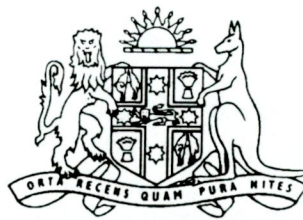
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*This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Clerk of the Legislative Assembly.  
Legislative Assembly*



New South Wales

## **Police Legislation Amendment Bill 1996**

Act No      , 1996

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An Act to amend the *Police Service Act 1990* and various other Acts to make further provision for dealing with complaints about police and to make amendments consequent on the establishment of the Police Integrity Commission; and for other purposes.

---

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

**1 Name of Act**

This Act is the *Police Legislation Amendment Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation. 5

**3 Amendment of Police Service Act 1990 No 47**

The *Police Service Act 1990* is amended as set out in Schedule 1.

**4 Amendment of Confiscation of Proceeds of Crime Act 1989 No 90** 10

The *Confiscation of Proceeds of Crime Act 1989* is amended as set out in Schedule 2.

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

The *Independent Commission Against Corruption Act 1988* is amended as set out in Schedule 3. 15

**6 Amendment of Ombudsman Act 1974 No 68**

The *Ombudsman Act 1974* is amended as set out in Schedule 4.

**7 Amendment of Royal Commission (Police Service) Act 1994 No 60** 20

The *Royal Commission (Police Service) Act 1994* is amended as set out in Schedule 5.

**8 Amendment of other Acts**

The Acts specified in Schedule 6 are amended as set out in that Schedule. 25



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## Schedule 1 Amendment of Police Service Act 1990

(Section 3)

### [1] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

*PIC Commissioner* means the Commissioner for the Police Integrity Commission.

*Police Integrity Commission* means the body of that name constituted by the *Police Integrity Commission Act 1996*.

5

10

### [2] Section 3 (3)

Insert after section 3 (2):

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

### [3] Section 94A Reports by police internal affairs for proposed police appointments

15

Omit section 94A (3) (b). Insert instead:

(b) particulars of any complaint made against the person in accordance with Division 2 of Part 8A, other than complaints that have been resolved in favour of the person,

20

### [4] Section 94A (3) (c) (i)

Omit "Division 4". Insert instead "Division 5".

### [5] Part 8A

Omit the Part. Insert instead:

## Part 8A Complaints about conduct of police officers

25

### Division 1 Preliminary

#### 121 Meaning of "conduct" of police officer

##### (1) Definition

For the purposes of this Act, *conduct* of a police officer means any action or inaction (or alleged action or inaction) of a police officer:

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Police Legislation Amendment Bill 1996

Schedule 1      Amendment of Police Service Act 1990

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- (a) whether or not it also involves non-police participants, and
  - (b) whether or not it occurs while the police officer is officially on duty, and
  - (c) whether or not it occurred before the commencement of this subsection, and 5
  - (d) whether or not it occurred outside the State or outside Australia.
- (2) **Examples**
- Such conduct can involve (but is not limited to) any of the following: 10
- (a) police corruption,
  - (b) the commission of a criminal offence or disciplinary offence by a police officer,
  - (c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer, 15
  - (d) conduct of a police officer:
    - (i) that is otherwise contrary to law, or
    - (ii) that is unreasonable, unjust, oppressive or improperly discriminatory, or 20
    - (iii) that is in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory, or 25
    - (iv) that is based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations, or
    - (v) that is based wholly or partly on a mistake of law or fact, or 30
    - (vi) for which reasons should have been given but were not given,

- 
- (e) a matter of administration involving a police officer,
- (f) a matter that concerns the internal management of the Police Service.
- (3) **Former police officers** 5  
Conduct may be dealt with, or continue to be dealt with, under this Act even though any police officer involved has ceased to be a police officer. Accordingly, references in this Act to a police officer extend, where appropriate, to include a former police officer. 10

## 122 Other definitions

In this Part:

*category* means a category referred to in Division 7.

*complaint* means a complaint made in accordance with Division 2. 15

*conciliation* means conciliation under Division 3.

*investigation* means investigation under Division 5.

*Police Royal Commission* means a Royal Commission to which the *Royal Commission (Police Service) Act 1994* applies. 20

*telephone* includes facsimile.

## 122A Relationship with certain other Acts and bodies

- (1) The provisions of this Part are subject to the *Royal Commission (Police Service) Act 1994* and the *Police Integrity Commission Act 1996*. 25
- (2) The Police Royal Commission and the Police Integrity Commission are to enter into co-operative arrangements regarding the exercise of their respective functions concerning complaints. Any such arrangements have effect subject to any guidelines in force under subsection (3). 30



- (3) The regulations may make provision for or with respect to guidelines to be observed by the Police Royal Commission and the Police Integrity Commission regarding the exercise of their respective functions concerning complaints. 5

**Note.** Section 70 (8) of the *Police Integrity Commission Act 1996* provides as follows:

- (8) A Category 1 complaint, to the extent that it is taken over by the Commission, cannot be dealt with as a complaint under Part 8A of the *Police Service Act 1990* and for that purpose is taken not to be a police complaint, except as directed by the Commission either generally or in any particular case or as directed by the regulations. 10

## **Division 2      Complaints about police officers**

### **123 Right to make complaint** 15

- (1) Any person may make a complaint about the conduct of a police officer.
- (2) This Part does not affect any other right of a person to complain about the conduct of a police officer.

**Note.** Section 121 (3) extends the operation of this Part to former police officers. 20

### **124 Previous complaints excluded**

- (1) A complaint by a person about the conduct of a police officer is not to be dealt with under this Part if:
- (a) the person has already made another complaint in accordance with this Act about the same conduct of the police officer and that other complaint is being dealt with or has already been dealt with under this or any other Act, or 25
- (b) the person has already made another complaint (not being a complaint in accordance with this Act) about the same conduct of the police officer and the other complaint: 30
- (i) is being officially investigated, or
- (ii) has been dealt with after such an investigation, 35

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including, for example, an official investigation by a Royal Commission or by a Parliamentary Committee, but not including an investigation by the Commissioner of Police, the Independent Commission Against Corruption or the New South Wales Crime Commission, or

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- (c) the person is not identified in the complaint and another complaint has already been made in accordance with this Act about the same conduct of the police officer.

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- (2) Nothing in this section prevents a complaint from being dealt with if it contains new allegations or involves new evidence.

### 125 Making of complaints

- (1) **In writing** 15  
A complaint must be in writing.

- (2) **How made**  
A complaint is duly made if:
- (a) it is delivered to a police officer personally or received by a member of the Police Service by post or by facsimile, or 20

- (b) it is lodged or received at the office of the Police Integrity Commission or of the Ombudsman while that office is open for business or it is received in that office by post or facsimile, or 25

- (c) it is addressed to the Police Integrity Commission or the Ombudsman and lodged at a Local Court, or

- (d) it is referred to the Police Integrity Commission or the Ombudsman by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission. 30

- (3) **Exceptional circumstances where unwritten complaint acceptable**  
However, the Police Integrity Commission or Ombudsman may, at discretion, in exceptional circumstances accept a complaint that is not in writing. If such an unwritten complaint is accepted, it must be reduced to writing by the Police Integrity Commission or Ombudsman as soon as practicable. 5
- (4) **Anonymous complaints**  
It is not necessary for the complainant to be identified in a complaint. 10
- (5) **MP may act for complainant**  
A complaint may, with the written consent of the complainant, be made on his or her behalf by a member of Parliament. 15
- (6) **Complaints by prisoners**  
If a prisoner informs a prison officer that the prisoner wishes to make a complaint to a police officer, or to the Police Integrity Commission, or to the Ombudsman, the prison officer must: 20
- (a) take all steps necessary to facilitate the making of the complaint, and
- (b) send immediately to the addressee, unopened, any written matter addressed to a police officer (whether by name or by reference to an office held by the officer), or to the Police Integrity Commission, or to the Ombudsman. 25

In this subsection, *prisoner* means any person in lawful detention or custody, and *prison officer* means any person by whom the prisoner is detained, or in whose custody the prisoner is, or who is in charge of the prisoner. 30



**125A Complaints received by PIC**

- (1) If the Police Integrity Commission receives a complaint, the Commission must, as soon as practicable, cause a copy of the complaint to be sent to:
- (a) the Ombudsman, if it is within a class or kind agreed on by the PIC Commissioner and the Ombudsman as requiring notification to the Ombudsman, and 5
  - (b) the Commissioner of Police, unless: 10
    - (i) it is a Category 1 complaint, or
    - (ii) it is within a class or kind agreed on by the PIC Commissioner and the Commissioner of Police as not requiring notification to the Commissioner of Police.
- (2) The Police Integrity Commission may, if of the opinion that there are reasonable grounds for not sending a copy of a complaint to the Commissioner of Police under this section, send instead a summary or appropriate details of the complaint. 15

**125B Complaints received by Ombudsman** 20

- (1) If the Ombudsman receives a complaint, the Ombudsman must, as soon as practicable, cause a copy of the complaint to be sent to:
- (a) the Police Integrity Commission, if it is a Category 1 complaint, or 25
  - (b) the Commissioner of Police, unless:
    - (i) it is a Category 1 complaint, or
    - (ii) it is within a class or kind agreed on by the Ombudsman and the Commissioner of Police as not requiring notification to the Commissioner of Police. 30
- (2) The Ombudsman may, if of the opinion that there are reasonable grounds for not sending a copy of a complaint to the Commissioner of Police under this section, send instead a summary or appropriate details of the complaint. 35

**125C Multiple handling of complaints**

- (1) Nothing in section 125A or 125B requires a copy of a complaint to be sent to an authority if the authority already has a copy (or a summary or appropriate details) of the complaint. 5
- (2) In this section, *authority* means the Ombudsman, the Commissioner of Police or the Police Integrity Commission.

**126 Complaints received by police to be forwarded to Commissioner** 10

A member of the Police Service who receives a complaint must, as soon as practicable, forward the complaint to the Commissioner of Police or a police officer nominated by the Commissioner of Police, unless it has previously been made to or forwarded to the Commissioner of Police or a nominated officer. 15

**127 Complaints received by police to be forwarded to PIC or Ombudsman**

If the Commissioner of Police or a nominated police officer receives a complaint, either directly or forwarded by another police officer, the Commissioner of Police or nominated officer must, as soon as practicable, cause a copy of the complaint to be sent to: 20

- (a) the Police Integrity Commission, in the case of a Category 1 complaint, and 25
- (b) the Ombudsman, unless:
  - (i) in the case of a Category 1 complaint—it is within a class or kind agreed on by the PIC Commissioner and the Ombudsman as not requiring notification to the Ombudsman, or 30
  - (ii) in the case of a complaint other than a Category 1 complaint—it is within a class or kind agreed on by the Ombudsman and the Commissioner of Police as not requiring notification to the Ombudsman. 35

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**128 Provisions relating to complaints lodged at Local Courts**

- (1) If a complaint is lodged at a Local Court, the Clerk of the Court must, by telephone, notify the Ombudsman as soon as practicable of brief details of the complaint.
- (2) The Clerk of the Court must, as soon as practicable, forward the complaint to the Ombudsman, unless otherwise directed by the Ombudsman. 5
- (3) If the Clerk of the Court is directed to do so by the Ombudsman, the Clerk must:
  - (a) forward the complaint to the Police Integrity Commission, and 10
  - (b) obtain a receipt for the complaint from the Commission, and
  - (c) retain such records of the complaint as the Ombudsman directs, and 15
  - (d) send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk.
- (4) If the Clerk of the Court is directed to do so by the Ombudsman, the Clerk must:
  - (a) forward the complaint to a police officer specified by the Ombudsman, and 20
  - (b) obtain a receipt for the complaint from that police officer, and
  - (c) retain such records of the complaint as the Ombudsman directs, and 25
  - (d) send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk.
- (5) The Ombudsman may give a direction to the Clerk of the Court under subsection (3) only if the complaint appears to the Ombudsman to be likely to be a Category 1 complaint or if the complaint is of a class or kind that the Police Integrity Commission and the Ombudsman have agreed should be sent to the Commission. 30  
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- (6) A reference in the above provisions of this section to the Ombudsman includes a reference to an officer of the Ombudsman nominated by the Ombudsman.
- (7) The Clerk of a Local Court is taken to be an officer of the Ombudsman in connection with any action of the Clerk under this section. 5

**129 Provisions relating to complaints referred by Minister, ICAC or Crime Commission or made by MP**

- (1) If:
  - (a) the Minister refers a complaint to the Police Integrity Commission or the Ombudsman, or 10
  - (b) a member of Parliament acts for a complainant, neither the Minister nor the member becomes the complainant, except for the purposes of any provision of this Act under which the complainant is informed or notified of any matter or given or sent any matter. 15
- (2) If:
  - (a) the Minister publishes to a person whose complaint has been referred by the Minister any matter with respect to the complaint published to the Minister by the Police Integrity Commission, the Ombudsman or a police officer, or 20
  - (b) a member of Parliament publishes to a person for whom the member acts any such matter published to the member, 25

the publication to that person has, for all purposes, the same effect as it would have if it had been published to that person by the Commission, the Ombudsman or the police officer, as the case may be.
- (3) If the Independent Commission Against Corruption refers a complaint to the Police Integrity Commission or the Ombudsman, that Commission does not become the complainant. 30

- (4) If the New South Wales Crime Commission refers a complaint to the Police Integrity Commission or the Ombudsman, the Crime Commission does not become the complainant.

### 130 Intelligence matters

- (1) The Ombudsman and the Commissioner of Police may agree that a particular complaint relates to intelligence matters and be classified as an excluded complaint. 5
- (2) Before agreement is reached, the Commissioner of Police must advise the Ombudsman of the action that is proposed to be taken with respect to the subject-matter of the complaint. 10
- (3) The Ombudsman may require the Commissioner of Police to advise the Ombudsman of action taken or progress on action being taken with regard to an excluded complaint. 15
- (4) The complainant is to be informed that the complaint will not be investigated under this Act.
- (5) An excluded complaint is to be treated as excluded from this Part, but nothing in this section affects any power of the PIC with regard to it. 20
- (6) The Ombudsman and the Commissioner of Police may agree, or the Ombudsman may direct, that an excluded complaint be no longer treated as excluded from this Part, and this Part applies to it accordingly. 25
- (7) Without affecting the generality of section 70 (8) of the *Police Integrity Commission Act 1996*, this section does not apply to a Category 1 complaint, except to the extent that it has been referred or referred back under that Act to be dealt with in accordance with this Part. 30

### Division 3 Conciliation

#### 131 Nature of conciliation

For the purposes of this Part, *conciliation* of a complaint about the conduct of a police officer means dealing with the complaint under this Division in a manner acceptable to the complainant. 35

**132 Complaints where conciliation must be attempted**

An attempt must be made to deal with a complaint about the conduct of a police officer by conciliation if the complaint is of a class or kind that the Ombudsman and the Commissioner of Police have agreed may be suitable for conciliation. 5

**133 Other complaints where conciliation may be attempted**

- (1) An attempt may be made to deal with any other complaint about the conduct of a police officer by conciliation if the officer dealing with the complaint is satisfied that the conciliation may be successful. 10
- (2) This section does not apply to a complaint excluded by section 134.

**134 Complaints that may not be dealt with by conciliation**

A complaint about the conduct of a police officer may not be dealt with by conciliation if: 15

- (a) the conduct appears to have involved the commission of an indictable offence, or
- (b) the Commissioner has decided, or the Ombudsman has directed, that the complaint be investigated under Division 5, 20
- (c) the complainant is not identified.

**135 Who attempts conciliation**

- (1) A police officer is to make an attempt to deal with a complaint by conciliation if the complaint was received by a police officer or if it was referred by the Ombudsman to the Commissioner for conciliation. 25
- (2) If the complaint was received by the Ombudsman and not referred to the Commissioner, the attempt to conciliate is to be made by the Ombudsman or an officer of the Ombudsman. 30



- 
- (3) The person who is attempting to deal with a complaint by conciliation may, with the agreement of the complainant, arrange for a mediator to assist in the conciliation.

**136 Notification of outcome of conciliation**

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- (1) A police officer who attempts to deal with a complaint by conciliation must inform the Ombudsman of the outcome.
- (2) If the Ombudsman or an officer of the Ombudsman attempts to deal with a complaint by conciliation, the Ombudsman must inform the Commissioner of the outcome.

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**137 Statements by police officer during conciliation not admissible in criminal or disciplinary proceedings**

- (1) If a complaint about the conduct of a police officer is being dealt with by conciliation under this Division, any statement made by that police officer in good faith for the purposes of the conciliation is not admissible in any civil, criminal or disciplinary proceedings against the police officer.
- (2) The statement is inadmissible only if the criminal or disciplinary proceedings relate to the conduct that is the subject of the complaint.

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**138 Audit by Ombudsman of conciliation by police officers**

- (1) The Ombudsman is to conduct random audits of complaints that police officers have dealt with by conciliation under this Division.
- (2) For the purposes of any such audit, the Ombudsman may:
- (a) inspect the records made by police officers of a conciliation, and

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- (b) interview any of the parties to the conciliation about the conduct of the conciliation, and
  - (c) interview any other person about matters related to the conciliation.
- (3) The Ombudsman may make recommendations to the Commissioner about the conciliation of complaints under this Division. 5

**139 Procedure where conciliation fails**

If an attempt under this Division to deal with a complaint by conciliation is unsuccessful, the complaint continues thereafter to be subject to the other provisions of this Part. 10

**Division 4 Managerial action**

**139A Application of Division**

This Division applies to: 15

- (a) a complaint that is of a class or kind that the Ombudsman and the Commissioner have agreed is appropriate to be dealt with by managerial action, whether because it relates to matters of management or administration or otherwise, or 20
- (b) a particular complaint that the Ombudsman and the Commission have agreed is appropriate to be dealt with under this Division.

**139B Application of Part to complaints under this Division**

Divisions 3, 5 and 6 do not apply to complaints to which this Division applies. 25

**139C Dealing with complaints under this Division**

Complaints to which this Division applies are to be dealt with by the Commissioner, in accordance with such guidelines (if any) as are agreed on by the Ombudsman and Commissioner. 30

**Division 5 Investigations**

**140 Investigation of complaints**

Complaints may be investigated under this Division.

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**140A Decisions of Commissioner about complaints received by police**

- (1) This section applies to a complaint received by the Commissioner or a nominated police officer as referred to in section 127 or otherwise. 5
- (2) The Commissioner may decide that a complaint be or not be investigated under this Division. The regulations may provide that the Commissioner is taken to have decided not to investigate a complaint under this Division if the Commissioner has not made a decision about it within the prescribed time. 10
- (3) If the Commissioner decides that a complaint be investigated under this Division, the Commissioner must notify the Ombudsman and the complainant (if identified) of the decision. 15
- (4) If the Commissioner decides that a complaint not be investigated under this Division, the Commissioner:
- (a) must notify the Ombudsman of the decision, and
  - (b) must, if the Ombudsman ratifies the decision, notify the complainant (if identified) of the decision in terms approved by the Ombudsman, and 20
  - (c) may, if the Ombudsman ratifies the decision, and if the Commissioner considers it appropriate to do so, notify the police officer whose conduct is the subject of the complaint of the decision. 25
- (5) The Ombudsman may decide that a complaint referred to in subsection (4) should be investigated under this Division. In that case, the Ombudsman must notify the Commissioner and the complainant (if identified) of the Ombudsman's decision. 30
- (6) The Commissioner must cause a complaint to be investigated under this Division if the Ombudsman directs that it should be investigated under this Division.



**141 Decisions of Ombudsman about complaints received by Ombudsman**

- (1) This section applies to a complaint received by the Ombudsman (other than a complaint to which section 140A applies). 5
- (2) The Ombudsman may decide that a complaint be or not be investigated by the Commissioner under this Division. The regulations may provide that the Ombudsman is taken to have decided that a complaint not be investigated under this Division if the Ombudsman has not made a decision about it within the prescribed time. 10
- (3) The Commissioner must cause a complaint to be investigated under this Division if the Ombudsman decides that the complaint should be so investigated and duly notifies the Commissioner accordingly. 15
- (4) The notification to the Commissioner of a decision of the Ombudsman that a complaint be investigated under this Division:
  - (a) is to be in writing, and
  - (b) as far as practicable, is to identify the police officer whose conduct is the subject of the complaint, and 20
  - (c) is to be accompanied by a copy of the complaint or (if the Ombudsman is of the opinion that there are reasonable grounds for not providing a copy of the complaint) by a summary or appropriate details of the complaint. 25
- (5) If the Ombudsman decides that a complaint be investigated by the Commissioner under this Division, the Ombudsman must notify the complainant (if identified) of the decision. 30
- (6) If the Ombudsman decides that a complaint not be investigated by the Commissioner under this Division:
  - (a) the Ombudsman must notify the complainant (if identified) of the decision and of the Ombudsman's reasons for the decision, and 35

- 
- (b) the Ombudsman must send to the Commissioner a copy of the notification, accompanied by a copy of the complaint to which it relates or (if the Ombudsman is of the opinion that there are reasonable grounds for not providing a copy of the complaint) by a summary or appropriate details of the complaint, and 5
  - (c) the Commissioner may, if the Commissioner considers it appropriate to do so, notify the police officer whose conduct is the subject of the complaint of the decision. 10

**141A Factors to be considered by Commissioner or Ombudsman**

- (1) In deciding under section 140A or 141 whether a complaint should be investigated by the Commissioner under this Division, the Commissioner or Ombudsman may have regard to such matters as he or she thinks fit, including whether, in his or her opinion: 15
  - (a) action has been, is being or will be taken to remedy the subject-matter of the complaint without the need for an investigation by the Commissioner under this Division, or 20
  - (b) the complaint is frivolous, vexatious or not made in good faith, or
  - (c) the subject-matter of the complaint is trivial, or 25
  - (d) the conduct complained of occurred at too remote a time to justify investigation, or
  - (e) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress, or 30
  - (f) the complainant does not or, where the complainant is not identified, the complainant could not have an interest, or a sufficient interest, in the conduct complained of.

- (2) Without affecting the generality of subsection (1), the Commissioner or Ombudsman is not to decide that a complaint, in which the complainant is not identified, be investigated under this Division, unless of the opinion:
- (a) that the complaint appears to contain sufficient information to enable an investigation to be carried out, and 5
  - (b) that the conduct the subject of the complaint would:
    - (i) if the conduct had occurred, provide reasonable grounds to believe that a criminal offence had been committed by a police officer, or 10
    - (ii) if a departmental charge were proved against a police officer in relation to the conduct, warrant the imposition of a substantial punishment on the police officer. 15

**141B Investigations not to proceed in certain circumstances**

- (1) The Ombudsman is not to determine that a complaint should be investigated under this Division if of the opinion that the conduct the subject of the complaint is unconnected with the fact that the person concerned is a police officer. 20
- (2) If the Ombudsman forms that opinion after an investigation has begun, the Ombudsman is to consent to or direct a discontinuation of the investigation under section 143. 25

**142 Conduct of investigation by Commissioner**

- (1) An investigation under this Division by the Commissioner is to be conducted by such police investigative staff as are selected by the Commissioner or in accordance with arrangements approved by the Commissioner. 30



- 
- (2) The police officer or police officers carrying out an investigation under this Division are to have regard to any matters specified by the Commissioner or Ombudsman as needing to be examined or taken into consideration.

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**142A Identity of complainant not to be disclosed**

- (1) While investigating a complaint, a police officer must not, without the consent of the Commissioner or another police officer nominated by the Commissioner, disclose to any person (other than the Commissioner or a police officer so nominated) the identity of the complainant. This subsection does not apply to a disclosure in a report to the Commissioner under this Division of the progress or result of the investigation.
- (2) Consent to the disclosure of the identity of the complainant is not to be granted unless it is necessary for the effective conduct of the investigation of the complaint.

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**143 Deferral or discontinuance of investigation**

- (1) The Commissioner may apply to the Ombudsman for consent:
- (a) to defer the commencement or continuation of the investigation of a complaint, or
  - (b) to discontinue the investigation of a complaint.
- (2) The Ombudsman may:
- (a) consent to the deferral of the commencement or continuation of the investigation of a complaint pending the conclusion of any relevant criminal proceedings or for any other good cause, or
  - (b) consent to the discontinuance of the investigation of a complaint if:
    - (i) the Ombudsman is of the opinion action has been, is being or will be taken to remedy the subject-matter of the complaint without the need for the investigation to continue, or

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- (ii) continuation of the investigation would be, in the circumstances of the case, unreasonable or impracticable.
- (3) If the Ombudsman grants a consent and the complainant is identified, the Ombudsman is to notify the complainant in writing of that fact and of the reasons for granting the consent and is to send to the Commissioner a copy of the notification. 5
- (4) If the Ombudsman does not, within 28 days, grant a consent applied for under this section, the Commissioner may, within 14 days thereafter, notify the Ombudsman that the Commissioner will treat the consent as having been granted if the Ombudsman does not grant or refuse the application within 14 days after the date of the letter. 10
- (5) If the Ombudsman does not grant or refuse the consent within 14 days after the date of the letter referred to in subsection (4), the consent is taken to have been granted at the end of that period. 15
- (6) The Ombudsman may, if satisfied that it is in the public interest and without any application by the Commissioner for consent, direct the Commissioner that the investigation of a complaint under this Division be discontinued. 20
- (7) The commencement or continuation of the investigation of a complaint under this Division may not be deferred, and the investigation of a complaint under this Division may not be discontinued, except in accordance with a consent granted or direction given under this section. 25

**144 Monitoring of investigation by Ombudsman**

- (1) The Ombudsman may monitor the progress of the investigation of a complaint under this Division if the Ombudsman considers it is in the public interest to do so. 30
- (2) The Ombudsman or an officer of the Ombudsman may be present as an observer during interviews conducted by police officers for the purposes of an investigation and 35

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confer with those police officers about the conduct and progress of the investigation. The powers of the Ombudsman or an officer of the Ombudsman under this subsection may be exercised only in accordance with arrangements agreed to between the Ombudsman and the Commissioner as to the manner in which the powers are to be exercised.

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(3) The Commissioner is to provide the Ombudsman with such documentary and other information (including records of interviews) as the Ombudsman may from time to time request with respect to an investigation.

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(4) The Commissioner, and any police officers involved in conducting an investigation, are to comply with any arrangements agreed to between the Commissioner and the Ombudsman as to the monitoring of the investigation or of investigations generally.

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#### **145 Proceedings to be instituted if warranted**

(1) If it appears to a police officer conducting an investigation that sufficient evidence exists to warrant the prosecution of any person for an offence, the police officer is, subject to this Act, to cause appropriate proceedings to be instituted against the person.

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(2) The Commissioner must inform the Ombudsman of the institution of any such proceedings and of the particulars of the proceedings.

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(3) A police officer is not to institute proceedings against another police officer for an offence without the approval of the Commissioner.

#### **146 Result of investigation to be reported**

(1) A police officer conducting an investigation must, at the conclusion of the investigation, furnish to the Commissioner a report that:

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(a) gives appropriate details of the investigation (having regard to any guidelines issued by the Commissioner), and

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- (b) explains whether and why any matters specified by the Ombudsman as needing to be examined or taken into consideration were not examined or taken into consideration, and
  - (c) states the result of the investigation, including any adverse findings against any police officer, and 5
  - (d) recommends the appropriate action to be taken (where relevant):
    - (i) to correct unacceptable conduct, or
    - (ii) to prevent a recurrence of unacceptable conduct, or 10
    - (iii) to punish unacceptable conduct, and
  - (e) contains any comments that the police officer conducting the investigation considers appropriate. 15
- (2) The Commissioner is to cause the report to be examined, and to be altered or rewritten if necessary or appropriate, so that a finalised report of the investigation can be sent to the Ombudsman for review.

**147 Report etc to be sent to Ombudsman** 20

- (1) The Commissioner must, as soon as practicable after being satisfied that an investigation has been concluded and a report of the investigation has been finalised:
  - (a) send to the Ombudsman a copy of the finalised report and copies of all statements taken in the course of the investigation and of all other documents on which the report is based, and 25
  - (b) provide the Ombudsman with such comments on the report and statements as the Commissioner thinks fit, and 30
  - (c) specify what action should, in the opinion of the Commissioner, be taken as a result of the investigation.

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- (2) After receiving that material and information, the Ombudsman may require the Commissioner and any police officer who investigated the complaint to provide such additional information as the Ombudsman considers is necessary to enable the Ombudsman to determine whether the complaint was properly investigated. 5

**148 Investigation under Ombudsman Act 1974 where complaint not dealt with in time**

- (1) If the Ombudsman has not, in relation to a complaint, received from the Commissioner the material and information referred to in section 147 (1) within the relevant period referred to in this section, the Ombudsman may make the conduct to which the complaint relates the subject of an investigation pursuant to section 153. 10 15
- (2) The Ombudsman must notify the Commissioner in writing when the Ombudsman commences such an investigation.
- (3) The *relevant period* is the period of 180 days after: 20
- (a) the Commissioner notifies the Ombudsman pursuant to section 140A that the complaint is to be investigated, or
- (b) the Ombudsman notifies the Commissioner pursuant to section 141 of the Ombudsman's determination that the complaint should be investigated, 25
- or that period as extended under section 149 or 150.
- (4) However, the period of 180 days referred to in subsection (3) is to be a period of 90 days in the case of a complaint of a class or kind that the Ombudsman and the Commissioner have agreed should be subject to that shorter period. 30

**149 Extension of time where complaint not dealt with**

- (1) The Commissioner may apply to the Ombudsman for an extension of the relevant period referred to in section 148, and the Ombudsman may grant the extension.
- (2) More than one such application may be made, but no such application may be made after the relevant period has expired. 5
- (3) The Commissioner is to notify the police officer, whose conduct was the subject of the complaint, about the application. The police officer is to be given a reasonable opportunity to make written representations to the Ombudsman as to whether the extension should be granted. 10
- (4) If the Ombudsman grants the extension, the Ombudsman must, if the complainant is identified, notify the complainant in writing, giving the reasons for granting the extension, and must send to the Commissioner a copy of the notification. 15
- (5) If an extension is granted by the Ombudsman, the relevant period is extended by the period specified by the Ombudsman when granting the extension. 20

**150 Extension of time where application for deferral of investigation etc**

- (1) If an application for the Ombudsman's consent is made under section 143, the relevant period referred to in section 148 is extended until: 25
  - (a) the application is granted by the Ombudsman, or
  - (b) the application is withdrawn.
- (2) If an application for consent under section 143 to the deferral of the commencement or continuation of an investigation is granted by the Ombudsman, the relevant period is taken: 30
  - (a) to have ceased to run on the day the application was made, and
  - (b) to recommence to run from the day to which the commencement or continuation is deferred. 35



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**151 Further investigation if Ombudsman not satisfied about  
conduct of investigation**

- (1) If, after receiving the material and information referred to in section 147, the Ombudsman is not satisfied that a complaint was properly investigated under this Division, the Ombudsman may advise the Commissioner accordingly, specifying what are, in his or her opinion, the deficiencies in the investigation. 5
- (2) The Commissioner is, on receipt of the Ombudsman's advice, and if required to do so, to cause a further investigation to be conducted in order to remedy the deficiencies referred to in the advice. 10
- (3) The further investigation is to be conducted within such period (if any) as the Ombudsman specifies.
- (4) This Division (including this section, but excluding sections 140A, 141, 141A and 141B) applies to and in respect of a further investigation under this section in the same way as it applies to an initial investigation. 15

**152 Further consideration if Ombudsman not satisfied about  
outcome of investigation**

- (1) If, after receiving the material and information referred to in section 147, the Ombudsman is not satisfied with the outcome of an investigation (whether because of the quality of the investigation or report or for any other reason), the Ombudsman may request the Commissioner to reconsider the action that the Commissioner proposes should be taken as a result of the investigation. 20 25
- (2) If the Ombudsman makes such a request, the Commissioner may revise the police report or may decide not to alter it. 30
- (3) Instead of or in addition to making such a request, or after consideration of a revised police report, the Ombudsman may prepare a report that contains such of the matters referred to in section 156 (1) (a)–(e) as appear to the Ombudsman to be relevant. 35

- (4) The Ombudsman is to provide a copy of the report under subsection (3) to:
  - (a) the complainant (if identified), and
  - (b) the Minister, and
  - (c) the Commissioner. 5
- (5) The Commissioner is then to provide a copy of the report under subsection (3) to the police officer whose conduct was the subject of the complaint.
- (6) The issue may be the subject of a special report to Parliament by the Ombudsman under section 161. 10

**153 Investigation under Ombudsman Act 1974**

- (1) The Ombudsman may, if satisfied that it is in the public interest to do so, make a complaint, any investigation of the complaint, and any related issues, the subject of an investigation under the *Ombudsman Act 1974*. 15
- (2) The Ombudsman may act under this section before the commencement of an investigation under this Division, during the progress of any such investigation or after the consideration by the Ombudsman of a report by the Commissioner under section 147 or 151. 20
- (3) The Ombudsman must notify the Commissioner of any action under this section.
- (4) On being so notified, the Commissioner is to discontinue any investigation under this Division.
- (5) This section has effect despite anything to the contrary in this Part. 25

**154 Other police investigations not affected**

- (1) The Commissioner or any other police officer is not prevented from investigating, otherwise than under this Division, a matter relating to a complaint even though an investigation under this Division is not made, is deferred 30

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or discontinued, is completed or is made the subject of an investigation under the *Ombudsman Act 1974* or any other Act.

- (2) Without affecting the generality of section 70 (8) of the *Police Integrity Commission Act 1996*, a matter that is the subject of a Category 1 complaint must not be investigated as referred to in subsection (1), unless: 5
- (a) it is referred or referred back under that Act to be dealt with in accordance with this Part, or
- (b) such an investigation is authorised to be carried out by the regulations or by the Commission either generally or in any particular case. 10

## **Division 6 Reports**

### **155 Reports following police investigation**

- (1) If the Ombudsman is, having regard to the finalised report provided by the Commissioner in relation to an investigation under Division 5 and having regard to such other matters as the Ombudsman thinks fit, satisfied that a complaint has, or matters arising out of the investigation have, been satisfactorily dealt with, the Ombudsman is to furnish a report to: 15
- (a) the complainant (if identified), and
- (b) the Commissioner,
- indicating that the Ombudsman is satisfied that the complaint has, or matters arising out of the investigation have, been satisfactorily dealt with. 20 25
- (2) The Commissioner is to furnish a report to the police officer whose conduct was the subject of the complaint.
- (3) A report furnished under this section is to contain an indication of the outcome of the investigation and may, if the Ombudsman or Commissioner thinks fit, be accompanied by a copy of or extracts from or a summary of the finalised report provided by the Commissioner. 30



- (4) A report furnished under subsection (1) may, if the Ombudsman thinks fit, be accompanied by a statement of reasons why the Ombudsman is satisfied that the complaint has, or matters arising out of the investigation have, been satisfactorily dealt with. 5

**156 Report following Ombudsman's investigation**

- (1) The Ombudsman must, at the conclusion of an investigation under the *Ombudsman Act 1974* of a complaint, prepare a report that:
- (a) gives appropriate details of the investigation, and 10
  - (b) states the result of the investigation, including any adverse findings against any police officer, and
  - (c) recommends the appropriate action to be taken (where relevant):
    - (i) to correct unacceptable conduct, or 15
    - (ii) to prevent a recurrence of unacceptable conduct, or
    - (iii) to punish unacceptable conduct, and
  - (d) identifies any unsatisfactory aspects of any report into the complaint prepared by a police officer under this Part, and 20
  - (e) includes any other comments that the Ombudsman considers appropriate.
- (2) The Ombudsman is to provide a copy of the report to:
- (a) the complainant (if identified), and 25
  - (b) the Minister, and
  - (c) the Commissioner.
- (3) The Commissioner is then to provide a copy of the report to the police officer whose conduct was the subject of the complaint. 30

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**157 Recommendation in report under section 156**

In a report under section 156, the Ombudsman may (where relevant) recommend:

- (a) that the conduct to which it relates be considered or reconsidered by the police officer whose conduct it was, or by any person in a position to supervise or direct that police officer in relation to the conduct or to review, rectify, mitigate or change the conduct or its consequences, or 5
- (b) that action be taken to rectify, mitigate or change the conduct or its consequences, or 10
- (c) that reasons be given for the conduct, or
- (d) that any law or practice relating to the conduct be changed, or
- (e) that any other action be taken. 15

**158 Notification of proposed action on reports**

- (1) The Commissioner must, as soon as practicable after receiving a report under this Division, notify the Ombudsman of the nature of the action (if any) proposed to be taken by the Commissioner as a result of the report. 20
- (2) The nature of the action that the Commissioner may propose in the notification includes:
  - (a) that the police officer be admonished, or
  - (b) that a departmental charge be preferred against the police officer, or 25
  - (c) that consideration be given to the police officer being charged with a criminal offence.

The notification may contain particulars of any penalty proposed to be imposed.

- (3) Where the Ombudsman has given a copy of a report under section 156 to the Commissioner and the Ombudsman is of the opinion: 30

- (a) that the Commissioner has unreasonably delayed notifying the Ombudsman under this section with respect to the report, or
  - (b) that the nature of the proposed action notified under this section by the Commissioner is, in the circumstances of the case, unreasonable or inadequate, or 5
  - (c) that the Commissioner has unreasonably delayed taking action as a result of the report, 10
- the Ombudsman is to advise the Commissioner accordingly by notice in writing served on the Commissioner.
- (4) If the Ombudsman and the Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (3), either or both of them may notify the Minister that the issue is unresolved. The issue may be the subject of a special report to Parliament by the Ombudsman under section 161. 15

**159 Notification of action taken on report**

- (1) The Commissioner must, as soon as practicable after taking action as the result of a report under this Division (being action with respect to a police officer whose conduct is the subject of a complaint), notify the Ombudsman of the nature of the action so taken. 20
- (2) The notification must, if the action taken consists of or includes the imposition of a penalty, contain particulars of the nature and quantum of the penalty imposed. 25
- (3) The Ombudsman is to determine whether, in the circumstances of the case, action so notified was, in the opinion of the Ombudsman: 30
  - (a) appropriate, and
  - (b) taken within a reasonable time.

**160 Progress report to complainant**

The Ombudsman may from time to time report to the complainant (if identified) on the progress of an investigation under Division 5 into a complaint. 35



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**161 Special report to Parliament**

- (1) The Ombudsman may, at any time, make a special report to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report on any matter arising in connection with the exercise of his or her functions under this Part. 5
- (2) The Ombudsman may include in such a report a recommendation that the report be made public as soon as practicable.

**162 Special report about serious misconduct** 10

If the Ombudsman is of the opinion that a police officer is guilty of such serious misconduct as may warrant dismissal or punishment, the Ombudsman may report his or her opinion and the reasons for that opinion to the Minister and the Commissioner. 15

**Division 7 Complaints Information System**

**162A Complaints Information System**

- (1) The regulations may make provision for or with respect to a Complaints Information System, including:
- (a) the establishment, control, operation and maintenance of the System, and 20
  - (b) the registration of complaints in the System, and
  - (c) the nature of the information about complaints that is to be registered in the System, and
  - (d) access to information in the System, and 25
  - (e) retention, amendment and deletion of material in the System, and
  - (f) security arrangements for the System, and
  - (g) mechanisms for identifying, preventing and detecting abuse, misuse or corrupt use of the System or information in the System. 30

- (2) Protocols and memoranda of understanding may be entered into by the PIC Commissioner, the Ombudsman and the Commissioner of Police regarding any matter for or with respect to which regulations can be made under this section. Any such protocol or memorandum is subject to the provisions of the regulations and cannot create an offence. 5
- (3) A regulation made for the purposes of this section may create an offence punishable by a penalty not exceeding 50 penalty units. 10

**162B Registration of complaints**

- (1) Information about all complaints received by members of the Police Service, the PIC or the Ombudsman must be registered in the Complaints Information System.
- (2) Despite subsection (1), the PIC may direct that information about a Category 1 complaint (or a specified class of Category 1 complaints): 15
  - (a) not be entered in the System, or
  - (b) be removed from the System, or
  - (c) be entered or re-entered in the System. 20
- (3) The PIC and officers of the PIC approved by the PIC Commissioner are to have unrestricted access to all information in the System.
- (4) The Ombudsman and officers of the Ombudsman are to have unrestricted access to all information in the System, subject however to the terms of any caveat under this section. 25
- (5) The PIC may place a caveat on particular information registered in the System. Access to this information by other agencies and other persons is to be restricted in accordance with the terms of the caveat. 30
- (6) The Ombudsman may place a caveat on particular information registered in the System in relation to an

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excluded complaint under section 130. Access to this information by agencies and persons (other than the PIC and officers of the PIC approved by the PIC Commissioner) is to be restricted in accordance with the terms of the caveat.

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### 162C Classification of complaints

- (1) Complaints are classified as follows:
- (a) Category 1 complaints,
  - (b) Category 2 complaints,
  - (c) Category 3 complaints,
  - (d) Category 4 complaints.
- (2) A Category 1 complaint is a Category 1 complaint as defined in section 67 of the *Police Integrity Commission Act 1996*.
- Note.** The definition of that expression is as follows:
- Category 1 complaint** means a police complaint:
- (a) that is of a class or kind that the PIC Commissioner and the Ombudsman have agreed should be referred to the Commission, or
  - (b) that the PIC Commissioner has requested should be referred to the Commission, or
  - (c) that is of a class or kind prescribed by the regulations.
- (3) A Category 2 complaint is a complaint that does fall within Category 1, 3 or 4.
- (4) A Category 3 complaint is a complaint that is of a class or kind referred to in section 132.
- (5) A Category 4 complaint is a complaint that is of a class or kind referred to in section 139A.

### 162D Assignment to categories

- (1) On receiving a complaint, the Ombudsman or the Commissioner of Police is to make an initial decision as to the category into which the complaint falls, based on this Act, the regulations and any agreements under this Act.



- (2) On receiving a complaint, the PIC is to make an initial decision as to whether or not the complaint falls within Category 1, based on this Act, the regulations and any guidelines issued by the PIC.
- (3) A complaint that involves conduct that could involve two or more categories is to be treated as falling within the higher or highest of them (Category 1 being treated as the highest category). 5
- (4) A complaint may be treated as a Category 2 complaint if there is doubt as to the category into which it falls. 10

**162E Reclassification of inappropriately classified complaints**

- (1) The Commissioner of Police may direct the reclassification of a Category 3 or 4 complaint at any time, if it appears that the complaint was inappropriately classified. This power is subject to any direction under subsection (2) or (3). 15
- (2) The Ombudsman may direct the reclassification of a Category 2, 3 or 4 complaint at any time, if it appears that the complaint was inappropriately classified. This is subject to any direction under subsection (3). 20
- (3) The PIC may direct the reclassification of a Category 2, 3 or 4 complaint as a Category 1 complaint at any time, if it appears that the complaint was inappropriately classified.
- (4) Nothing in this section prevents a direction being given under section 162F or 162G that a particular complaint be treated as a Category 1 or 2 complaint. 25

**162F Ombudsman may take over complaint**

- (1) The Ombudsman may at any time direct that a Category 3 or 4 complaint be treated as a Category 2 complaint. This power has effect subject to a direction under section 162G. 30
- (2) The complaint is then to be treated as a Category 2 complaint, even though it would not or may not otherwise fall within that category. 35

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**162G Police Integrity Commission may take over complaint**

- (1) The Police Integrity Commission may at any time direct that a Category 2, 3 or 4 complaint be treated as a Category 1 complaint.
- (2) The complaint is then to be treated as a Category 1 complaint, even though it would not or may not otherwise fall within that category. 5

**162H No review of classification**

Judicial review of or involving the classification or reclassification of a complaint into a category (whether by way of appeal or otherwise) is not available. 10

**Division 8 Miscellaneous**

**163 Ombudsman may require further information from complainant**

- (1) For the purposes of the conciliation of a complaint under Division 3 or for the purpose of determining whether a complaint should be investigated under Division 5, the Ombudsman may, if the complainant is identified, do any one or more of the following: 15
  - (a) request a complainant to attend before the Ombudsman for the purpose of providing further information concerning the complaint, 20
  - (b) request the complainant to provide further written particulars concerning the complaint,
  - (c) request the complainant to verify by statutory declaration his or her complaint, or any particulars given by the complainant concerning his or her complaint. 25
- (2) The Ombudsman may withdraw the request if the complainant objects and the Ombudsman is satisfied that the grounds of the objection are well-founded. 30

- (3) If the Ombudsman makes a request (and it is not withdrawn), the Ombudsman is to take no further action in connection with the complaint concerned until the request is complied with or a reasonable time for compliance with the request has elapsed. 5
- (4) If the request is not complied with within a reasonable time, the Ombudsman may treat the complaint concerned as having been dealt with under Division 3 in a manner acceptable to the complainant. If the Ombudsman does so, the Ombudsman is to inform the Commissioner and the complainant accordingly. 10

**164 Ombudsman may request further information from other persons**

- (1) For the purpose of determining whether a complaint should be investigated under Division 5, the Ombudsman may also request information from persons other than the complainant. 15
- (2) However, this section does not authorise the Ombudsman:
  - (a) to investigate the complaint or to collect information for the purposes of the investigation of the complaint or of a report under this Part, or 20
  - (b) to interview the police officer the subject of the complaint, or
  - (c) to require persons to provide information. 25

**165 Ombudsman may require Commissioner to provide information etc**

- (1) For the purposes of a conciliation of a complaint or for the purpose of determining whether a complaint should be investigated under Division 5, the Commissioner must, at the request of the Ombudsman, provide the Ombudsman:
    - (a) with an explanation of the policies, procedures and practices of the Police Service relevant to the conduct complained of, and 30
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- (b) with such documentary and other information (including records of interviews) as the Ombudsman requests with respect to any inquiries made by the Commissioner or other police officers into the complaints, and 5
- (c) to the extent to which the Commissioner is able to do so, with any explanation, comment or information sought by the Ombudsman in connection with the complaint.
- (2) The Ombudsman may withdraw any such request if the Commissioner objects and the Ombudsman is satisfied that the grounds of the objection are well-founded. 10
- (3) The Ombudsman may, instead of making any such request, seek the information concerned from other police officers in accordance with arrangements agreed to by the Commissioner and the Ombudsman. 15

**166 Certain information to be confidential**

- (1) If the Commissioner is of the opinion that publication of any material or information:
- (a) which, under this Part, the Commissioner or any other police officer is required to provide for the Ombudsman, or 20
- (b) which, under the *Ombudsman Act 1974*, the Commissioner or any other police officer is required, in the course of an investigation under that Act of the conduct to which a complaint relates, to provide for the Ombudsman, 25
- might prejudice the investigation or prevention of crime, or otherwise be contrary to the public interest, the Commissioner is to inform the Ombudsman accordingly, giving the reasons for his or her opinion. 30
- (2) If the Ombudsman, pursuant to a requirement made under the *Ombudsman Act 1974* in the course of an investigation under that Act of the conduct to which a

complaint relates, receives material or information from a police officer, the Ombudsman may not, except as provided in subsection (3) (b) or with the consent of the Commissioner, publish that material or information, otherwise than to the Commissioner, until the expiration of 21 days after that receipt. 5

- (3) If the Ombudsman is provided with material or information in respect of which the Commissioner has given the opinion referred to in subsection (1), the Ombudsman: 10
- (a) may not, except as provided in paragraph (b), publish that material or information, and
  - (b) may, if in his or her opinion the circumstances so warrant, make in relation to that material or information a report to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report. 15

**167 Certain provisions of Ombudsman Act 1974 to apply**

Sections 17, 18 and 23 of the *Ombudsman Act 1974* apply to and in respect of the exercise by the Ombudsman of the functions conferred and imposed by this Part in the same way as they apply to and in respect of an investigation by the Ombudsman under the *Ombudsman Act 1974*. 20

**168 Information to be confidential** 25

Without limiting the operation of section 34 (1) (a) of the *Ombudsman Act 1974*, in the application of section 34 (1) of that Act to and in respect of information received in the course of the administration or execution of this Part, the reference in that subsection: 30

- (a) to a public authority—is to be construed as a reference to a police officer, and
- (b) to the head of that authority—is to be construed as a reference to the Commissioner, and
- (c) to the responsible Minister—is to be construed as a reference to the Minister administering this Act. 35

**169 Ombudsman or officer as witness**

- (1) Neither the Ombudsman, nor an officer or special officer of the Ombudsman who is not a police officer, is competent or compellable, in any legal proceedings or in any proceedings before the Police Tribunal, to give evidence or produce documents in respect of any matter in which he or she is or was involved in the course of the administration or execution of this Part. 5
- (2) Subsection (1) does not apply to or in respect of any proceedings under section 37 of the *Ombudsman Act 1974* or under Part 3 of the *Royal Commissions Act 1923*. 10
- (3) Subsections (1) and (2) do not prejudice or affect the operation of section 35 of the *Ombudsman Act 1974* in relation to the administration and execution of this Act. 15

**170 Limitation on delegation of functions by Ombudsman**

- (1) The functions of the Ombudsman that may, under section 10 of the *Ombudsman Act 1974*, be delegated to a special officer of the Ombudsman (other than an Assistant Ombudsman) do not include: 20
- (a) any power or duty to make a report under this Act, or
- (b) the power to require additional information referred to in section 147 (2) of this Act.
- (2) The functions of the Ombudsman that may, under section 10 of the *Ombudsman Act 1974*, be delegated to an Assistant Ombudsman do not include any power or duty to make a report under this Act (other than a report under section 155, 156 or 160). 25

**170A Provisions relating to reports** 30

- (1) **Tabling**  
A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this Act must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer. 35



- (2)    **Public reports**  
If a report includes a recommendation by the Ombudsman that the report be made public forthwith, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House. 5
  
- (3)    **Privileges and immunities**  
A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House. 10
  
- (4)    **Report procedures**  
A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act. 15

**171 Liability to do duty continues**

This Part does not operate to absolve a police officer who receives a complaint from liability to perform any duty imposed on the police officer otherwise than by this Part. 20

**172 Publicity**

- (1)    The Ombudsman is to cause to be prepared pamphlets briefly explaining the rights and duties of police officers and the public under this Part. 25
  
- (2)    The pamphlets are to be written in the English language and in such other languages as the Ombudsman considers necessary.
  
- (3)    The Ombudsman must: 30
  - (a)    supply the Commissioner with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at each police station in the State, and the Commissioner is to distribute the pamphlets accordingly, and 35

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- (b) supply the Director-General of the Attorney General's Department with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at the office of each Local Court in the State, and the Director-General is to distribute the pamphlets accordingly, and 5
  - (c) make such arrangements as the Ombudsman thinks fit with any government department or instrumentality or with any other body or organisation for making the pamphlets available, or distributing them, to any interested person, and 10
  - (d) take such further or other action as the Ombudsman considers necessary to bring the provisions of this Part to the attention of interested persons. 15

**172A Certain documents privileged**

- (1) A document brought into existence for the purposes of this Part is not admissible in evidence in any proceedings other than an inquiry under section 197 or proceedings which concern the discipline of police officers and which are dealt with by: 20
  - (a) the Commissioner, or
  - (b) the Police Tribunal, or
  - (c) GREAT.
- (2) Subsection (1) does not apply to or in respect of: 25
  - (a) a document comprising a complaint, or
  - (b) a document published by order of, or under the authority of, the Presiding Officer of a House of Parliament or either House, or both Houses, of Parliament, or 30
  - (c) a document published under section 197 (5), or
  - (d) a document that a witness is willing to produce.
- (3) Subsections (1) and (2) do not operate to render admissible in evidence in any proceedings any document that would not have been so admissible if this section had not been enacted. 35

**172B Consultation with Minister**

The Ombudsman may consult with the Minister about a complaint at any stage and may for that purpose disclose to the Minister any information relating to or arising in connection with the complaint, including: 5

- (a) any matters arising from an investigation of the complaint, and
- (b) any report or proposed report relating to the complaint, and
- (c) any action taken or proposed to be taken in connection with the complaint. 10

**172C Action may be taken before report finalised**

- (1) Action (including disciplinary or criminal action) may be taken in relation to a complaint before the investigation of, or report by the Commissioner or Ombudsman relating to, the complaint has been finalised under this Part. 15
- (2) The views of the Ombudsman should, as far as practicable, be sought and taken into account before any such action is so taken. 20
- (3) This section has effect despite any other provision of this Part.

**172D Investigation on Ombudsman's own motion**

- (1) Where it appears to the Ombudsman that any conduct of a police officer could be but is not the subject of a complaint under this Part, the Ombudsman may make the conduct the subject of an investigation under the *Ombudsman Act 1974*. 25
- (2) The Ombudsman may make preliminary inquiries for the purpose of deciding whether to make any such conduct the subject of an investigation under the *Ombudsman Act 1974*. 30
- (3) Section 156 applies to such an investigation as if the Ombudsman had made a complaint about the conduct.



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**[6] Part 9, Division 1A, heading**

Insert “or Police Integrity Commission” after “Police Royal Commission”.

**[7] Section 181A Definition and operation of Division**

Omit the definition of *Police Royal Commission*. Insert instead: 5

*Police Royal Commission* means a Royal Commission to which the *Royal Commission (Police Service) Act 1994* applies.

**[8] Section 181B Dismissal of police officers—information arising out of Police Royal Commission or Police Integrity Commission** 10

Insert “or the Police Integrity Commission” after “Police Royal Commission” in section 181B (1).

**[9] Section 181C Acceptance of resignation of police officers in certain cases**

Insert “or the Police Integrity Commission” after “Police Royal Commission” in section 181C (b). 15

**[10] Section 200 Bribery or corruption**

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

Insert instead: 20

(4) An offence under this section is an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 7 years, or both.

**[11] Section 207 Proceedings for offences**

Omit "Proceedings" from section 207 (1).  
Insert instead "Except where otherwise expressly provided by this Act, proceedings".

**[12] Section 207 (3) and (4)**

5

Insert after section 207 (2):

- (3) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent. 10
- (4) If, in accordance with subsection (3), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is 50 penalty units or imprisonment for 2 years, or both. 15

**[13] Section 219 Regulations**

Insert after section 219 (2):

- (2A) The regulations may make provision for or with respect to the functions of the Commissioner, the Ombudsman, the Police Integrity Commission and other persons in connection with the handling of complaints against police officers under the legislative scheme constituted by this Act, the *Ombudsman Act 1974* and the *Police Integrity Commission Act 1996*. 20

---

## Schedule 2 Amendment of Confiscation of Proceeds of Crime Act 1989

(Section 4)

### [1] Section 4 Definitions

Insert "or Commissioner for the Police Integrity Commission" after "Director of Public Prosecutions" in paragraph (a) of the definition of *appropriate officer* in section 4 (1). 5

### [2] Section 4

Renumber paragraph (e) of the definition of *prescribed authority* as paragraph (f), and insert before that paragraph: 10

(e) the Police Integrity Commission, or

### [3] Section 88A

Insert after section 88:

#### 88A Commissioner for the Police Integrity Commission

(1) The Commissioner for the Police Integrity Commission may exercise any function under this Act only: 15

(a) after consultation with the Director of Public Prosecutions, or

(b) in conformity with an arrangement referred to in section 84 of the *Police Integrity Commission Act 1996*, 20

and must consider whether any such function should instead be exercised by the Director.

(2) It is intended that the Commissioner for the Police Integrity Commission will exercise a function under this Act only in connection with matters arising during or out of the Police Integrity Commission's own investigations. However, this subsection does not provide any grounds for an appeal against or any other challenge to the exercise by the Commissioner of any such function. 25  
30



**Schedule 3 Amendment of Independent  
Commission Against Corruption Act  
1988**

(Section 5)

- [1] Section 3 Definitions** 5
- Insert in alphabetical order in section 3 (1):
- hearing* means a hearing under this Act.
- [2] Section 3 (1)**
- Insert “, and (without limitation) includes a preliminary investigation referred to in section 20A” after “Act” in the definition of *investigation*. 10
- [3] Section 20A**
- Insert after section 20:
- 20A Preliminary investigations**
- (1) An investigation may be in the nature of a preliminary investigation. 15
- (2) A preliminary examination can be conducted, for example, for the purpose of assisting the Commission:
- (a) to discover or identify conduct that might be made the subject of a more complete investigation under this Act, or 20
- (b) to decide whether to make particular conduct the subject of a more complete investigation under this Act.
- (3) Nothing in this section affects any other provision of this Act. 25

**[4] Section 41 Authority conferred by warrant**

Insert “, or a senior Commission investigator, named in and” after “Force” where firstly occurring in section 41 (2).

**[5] Section 41 (2)**

Insert “or senior Commission investigator” after “Force” where secondly occurring. 5

**[6] Section 41 (3)**

Insert after section 41 (2):

(3) In this section:

*senior Commission investigator* means an officer of the Commission who is designated by the Commissioner as a senior investigator and who is issued by the Commissioner with means of identification as such a senior Commission investigator. 10

**[7] Section 50**

15

Omit the section. Insert instead:

**50 Protection of witnesses and persons assisting Commission**

(1) If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary: 20

(a) to protect the safety of any such person, or 25

(b) to protect any such person from intimidation or harassment.

- (2) In this section, a reference to a person who is assisting the Commission is a reference to a person who:
- (a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing, or 5
  - (b) has produced or proposes to produce a document or other thing to the Commission under this Act, or
  - (c) has assisted, is assisting or is to assist the Commission in some other manner. 10
- (3) Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public official:
- (a) to provide any protection referred to in subsection (1), or 15
  - (b) to provide personnel or facilities or both to assist in providing that protection, or
  - (c) to otherwise assist in the provision of that protection.
- (4) The Commissioner of Police, or such a public authority or public official, is under a duty to comply with any such direction as far as reasonably possible. 20
- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person and containing directions of a kind or kinds referred to in subsection (3). 25
- (6) A person who contravenes an order applying to the person under subsection (5) without reasonable excuse is guilty of an indictable offence.
- Maximum penalty: 200 penalty units or imprisonment for 5 years, or both. 30
- (7) Nothing in this section affects the *Witness Protection Act 1995*.



**[8] Section 82 Offences relating to obtaining information**

Insert "in a material particular" after "false or misleading".

**[9] Section 93**

Omit the section. Insert instead:

**93 Injury to witness or person assisting Commission** 5

(1) A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of:

- (a) his or her assisting the Commission, or
- (b) any evidence given by him or her before the Commission, 10

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

(2) In this section, a reference to a person assisting the Commission is a reference to a person who: 15

- (a) has appeared, is appearing or is to appear as a witness before the Commission, or
- (b) has complied with or proposes to comply with a requirement under section 21 or 22, or 20
- (c) has assisted, is assisting or is to assist the Commission in some other manner.

**[10] Section 94**

Omit the section. Insert instead:

**94 Dismissal of witness, or person assisting Commission, by employer** 25

(1) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Commission is guilty of an indictable offence. 30

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (2) In this section, a reference to a person assisting the Commission is a reference to a person who:
- (a) has appeared, is appearing or is to appear as a witness before the Commission, or
  - (b) has complied with or proposes to comply with a requirement under section 21 or 22, or 5
  - (c) has assisted, is assisting or is to assist the Commission in some other manner.
- (3) In any proceedings for an offence against this section, it lies on the employer to prove that any employee shown 10 to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1).

**[11] Section 96 Bribery of officer of Commission** 15

Omit "5 years" wherever occurring. Insert instead "7 years".

**[12] Part 10A**

Insert after Part 10:

**Part 10A Special powers**

**101A Definitions** 20

In this Part:

*Commission investigator* means an officer of the Commission who is designated by the Commissioner as an investigator and who is issued by the Commissioner with means of identification as such an investigator. 25

*Commission surveillance officer* means an officer of the Commission who is designated by the Commissioner as a surveillance officer and who is issued by the Commissioner with means of identification as such an officer. 30

*seconded police officer* means:

- (a) a member of the Australian Federal Police, or
- (b) a member of the Police Force of another State or Territory, or
- (c) a member of the Police Force of any country prescribed by the regulations for the purposes of this Part, 5

who is seconded or otherwise engaged to assist the Commission.

**101B Commission investigator who is seconded police officer to have all powers of NSW police officer** 10

- (1) A Commission investigator who is a seconded police officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Service Act 1990* has and may exercise under any law of the State (including the common law and this Act). 15
- (2) Those functions extend to functions conferred after the commencement of this Part. 20
- (3) A Commission investigator has and may exercise those functions by virtue of this section only when acting in the person's capacity as an officer of the Commission.
- (4) This section does not operate to subject a Commission investigator to the control and direction of the Commissioner of Police or any other police officer when acting in the person's capacity as an officer of the Commission. 25
- (5) A complaint about the conduct of a Commission investigator when exercising the functions of a police officer may not be made under Part 8A of the *Police Service Act 1990*. 30

**[13] Section 111 Secrecy**

Insert "or disciplinary proceedings" after "prosecution" wherever occurring in section 111 (3) and (4) (b). 35



**[14] Section 111A, 111B**

Insert after section 111:

**111A Secrecy provisions in other Acts**

The following provisions do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under this Act: 5

- (a) section 15 (Secrecy) of the *Companies (Administration) Act 1981*,
- (b) section 206 (Disclosure of information relating to Police Board functions) of the *Police Service Act 1990*. 10

**111B Privacy Committee Act 1975**

- (1) **Disclosure of information by members or officers of Privacy Committee** 15

Section 20 of the *Privacy Committee Act 1975* does not apply to the disclosure of information for the purposes of any proceedings for an offence under this Act.

- (2) **Members or officers of Privacy Committee as witnesses** 20

Section 21 of the *Privacy Committee Act 1975* does not apply in respect of any proceedings for an offence under this Act.

**[15] Section 112 Publication of evidence etc**

Insert after section 112 (1): 25

- (1A) The Commission is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

**[16] Section 116 Proceedings for offences**

Insert after section 116 (3):

- (4) Proceedings for an alleged offence under section 80 (c) or 81 may be commenced within 3 years after the commission of the alleged offence.

5

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**Schedule 4 Amendment of Ombudsman Act 1974**

(Section 6)

**[1] Section 5 Definitions**

Omit the definition of *Joint Committee* from section 5 (1).

Insert instead:

5

*Joint Committee* means the joint committee called the Committee on the Office of the Ombudsman and the Police Integrity Commission, constituted under this Act.

**[2] Section 31A Constitution of Joint Committee**

Insert "and the Police Integrity Commission" after "Ombudsman".

10

**[3] Section 31A (2)**

Insert at the end of section 31A:

- (2) The Joint Committee has and may exercise the functions conferred or imposed on it by or under this Act, the *Police Integrity Commission Act 1996*, or any other Act.

15

**[4] Section 31B Functions**

Omit "The functions of the Joint Committee are as follows" from section 31B (1).

Insert instead "The Joint Committee has the following functions under this Act".

20

**[5] Section 31BA Power to veto proposed appointments**

Omit "Ombudsman or Director of Public Prosecutions" from section 31BA (1).

Insert instead "Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission".

25



- 
- [6] Section 31BA (5)**
- Insert after section 31BA (5) (b):
- , and
- (c) in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the *Police Integrity Commission Act 1996*. 5
- [7] Section 31H Confidentiality** 10
- Omit "Ombudsman or Director of Public Prosecutions" from section 31H (1A) and (1C) wherever occurring.
- Insert instead "Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission". 15
- [8] Section 35A Immunity of Ombudsman and others**
- Omit "this Act" from section 35A (1).
- Insert instead "this or any other Act".
- [9] Section 37 Offences**
- Insert after section 37 (3): 20
- (4) A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of:
- (a) his or her making a complaint to the Ombudsman, or 25
- (b) his or her assisting the Ombudsman, or
- (c) any evidence given by him or her to the Ombudsman,
- is guilty of an indictable offence.
- Maximum penalty: 200 penalty units or imprisonment for 5 years, or both. 30

- (5) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Ombudsman is guilty of an indictable offence. 5
- Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.
- (6) In any proceedings for an offence against subsection (5), it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (5). 10
- (7) In this section, a reference to a person assisting the Ombudsman is a reference to a person who: 15
- (a) has appeared, is appearing or is to appear as a witness before the Ombudsman, or
  - (b) has complied with or proposes to comply with a requirement under section 18, or
  - (c) has assisted, is assisting or is to assist the Ombudsman in some other manner. 20

**[10] Section 38**

Omit the section. Insert instead:

**38 Proceedings for offences**

- (1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone. 25
- (2) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent. 30

- 
- (3) If, in accordance with subsection (2), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is:
- (a) in the case of an individual—the smaller of:
    - (i) a fine of 50 penalty units or imprisonment for 2 years, or both, or 5
    - (ii) the maximum penalty otherwise applicable to the offence when committed by an individual, or
  - (b) in the case of a corporation—the smaller of: 10
    - (i) a fine of 100 penalty units, or
    - (ii) the maximum penalty otherwise applicable to the offence when committed by a corporation.



**Schedule 5 Amendment of Royal Commission  
(Police Service) Act 1994**

(Section 7)

**[1] Section 26 Protection of witnesses and persons assisting  
Commission 5**

Omit section 26 (1). Insert instead:

- (1) If it appears to the Commissioner that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commissioner may make such arrangements as are necessary: 10
- (a) to protect the safety of any such person, or
- (b) to protect any such person from intimidation or harassment. 15

**[2] Section 26 (3)–(7)**

Insert after section 26 (2):

- (3) Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public official: 20
- (a) to provide any protection referred to in subsection (1), or
- (b) to provide personnel or facilities or both to assist in providing that protection, or
- (c) to otherwise assist in the provision of that protection. 25
- (4) The Commissioner of Police, or such a public authority or public official, is under a duty to comply with any such direction as far as reasonably possible.

- 
- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person and containing directions of a kind or kinds referred to in subsection (3).
- (6) A person who contravenes an order applying to the person under subsection (5) without reasonable excuse is guilty of an indictable offence. 5  
Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.
- (7) Nothing in this section affects the *Witness Protection Act 1995*. 10

**[3] Section 41 Proceedings for offences**

Omit "Proceedings".

Insert instead "Except where otherwise expressly provided by this Act, proceedings". 15

**[4] Section 41 (2) and (3)**

Insert at the end of section 41:

- (2) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent. 20
- (3) If, in accordance with subsection (2), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is 50 penalty units or imprisonment for 2 years, or both. 25

**Schedule 6 Amendment of other Acts**

(Section 8)

**6.1 Defamation Act 1974 No 18**

**[1] Section 17S**

Insert after section 17R: 5

**17S Matters arising under the Police Integrity Commission Act 1996**

- (1) There is a defence of absolute privilege for a publication:
  - (a) to or by the Police Integrity Commission, or
  - (b) to or by the Commissioner for the Police Integrity Commission as Commissioner, or 10
  - (c) to or by the Inspector of the Police Integrity Commission as Inspector, or
  - (d) to any officer of the Commission or officer of the Inspector (within the meaning of the *Police Integrity Commission Act 1996*) as such an officer. 15
- (2) This section applies in relation to any hearing before the Police Integrity Commission or Inspector of the Police Integrity Commission or any other matter relating to the powers, authorities, duties or functions of the Commission or Inspector. 20

**[2] Schedule 2 Proceedings of Public Concern and Official and Public Documents and Records**

Insert at the end of clause 2 (inserting the appropriate item number):

- ( ) proceedings at a hearing held in public by the Police Integrity Commission or Inspector of the Police Integrity Commission. 25



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**6.2 Freedom of Information Act 1989 No 5**

**Schedule 2 Exempt bodies and offices**

Insert at the end of the Schedule:

The Police Integrity Commission—corruption prevention, complaint handling, investigative and report functions. 5

The office of Inspector of the Police Integrity Commission—operational auditing, complaint handling, investigative and report functions.

**6.3 Protected Disclosures Act 1994 No 92** 10

**[1] Section 4 Definitions**

Insert in alphabetical order:

*PIC* means the Police Integrity Commission constituted under the *Police Integrity Commission Act 1996*.

*PIC Inspector* means the Inspector of the Police Integrity Commission appointed under the *Police Integrity Commission Act 1996*. 15

*PIC officer* means an officer of the Commission, as defined in the *Police Integrity Commission Act 1996*.

*PICI officer* means an officer of the Inspector, as defined in the *Police Integrity Commission Act 1996*. 20

**[2] Section 4**

Insert at the end of paragraph (c) of the definition of *investigating authority*:

, or 25

(d) the PIC, or

(e) the PIC Inspector.



- 
- (b) be a disclosure of information that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the PIC, a PIC officer or a PICI officer.
- (3) To be protected by this Act, a disclosure by a public official to an investigating authority (being the Auditor-General, the Commission or the Ombudsman) concerning the PIC or a PIC officer must relate to a matter referred by the PIC Inspector to the investigating authority under section 95 of the *Police Integrity Commission Act 1996*. 5 10

**[7] Section 13 Disclosures about investigating authorities**

Insert after section 13 (4):

- (4A) Despite section 10, a disclosure by a public official to the Commission that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the PIC Inspector, the PIC Inspector or a PICI officer has engaged or proposes to engage in conduct of a kind that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act. 15 20
- (4B) The Commission may investigate, and report, in accordance with the *Independent Commission Against Corruption Act 1988* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (4A). 25

**6.4 Public Sector Management Act 1988 No 33**

**Schedule 1 Departments**

Insert in alphabetical order of Departments:

Police Integrity Commission                      \*Commissioner for the Police Integrity Commission 30



**6.5 Search Warrants Act 1985 No 37**

**Section 10 Definitions**

Insert in alphabetical order of Acts in the definition of *search warrant*:

section 45 of the *Police Integrity Commission Act 1996*, 5

**6.6 Telecommunications (Interception) (New South Wales) Act 1987 No 290**

**[1] Section 3 Definitions**

Omit "or" from paragraph (e) of the definition of *agency* in section 3 (1) and insert after that paragraph: 10

- (e1) the Police Integrity Commission,
- (e2) the Police Royal Commission, or

**[2] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *certifying officer*: 15

- , or
- (d) in the case of the Police Integrity Commission—the Commissioner or an Assistant Commissioner of that Commission, or
- (e) in the case of the Police Royal Commission—the Police Royal Commissioner. 20

**[3] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *chief officer*:

- , or
- (d) in the case of the Police Integrity Commission—the Commissioner of that Commission, 25
- (e) in the case of the Police Royal Commission—the Police Royal Commissioner.

---

**[4] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *eligible authority*:

, or

- (d) the Police Integrity Commission, or 5
- (e) the Police Royal Commission.

**[5] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *officer*:

, or

- (d) in the case of the Police Integrity Commission— 10  
an officer of the Commission (as defined in the  
*Police Service Act 1990*), or
- (e) in the case of the Police Royal Commission—an 15  
officer of the Police Royal Commission as defined  
in the *Police Integrity Commission Act 1996*.

**[6] Section 3 (1)**

Insert in alphabetical order in section 3 (1):

*Police Royal Commission* and *Police Royal Commissioner* have the same meanings as in the *Police Integrity Commission Act 1996*. 20

**[7] Section 21 Disclosure by persons under the Minister's administration**

Omit "or" at the end of paragraph (b) (iv), and insert after paragraph (b) (v):

- (vi) the *Police Integrity Commission Act 1996*, 25  
or
- (vii) the *Royal Commission (Police Service) Act 1994*, or

**6.7      Witness Protection Act 1995 No 87**

**Section 44   Relationship with other witness protection arrangements**

Insert at the end of paragraph (b):

, or

5

(c) section 26 of the *Royal Commission (Police Service) Act 1994*, or

(d) section 51 of the *Police Integrity Commission Act 1996*.





New South Wales

# Police Legislation Amendment Act 1996 No 29

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New South Wales

# Police Legislation Amendment Act 1996 No 29

Act No 29, 1996

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An Act to amend the *Police Service Act 1990* and various other Acts to make further provision for dealing with complaints about police and to make amendments consequent on the establishment of the Police Integrity Commission; and for other purposes. [Assented to 21 June 1996]

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**The Legislature of New South Wales enacts:****1 Name of Act**

This Act is the *Police Legislation Amendment Act 1996*.

**2 Commencement**

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

**3 Amendment of Police Service Act 1990 No 47**

The *Police Service Act 1990* is amended as set out in Schedule 1.

**4 Amendment of Confiscation of Proceeds of Crime Act 1989 No 90**

The *Confiscation of Proceeds of Crime Act 1989* is amended as set out in Schedule 2.

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

The *Independent Commission Against Corruption Act 1988* is amended as set out in Schedule 3.

**6 Amendment of Ombudsman Act 1974 No 68**

The *Ombudsman Act 1974* is amended as set out in Schedule 4.

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

The *Royal Commission (Police Service) Act 1994* is amended as set out in Schedule 5.

**8 Amendment of other Acts**

The Acts specified in Schedule 6 are amended as set out in that Schedule.

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## Schedule 1    **Amendment of Police Service Act 1990**

(Section 3)

### [1]    **Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*PIC Commissioner* means the Commissioner for the Police Integrity Commission.

*Police Integrity Commission* means the body of that name constituted by the *Police Integrity Commission Act 1996*.

### [2]    **Section 3 (3)**

Insert after section 3 (2):

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

### [3]    **Section 94A Reports by police internal affairs for proposed police appointments**

Omit section 94A (3) (b). Insert instead:

(b)    particulars of any complaint made against the person in accordance with Division 2 of Part 8A, other than complaints that have been resolved in favour of the person,

### [4]    **Section 94A (3) (c) (i)**

Omit "Division 4". Insert instead "Division 5".

### [5]    **Part 8A**

Omit the Part. Insert instead:

## **Part 8A    Complaints about conduct of police officers**

### **Division 1    Preliminary**

#### **121 Meaning of "conduct" of police officer**

##### (1)    **Definition**

For the purposes of this Act, *conduct* of a police officer means any action or inaction (or alleged action or inaction) of a police officer:

- (a) whether or not it also involves non-police participants, and
- (b) whether or not it occurs while the police officer is officially on duty, and
- (c) whether or not it occurred before the commencement of this subsection, and
- (d) whether or not it occurred outside the State or outside Australia.

(2)      **Examples**

Such conduct can involve (but is not limited to) any of the following:

- (a) police corruption,
- (b) the commission of a criminal offence or disciplinary offence by a police officer,
- (c) corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer,
- (d) conduct of a police officer:
  - (i) that is otherwise contrary to law, or
  - (ii) that is unreasonable, unjust, oppressive or improperly discriminatory, or
  - (iii) that is in accordance with any law or established practice but the law or practice is, or may be, unreasonable, unjust, oppressive or improperly discriminatory, or
  - (iv) that is based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations, or
  - (v) that is based wholly or partly on a mistake of law or fact, or
  - (vi) for which reasons should have been given but were not given,



- (e) a matter of administration involving a police officer,
- (f) a matter that concerns the internal management of the Police Service.

(3) **Former police officers**

Conduct may be dealt with, or continue to be dealt with, under this Act even though any police officer involved has ceased to be a police officer. Accordingly, references in this Act to a police officer extend, where appropriate, to include a former police officer.

**122 Other definitions**

In this Part:

*category* means a category referred to in Division 7.

*complaint* means a complaint made in accordance with Division 2.

*conciliation* means conciliation under Division 3.

*investigation* means investigation under Division 5.

*Police Royal Commission* means a Royal Commission to which the *Royal Commission (Police Service) Act 1994* applies.

*telephone* includes facsimile.

**122A Relationship with certain other Acts and bodies**

- (1) The provisions of this Part are subject to the *Royal Commission (Police Service) Act 1994* and the *Police Integrity Commission Act 1996*.
- (2) The Police Royal Commission and the Police Integrity Commission are to enter into co-operative arrangements regarding the exercise of their respective functions concerning complaints. Any such arrangements have effect subject to any guidelines in force under subsection (3).

- (3) The regulations may make provision for or with respect to guidelines to be observed by the Police Royal Commission and the Police Integrity Commission regarding the exercise of their respective functions concerning complaints.

**Note.** Section 70 (8) of the *Police Integrity Commission Act 1996* provides as follows:

- (8) A Category 1 complaint, to the extent that it is taken over by the Commission, cannot be dealt with as a complaint under Part 8A of the *Police Service Act 1990* and for that purpose is taken not to be a police complaint, except as directed by the Commission either generally or in any particular case or as directed by the regulations.

## **Division 2 Complaints about police officers**

### **123 Right to make complaint**

- (1) Any person may make a complaint about the conduct of a police officer.
- (2) This Part does not affect any other right of a person to complain about the conduct of a police officer.

**Note.** Section 121 (3) extends the operation of this Part to former police officers.

### **124 Previous complaints excluded**

- (1) A complaint by a person about the conduct of a police officer is not to be dealt with under this Part if:
- (a) the person has already made another complaint in accordance with this Act about the same conduct of the police officer and that other complaint is being dealt with or has already been dealt with under this or any other Act, or
- (b) the person has already made another complaint (not being a complaint in accordance with this Act) about the same conduct of the police officer and the other complaint:
- (i) is being officially investigated, or
- (ii) has been dealt with after such an investigation,

including, for example, an official investigation by a Royal Commission or by a Parliamentary Committee, but not including an investigation by the Commissioner of Police, the Independent Commission Against Corruption or the New South Wales Crime Commission, or

- (c) the person is not identified in the complaint and another complaint has already been made in accordance with this Act about the same conduct of the police officer.
- (2) Nothing in this section prevents a complaint from being dealt with if it contains new allegations or involves new evidence.

### **125 Making of complaints**

- (1) **In writing**  
A complaint must be in writing.
- (2) **How made**  
A complaint is duly made if:
  - (a) it is delivered to a police officer personally or received by a member of the Police Service by post or by facsimile, or
  - (b) it is lodged or received at the office of the Police Integrity Commission or of the Ombudsman while that office is open for business or it is received in that office by post or facsimile, or
  - (c) it is addressed to the Police Integrity Commission or the Ombudsman and lodged at a Local Court, or
  - (d) it is referred to the Police Integrity Commission or the Ombudsman by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission.



(3)      **Exceptional circumstances where unwritten complaint acceptable**

However, the Police Integrity Commission or Ombudsman may, at discretion, in exceptional circumstances accept a complaint that is not in writing. If such an unwritten complaint is accepted, it must be reduced to writing by the Police Integrity Commission or Ombudsman as soon as practicable.

(4)      **Anonymous complaints**

It is not necessary for the complainant to be identified in a complaint.

(5)      **MP may act for complainant**

A complaint may, with the written consent of the complainant, be made on his or her behalf by a member of Parliament.

(6)      **Complaints by prisoners**

If a prisoner informs a prison officer that the prisoner wishes to make a complaint to a police officer, or to the Police Integrity Commission, or to the Ombudsman, the prison officer must:

- (a)      take all steps necessary to facilitate the making of the complaint, and
- (b)      send immediately to the addressee, unopened, any written matter addressed to a police officer (whether by name or by reference to an office held by the officer), or to the Police Integrity Commission, or to the Ombudsman.

In this subsection, *prisoner* means any person in lawful detention or custody, and *prison officer* means any person by whom the prisoner is detained, or in whose custody the prisoner is, or who is in charge of the prisoner.

### **125A Complaints received by PIC**

- (1) If the Police Integrity Commission receives a complaint, the Commission must, as soon as practicable, cause a copy of the complaint to be sent to:
  - (a) the Ombudsman, if it is within a class or kind agreed on by the PIC Commissioner and the Ombudsman as requiring notification to the Ombudsman, and
  - (b) the Commissioner of Police, unless:
    - (i) it is a Category 1 complaint, or
    - (ii) it is within a class or kind agreed on by the PIC Commissioner and the Commissioner of Police as not requiring notification to the Commissioner of Police.
- (2) The Police Integrity Commission may, if of the opinion that there are reasonable grounds for not sending a copy of a complaint to the Commissioner of Police under this section, send instead a summary or appropriate details of the complaint.

### **125B Complaints received by Ombudsman**

- (1) If the Ombudsman receives a complaint, the Ombudsman must, as soon as practicable, cause a copy of the complaint to be sent to:
  - (a) the Police Integrity Commission, if it is a Category 1 complaint, or
  - (b) the Commissioner of Police, unless:
    - (i) it is a Category 1 complaint, or
    - (ii) it is within a class or kind agreed on by the Ombudsman and the Commissioner of Police as not requiring notification to the Commissioner of Police.
- (2) The Ombudsman may, if of the opinion that there are reasonable grounds for not sending a copy of a complaint

to the Commissioner of Police under this section, send instead a summary or appropriate details of the complaint.

**125C Multiple handling of complaints**

- (1) Nothing in section 125A or 125B requires a copy of a complaint to be sent to an authority if the authority already has a copy (or a summary or appropriate details) of the complaint.
- (2) In this section, *authority* means the Ombudsman, the Commissioner of Police or the Police Integrity Commission.

**126 Complaints received by police to be forwarded to Commissioner**

A member of the Police Service who receives a complaint must, as soon as practicable, forward the complaint to the Commissioner of Police or a police officer nominated by the Commissioner of Police, unless it has previously been made to or forwarded to the Commissioner of Police or a nominated officer.

**127 Complaints received by police to be forwarded to PIC or Ombudsman**

If the Commissioner of Police or a nominated police officer receives a complaint, either directly or forwarded by another police officer, the Commissioner of Police or nominated officer must, as soon as practicable, cause a copy of the complaint to be sent to:

- (a) the Police Integrity Commission, in the case of a Category 1 complaint, and
- (b) the Ombudsman, unless:
  - (i) in the case of a Category 1 complaint—it is within a class or kind agreed on by the PIC Commissioner and the Ombudsman as not requiring notification to the Ombudsman, or
  - (ii) in the case of a complaint other than a Category 1 complaint—it is within a class or kind agreed on by the Ombudsman and the Commissioner of Police as not requiring notification to the Ombudsman.



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**128 Provisions relating to complaints lodged at Local Courts**

- (1) If a complaint is lodged at a Local Court, the Clerk of the Court must, by telephone, notify the Ombudsman as soon as practicable of brief details of the complaint.
- (2) The Clerk of the Court must, as soon as practicable, forward the complaint to the Ombudsman, unless otherwise directed by the Ombudsman.
- (3) If the Clerk of the Court is directed to do so by the Ombudsman, the Clerk must:
  - (a) forward the complaint to the Police Integrity Commission, and
  - (b) obtain a receipt for the complaint from the Commission, and
  - (c) retain such records of the complaint as the Ombudsman directs, and
  - (d) send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk.
- (4) If the Clerk of the Court is directed to do so by the Ombudsman, the Clerk must:
  - (a) forward the complaint to a police officer specified by the Ombudsman, and
  - (b) obtain a receipt for the complaint from that police officer, and
  - (c) retain such records of the complaint as the Ombudsman directs, and
  - (d) send a copy of the complaint to the Ombudsman together with the receipt and a report of the action taken by the Clerk.
- (5) The Ombudsman may give a direction to the Clerk of the Court under subsection (3) only if the complaint appears to the Ombudsman to be likely to be a Category 1 complaint or if the complaint is of a class or kind that the Police Integrity Commission and the Ombudsman have agreed should be sent to the Commission.

- (6) A reference in the above provisions of this section to the Ombudsman includes a reference to an officer of the Ombudsman nominated by the Ombudsman.
- (7) The Clerk of a Local Court is taken to be an officer of the Ombudsman in connection with any action of the Clerk under this section.

**129 Provisions relating to complaints referred by Minister, ICAC or Crime Commission or made by MP**

- (1) If:
  - (a) the Minister refers a complaint to the Police Integrity Commission or the Ombudsman, or
  - (b) a member of Parliament acts for a complainant, neither the Minister nor the member becomes the complainant, except for the purposes of any provision of this Act under which the complainant is informed or notified of any matter or given or sent any matter.
- (2) If:
  - (a) the Minister publishes to a person whose complaint has been referred by the Minister any matter with respect to the complaint published to the Minister by the Police Integrity Commission, the Ombudsman or a police officer, or
  - (b) a member of Parliament publishes to a person for whom the member acts any such matter published to the member,  
  
the publication to that person has, for all purposes, the same effect as it would have if it had been published to that person by the Commission, the Ombudsman or the police officer, as the case may be.
- (3) If the Independent Commission Against Corruption refers a complaint to the Police Integrity Commission or the Ombudsman, that Commission does not become the complainant.

- (4) If the New South Wales Crime Commission refers a complaint to the Police Integrity Commission or the Ombudsman, the Crime Commission does not become the complainant.

### **130 Intelligence matters**

- (1) The Ombudsman and the Commissioner of Police may agree that a particular complaint relates to intelligence matters and be classified as an excluded complaint.
- (2) Before agreement is reached, the Commissioner of Police must advise the Ombudsman of the action that is proposed to be taken with respect to the subject-matter of the complaint.
- (3) The Ombudsman may require the Commissioner of Police to advise the Ombudsman of action taken or progress on action being taken with regard to an excluded complaint.
- (4) The complainant is to be informed that the complaint will not be investigated under this Act.
- (5) An excluded complaint is to be treated as excluded from this Part, but nothing in this section affects any power of the PIC with regard to it.
- (6) The Ombudsman and the Commissioner of Police may agree, or the Ombudsman may direct, that an excluded complaint be no longer treated as excluded from this Part, and this Part applies to it accordingly.
- (7) Without affecting the generality of section 70 (8) of the *Police Integrity Commission Act 1996*, this section does not apply to a Category 1 complaint, except to the extent that it has been referred or referred back under that Act to be dealt with in accordance with this Part.

## **Division 3 Conciliation**

### **131 Nature of conciliation**

For the purposes of this Part, *conciliation* of a complaint about the conduct of a police officer means dealing with the complaint under this Division in a manner acceptable to the complainant.



### **132 Complaints where conciliation must be attempted**

An attempt must be made to deal with a complaint about the conduct of a police officer by conciliation if the complaint is of a class or kind that the Ombudsman and the Commissioner of Police have agreed may be suitable for conciliation.

### **133 Other complaints where conciliation may be attempted**

- (1) An attempt may be made to deal with any other complaint about the conduct of a police officer by conciliation if the officer dealing with the complaint is satisfied that the conciliation may be successful.
- (2) This section does not apply to a complaint excluded by section 134.

### **134 Complaints that may not be dealt with by conciliation**

A complaint about the conduct of a police officer may not be dealt with by conciliation if:

- (a) the conduct appears to have involved the commission of an indictable offence, or
- (b) the Commissioner has decided, or the Ombudsman has directed, that the complaint be investigated under Division 5,
- (c) the complainant is not identified.

### **135 Who attempts conciliation**

- (1) A police officer is to make an attempt to deal with a complaint by conciliation if the complaint was received by a police officer or if it was referred by the Ombudsman to the Commissioner for conciliation.
- (2) If the complaint was received by the Ombudsman and not referred to the Commissioner, the attempt to conciliate is to be made by the Ombudsman or an officer of the Ombudsman.

- (3) The person who is attempting to deal with a complaint by conciliation may, with the agreement of the complainant, arrange for a mediator to assist in the conciliation.

### **136 Notification of outcome of conciliation**

- (1) A police officer who attempts to deal with a complaint by conciliation must inform the Ombudsman of the outcome.
- (2) If the Ombudsman or an officer of the Ombudsman attempts to deal with a complaint by conciliation, the Ombudsman must inform the Commissioner of the outcome.

### **137 Statements by police officer during conciliation not admissible in criminal or disciplinary proceedings**

- (1) If a complaint about the conduct of a police officer is being dealt with by conciliation under this Division, any statement made by that police officer in good faith for the purposes of the conciliation is not admissible in any civil, criminal or disciplinary proceedings against the police officer.
- (2) The statement is inadmissible only if the criminal or disciplinary proceedings relate to the conduct that is the subject of the complaint.

### **138 Audit by Ombudsman of conciliation by police officers**

- (1) The Ombudsman is to conduct random audits of complaints that police officers have dealt with by conciliation under this Division.
- (2) For the purposes of any such audit, the Ombudsman may:
  - (a) inspect the records made by police officers of a conciliation, and
  - (b) interview any of the parties to the conciliation about the conduct of the conciliation, and
  - (c) interview any other person about matters related to the conciliation.

- (3) The Ombudsman may make recommendations to the Commissioner about the conciliation of complaints under this Division.

### **139 Procedure where conciliation fails**

If an attempt under this Division to deal with a complaint by conciliation is unsuccessful, the complaint continues thereafter to be subject to the other provisions of this Part.

## **Division 4      Managerial action**

### **139A Application of Division**

This Division applies to:

- (a) a complaint that is of a class or kind that the Ombudsman and the Commissioner have agreed is appropriate to be dealt with by managerial action, whether because it relates to matters of management or administration or otherwise, or
- (b) a particular complaint that the Ombudsman and the Commission have agreed is appropriate to be dealt with under this Division.

### **139B Application of Part to complaints under this Division**

Divisions 3, 5 and 6 do not apply to complaints to which this Division applies.

### **139C Dealing with complaints under this Division**

Complaints to which this Division applies are to be dealt with by the Commissioner, in accordance with such guidelines (if any) as are agreed on by the Ombudsman and Commissioner.

## **Division 5      Investigations**

### **140 Investigation of complaints**

Complaints may be investigated under this Division.



**140A Decisions of Commissioner about complaints received by police**

- (1) This section applies to a complaint received by the Commissioner or a nominated police officer as referred to in section 127 or otherwise.
- (2) The Commissioner may decide that a complaint be or not be investigated under this Division. The regulations may provide that the Commissioner is taken to have decided not to investigate a complaint under this Division if the Commissioner has not made a decision about it within the prescribed time.
- (3) If the Commissioner decides that a complaint be investigated under this Division, the Commissioner must notify the Ombudsman and the complainant (if identified) of the decision.
- (4) If the Commissioner decides that a complaint not be investigated under this Division, the Commissioner:
  - (a) must notify the Ombudsman of the decision, and
  - (b) must, if the Ombudsman ratifies the decision, notify the complainant (if identified) of the decision in terms approved by the Ombudsman, and
  - (c) may, if the Ombudsman ratifies the decision, and if the Commissioner considers it appropriate to do so, notify the police officer whose conduct is the subject of the complaint of the decision.
- (5) The Ombudsman may decide that a complaint referred to in subsection (4) should be investigated under this Division. In that case, the Ombudsman must notify the Commissioner and the complainant (if identified) of the Ombudsman's decision.
- (6) The Commissioner must cause a complaint to be investigated under this Division if the Ombudsman directs that it should be investigated under this Division.

**141 Decisions of Ombudsman about complaints received by Ombudsman**

- (1) This section applies to a complaint received by the Ombudsman (other than a complaint to which section 140A applies).
- (2) The Ombudsman may decide that a complaint be or not be investigated by the Commissioner under this Division. The regulations may provide that the Ombudsman is taken to have decided that a complaint not be investigated under this Division if the Ombudsman has not made a decision about it within the prescribed time.
- (3) The Commissioner must cause a complaint to be investigated under this Division if the Ombudsman decides that the complaint should be so investigated and duly notifies the Commissioner accordingly.
- (4) The notification to the Commissioner of a decision of the Ombudsman that a complaint be investigated under this Division:
  - (a) is to be in writing, and
  - (b) as far as practicable, is to identify the police officer whose conduct is the subject of the complaint, and
  - (c) is to be accompanied by a copy of the complaint or (if the Ombudsman is of the opinion that there are reasonable grounds for not providing a copy of the complaint) by a summary or appropriate details of the complaint.
- (5) If the Ombudsman decides that a complaint be investigated by the Commissioner under this Division, the Ombudsman must notify the complainant (if identified) of the decision.
- (6) If the Ombudsman decides that a complaint not be investigated by the Commissioner under this Division:
  - (a) the Ombudsman must notify the complainant (if identified) of the decision and of the Ombudsman's reasons for the decision, and

- (b) the Ombudsman must send to the Commissioner a copy of the notification, accompanied by a copy of the complaint to which it relates or (if the Ombudsman is of the opinion that there are reasonable grounds for not providing a copy of the complaint) by a summary or appropriate details of the complaint, and
- (c) the Commissioner may, if the Commissioner considers it appropriate to do so, notify the police officer whose conduct is the subject of the complaint of the decision.

**141A Factors to be considered by Commissioner or Ombudsman**

- (1) In deciding under section 140A or 141 whether a complaint should be investigated by the Commissioner under this Division, the Commissioner or Ombudsman may have regard to such matters as he or she thinks fit, including whether, in his or her opinion:
  - (a) action has been, is being or will be taken to remedy the subject-matter of the complaint without the need for an investigation by the Commissioner under this Division, or
  - (b) the complaint is frivolous, vexatious or not made in good faith, or
  - (c) the subject-matter of the complaint is trivial, or
  - (d) the conduct complained of occurred at too remote a time to justify investigation, or
  - (e) in relation to the conduct complained of there is or was available to the complainant an alternative and satisfactory means of redress, or
  - (f) the complainant does not or, where the complainant is not identified, the complainant could not have an interest, or a sufficient interest, in the conduct complained of.



- (2) Without affecting the generality of subsection (1), the Commissioner or Ombudsman is not to decide that a complaint, in which the complainant is not identified, be investigated under this Division, unless of the opinion:
- (a) that the complaint appears to contain sufficient information to enable an investigation to be carried out, and
  - (b) that the conduct the subject of the complaint would:
    - (i) if the conduct had occurred, provide reasonable grounds to believe that a criminal offence had been committed by a police officer, or
    - (ii) if a departmental charge were proved against a police officer in relation to the conduct, warrant the imposition of a substantial punishment on the police officer.

#### **141B Investigations not to proceed in certain circumstances**

- (1) The Ombudsman is not to determine that a complaint should be investigated under this Division if of the opinion that the conduct the subject of the complaint is unconnected with the fact that the person concerned is a police officer.
- (2) If the Ombudsman forms that opinion after an investigation has begun, the Ombudsman is to consent to or direct a discontinuation of the investigation under section 143.

#### **142 Conduct of investigation by Commissioner**

- (1) An investigation under this Division by the Commissioner is to be conducted by such police investigative staff as are selected by the Commissioner or in accordance with arrangements approved by the Commissioner.

- (2) The police officer or police officers carrying out an investigation under this Division are to have regard to any matters specified by the Commissioner or Ombudsman as needing to be examined or taken into consideration.

#### **142A Identity of complainant not to be disclosed**

- (1) While investigating a complaint, a police officer must not, without the consent of the Commissioner or another police officer nominated by the Commissioner, disclose to any person (other than the Commissioner or a police officer so nominated) the identity of the complainant. This subsection does not apply to a disclosure in a report to the Commissioner under this Division of the progress or result of the investigation.
- (2) Consent to the disclosure of the identity of the complainant is not to be granted unless it is necessary for the effective conduct of the investigation of the complaint.

#### **143 Deferral or discontinuance of investigation**

- (1) The Commissioner may apply to the Ombudsman for consent:
  - (a) to defer the commencement or continuation of the investigation of a complaint, or
  - (b) to discontinue the investigation of a complaint.
- (2) The Ombudsman may:
  - (a) consent to the deferral of the commencement or continuation of the investigation of a complaint pending the conclusion of any relevant criminal proceedings or for any other good cause, or
  - (b) consent to the discontinuance of the investigation of a complaint if:
    - (i) the Ombudsman is of the opinion action has been, is being or will be taken to remedy the subject-matter of the complaint without the need for the investigation to continue, or

- (ii) continuation of the investigation would be, in the circumstances of the case, unreasonable or impracticable.
- (3) If the Ombudsman grants a consent and the complainant is identified, the Ombudsman is to notify the complainant in writing of that fact and of the reasons for granting the consent and is to send to the Commissioner a copy of the notification.
- (4) If the Ombudsman does not, within 28 days, grant a consent applied for under this section, the Commissioner may, within 14 days thereafter, notify the Ombudsman that the Commissioner will treat the consent as having been granted if the Ombudsman does not grant or refuse the application within 14 days after the date of the letter.
- (5) If the Ombudsman does not grant or refuse the consent within 14 days after the date of the letter referred to in subsection (4), the consent is taken to have been granted at the end of that period.
- (6) The Ombudsman may, if satisfied that it is in the public interest and without any application by the Commissioner for consent, direct the Commissioner that the investigation of a complaint under this Division be discontinued.
- (7) The commencement or continuation of the investigation of a complaint under this Division may not be deferred, and the investigation of a complaint under this Division may not be discontinued, except in accordance with a consent granted or direction given under this section.

#### **144 Monitoring of investigation by Ombudsman**

- (1) The Ombudsman may monitor the progress of the investigation of a complaint under this Division if the Ombudsman considers it is in the public interest to do so.
- (2) The Ombudsman or an officer of the Ombudsman may be present as an observer during interviews conducted by police officers for the purposes of an investigation and



confer with those police officers about the conduct and progress of the investigation. The powers of the Ombudsman or an officer of the Ombudsman under this subsection may be exercised only in accordance with arrangements agreed to between the Ombudsman and the Commissioner as to the manner in which the powers are to be exercised.

- (3) The Commissioner is to provide the Ombudsman with such documentary and other information (including records of interviews) as the Ombudsman may from time to time request with respect to an investigation.
- (4) The Commissioner, and any police officers involved in conducting an investigation, are to comply with any arrangements agreed to between the Commissioner and the Ombudsman as to the monitoring of the investigation or of investigations generally.

#### **145 Proceedings to be instituted if warranted**

- (1) If it appears to a police officer conducting an investigation that sufficient evidence exists to warrant the prosecution of any person for an offence, the police officer is, subject to this Act, to cause appropriate proceedings to be instituted against the person.
- (2) The Commissioner must inform the Ombudsman of the institution of any such proceedings and of the particulars of the proceedings.
- (3) A police officer is not to institute proceedings against another police officer for an offence without the approval of the Commissioner.

#### **146 Result of investigation to be reported**

- (1) A police officer conducting an investigation must, at the conclusion of the investigation, furnish to the Commissioner a report that:
  - (a) gives appropriate details of the investigation (having regard to any guidelines issued by the Commissioner), and

- (b) explains whether and why any matters specified by the Ombudsman as needing to be examined or taken into consideration were not examined or taken into consideration, and
  - (c) states the result of the investigation, including any adverse findings against any police officer, and
  - (d) recommends the appropriate action to be taken (where relevant):
    - (i) to correct unacceptable conduct, or
    - (ii) to prevent a recurrence of unacceptable conduct, or
    - (iii) to punish unacceptable conduct, and
  - (e) contains any comments that the police officer conducting the investigation considers appropriate.
- (2) The Commissioner is to cause the report to be examined, and to be altered or rewritten if necessary or appropriate, so that a finalised report of the investigation can be sent to the Ombudsman for review.

#### **147 Report etc to be sent to Ombudsman**

- (1) The Commissioner must, as soon as practicable after being satisfied that an investigation has been concluded and a report of the investigation has been finalised:
- (a) send to the Ombudsman a copy of the finalised report and copies of all statements taken in the course of the investigation and of all other documents on which the report is based, and
  - (b) provide the Ombudsman with such comments on the report and statements as the Commissioner thinks fit, and
  - (c) specify what action should, in the opinion of the Commissioner, be taken as a result of the investigation.

- (2) After receiving that material and information, the Ombudsman may require the Commissioner and any police officer who investigated the complaint to provide such additional information as the Ombudsman considers is necessary to enable the Ombudsman to determine whether the complaint was properly investigated.

**148 Investigation under Ombudsman Act 1974 where complaint not dealt with in time**

- (1) If the Ombudsman has not, in relation to a complaint, received from the Commissioner the material and information referred to in section 147 (1) within the relevant period referred to in this section, the Ombudsman may make the conduct to which the complaint relates the subject of an investigation pursuant to section 153.
- (2) The Ombudsman must notify the Commissioner in writing when the Ombudsman commences such an investigation.
- (3) The *relevant period* is the period of 180 days after:
  - (a) the Commissioner notifies the Ombudsman pursuant to section 140A that the complaint is to be investigated, or
  - (b) the Ombudsman notifies the Commissioner pursuant to section 141 of the Ombudsman's determination that the complaint should be investigated,or that period as extended under section 149 or 150.
- (4) However, the period of 180 days referred to in subsection (3) is to be a period of 90 days in the case of a complaint of a class or kind that the Ombudsman and the Commissioner have agreed should be subject to that shorter period.



**149 Extension of time where complaint not dealt with**

- (1) The Commissioner may apply to the Ombudsman for an extension of the relevant period referred to in section 148, and the Ombudsman may grant the extension.
- (2) More than one such application may be made, but no such application may be made after the relevant period has expired.
- (3) The Commissioner is to notify the police officer, whose conduct was the subject of the complaint, about the application. The police officer is to be given a reasonable opportunity to make written representations to the Ombudsman as to whether the extension should be granted.
- (4) If the Ombudsman grants the extension, the Ombudsman must, if the complainant is identified, notify the complainant in writing, giving the reasons for granting the extension, and must send to the Commissioner a copy of the notification.
- (5) If an extension is granted by the Ombudsman, the relevant period is extended by the period specified by the Ombudsman when granting the extension.

**150 Extension of time where application for deferral of investigation etc**

- (1) If an application for the Ombudsman's consent is made under section 143, the relevant period referred to in section 148 is extended until:
  - (a) the application is granted by the Ombudsman, or
  - (b) the application is withdrawn.
- (2) If an application for consent under section 143 to the deferral of the commencement or continuation of an investigation is granted by the Ombudsman, the relevant period is taken:
  - (a) to have ceased to run on the day the application was made, and
  - (b) to recommence to run from the day to which the commencement or continuation is deferred.

**151 Further investigation if Ombudsman not satisfied about conduct of investigation**

- (1) If, after receiving the material and information referred to in section 147, the Ombudsman is not satisfied that a complaint was properly investigated under this Division, the Ombudsman may advise the Commissioner accordingly, specifying what are, in his or her opinion, the deficiencies in the investigation.
- (2) The Commissioner is, on receipt of the Ombudsman's advice, and if required to do so, to cause a further investigation to be conducted in order to remedy the deficiencies referred to in the advice.
- (3) The further investigation is to be conducted within such period (if any) as the Ombudsman specifies.
- (4) This Division (including this section, but excluding sections 140A, 141, 141A and 141B) applies to and in respect of a further investigation under this section in the same way as it applies to an initial investigation.

**152 Further consideration if Ombudsman not satisfied about outcome of investigation**

- (1) If, after receiving the material and information referred to in section 147, the Ombudsman is not satisfied with the outcome of an investigation (whether because of the quality of the investigation or report or for any other reason), the Ombudsman may request the Commissioner to reconsider the action that the Commissioner proposes should be taken as a result of the investigation.
- (2) If the Ombudsman makes such a request, the Commissioner may revise the police report or may decide not to alter it.
- (3) Instead of or in addition to making such a request, or after consideration of a revised police report, the Ombudsman may prepare a report that contains such of the matters referred to in section 156 (1) (a)–(e) as appear to the Ombudsman to be relevant.

- (4) The Ombudsman is to provide a copy of the report under subsection (3) to:
  - (a) the complainant (if identified), and
  - (b) the Minister, and
  - (c) the Commissioner.
- (5) The Commissioner is then to provide a copy of the report under subsection (3) to the police officer whose conduct was the subject of the complaint.
- (6) The issue may be the subject of a special report to Parliament by the Ombudsman under section 161.

#### **153 Investigation under Ombudsman Act 1974**

- (1) The Ombudsman may, if satisfied that it is in the public interest to do so, make a complaint, any investigation of the complaint, and any related issues, the subject of an investigation under the *Ombudsman Act 1974*.
- (2) The Ombudsman may act under this section before the commencement of an investigation under this Division, during the progress of any such investigation or after the consideration by the Ombudsman of a report by the Commissioner under section 147 or 151.
- (3) The Ombudsman must notify the Commissioner of any action under this section.
- (4) On being so notified, the Commissioner is to discontinue any investigation under this Division.
- (5) This section has effect despite anything to the contrary in this Part.

#### **154 Other police investigations not affected**

- (1) The Commissioner or any other police officer is not prevented from investigating, otherwise than under this Division, a matter relating to a complaint even though an investigation under this Division is not made, is deferred



or discontinued, is completed or is made the subject of an investigation under the *Ombudsman Act 1974* or any other Act.

- (2) Without affecting the generality of section 70 (8) of the *Police Integrity Commission Act 1996*, a matter that is the subject of a Category 1 complaint must not be investigated as referred to in subsection (1), unless:
  - (a) it is referred or referred back under that Act to be dealt with in accordance with this Part, or
  - (b) such an investigation is authorised to be carried out by the regulations or by the Commission either generally or in any particular case.

## **Division 6      Reports**

### **155 Reports following police investigation**

- (1) If the Ombudsman is, having regard to the finalised report provided by the Commissioner in relation to an investigation under Division 5 and having regard to such other matters as the Ombudsman thinks fit, satisfied that a complaint has, or matters arising out of the investigation have, been satisfactorily dealt with, the Ombudsman is to furnish a report to:
  - (a) the complainant (if identified), and
  - (b) the Commissioner,indicating that the Ombudsman is satisfied that the complaint has, or matters arising out of the investigation have, been satisfactorily dealt with.
- (2) The Commissioner is to furnish a report to the police officer whose conduct was the subject of the complaint.
- (3) A report furnished under this section is to contain an indication of the outcome of the investigation and may, if the Ombudsman or Commissioner thinks fit, be accompanied by a copy of or extracts from or a summary of the finalised report provided by the Commissioner.

- (4) A report furnished under subsection (1) may, if the Ombudsman thinks fit, be accompanied by a statement of reasons why the Ombudsman is satisfied that the complaint has, or matters arising out of the investigation have, been satisfactorily dealt with.

### **156 Report following Ombudsman's investigation**

- (1) The Ombudsman must, at the conclusion of an investigation under the *Ombudsman Act 1974* of a complaint, prepare a report that:
- (a) gives appropriate details of the investigation, and
  - (b) states the result of the investigation, including any adverse findings against any police officer, and
  - (c) recommends the appropriate action to be taken (where relevant):
    - (i) to correct unacceptable conduct, or
    - (ii) to prevent a recurrence of unacceptable conduct, or
    - (iii) to punish unacceptable conduct, and
  - (d) identifies any unsatisfactory aspects of any report into the complaint prepared by a police officer under this Part, and
  - (e) includes any other comments that the Ombudsman considers appropriate.
- (2) The Ombudsman is to provide a copy of the report to:
- (a) the complainant (if identified), and
  - (b) the Minister, and
  - (c) the Commissioner.
- (3) The Commissioner is then to provide a copy of the report to the police officer whose conduct was the subject of the complaint.

### **157 Recommendation in report under section 156**

In a report under section 156, the Ombudsman may (where relevant) recommend:

- (a) that the conduct to which it relates be considered or reconsidered by the police officer whose conduct it was, or by any person in a position to supervise or direct that police officer in relation to the conduct or to review, rectify, mitigate or change the conduct or its consequences, or
- (b) that action be taken to rectify, mitigate or change the conduct or its consequences, or
- (c) that reasons be given for the conduct, or
- (d) that any law or practice relating to the conduct be changed, or
- (e) that any other action be taken.

### **158 Notification of proposed action on reports**

- (1) The Commissioner must, as soon as practicable after receiving a report under this Division, notify the Ombudsman of the nature of the action (if any) proposed to be taken by the Commissioner as a result of the report.
- (2) The nature of the action that the Commissioner may propose in the notification includes:
  - (a) that the police officer be admonished, or
  - (b) that a departmental charge be preferred against the police officer, or
  - (c) that consideration be given to the police officer being charged with a criminal offence.

The notification may contain particulars of any penalty proposed to be imposed.

- (3) Where the Ombudsman has given a copy of a report under section 156 to the Commissioner and the Ombudsman is of the opinion:



- (a) that the Commissioner has unreasonably delayed notifying the Ombudsman under this section with respect to the report, or
- (b) that the nature of the proposed action notified under this section by the Commissioner is, in the circumstances of the case, unreasonable or inadequate, or
- (c) that the Commissioner has unreasonably delayed taking action as a result of the report,

the Ombudsman is to advise the Commissioner accordingly by notice in writing served on the Commissioner.

- (4) If the Ombudsman and the Commissioner do not, within 28 days, resolve any issue the subject of a notice under subsection (3), either or both of them may notify the Minister that the issue is unresolved. The issue may be the subject of a special report to Parliament by the Ombudsman under section 161.

#### **159 Notification of action taken on report**

- (1) The Commissioner must, as soon as practicable after taking action as the result of a report under this Division (being action with respect to a police officer whose conduct is the subject of a complaint), notify the Ombudsman of the nature of the action so taken.
- (2) The notification must, if the action taken consists of or includes the imposition of a penalty, contain particulars of the nature and quantum of the penalty imposed.
- (3) The Ombudsman is to determine whether, in the circumstances of the case, action so notified was, in the opinion of the Ombudsman:
  - (a) appropriate, and
  - (b) taken within a reasonable time.

#### **160 Progress report to complainant**

The Ombudsman may from time to time report to the complainant (if identified) on the progress of an investigation under Division 5 into a complaint.

### **161 Special report to Parliament**

- (1) The Ombudsman may, at any time, make a special report to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report on any matter arising in connection with the exercise of his or her functions under this Part.
- (2) The Ombudsman may include in such a report a recommendation that the report be made public as soon as practicable.

### **162 Special report about serious misconduct**

If the Ombudsman is of the opinion that a police officer is guilty of such serious misconduct as may warrant dismissal or punishment, the Ombudsman may report his or her opinion and the reasons for that opinion to the Minister and the Commissioner.

## **Division 7 Complaints Information System**

### **162A Complaints Information System**

- (1) The regulations may make provision for or with respect to a Complaints Information System, including:
  - (a) the establishment, control, operation and maintenance of the System, and
  - (b) the registration of complaints in the System, and
  - (c) the nature of the information about complaints that is to be registered in the System, and
  - (d) access to information in the System, and
  - (e) retention, amendment and deletion of material in the System, and
  - (f) security arrangements for the System, and
  - (g) mechanisms for identifying, preventing and detecting abuse, misuse or corrupt use of the System or information in the System.

- (2) Protocols and memoranda of understanding may be entered into by the PIC Commissioner, the Ombudsman and the Commissioner of Police regarding any matter for or with respect to which regulations can be made under this section. Any such protocol or memorandum is subject to the provisions of the regulations and cannot create an offence.
- (3) A regulation made for the purposes of this section may create an offence punishable by a penalty not exceeding 50 penalty units.

#### **162B Registration of complaints**

- (1) Information about all complaints received by members of the Police Service, the PIC or the Ombudsman must be registered in the Complaints Information System.
- (2) Despite subsection (1), the PIC may direct that information about a Category 1 complaint (or a specified class of Category 1 complaints):
  - (a) not be entered in the System, or
  - (b) be removed from the System, or
  - (c) be entered or re-entered in the System.
- (3) The PIC and officers of the PIC approved by the PIC Commissioner are to have unrestricted access to all information in the System.
- (4) The Ombudsman and officers of the Ombudsman are to have unrestricted access to all information in the System, subject however to the terms of any caveat under this section.
- (5) The PIC may place a caveat on particular information registered in the System. Access to this information by other agencies and other persons is to be restricted in accordance with the terms of the caveat.
- (6) The Ombudsman may place a caveat on particular information registered in the System in relation to an



excluded complaint under section 130. Access to this information by agencies and persons (other than the PIC and officers of the PIC approved by the PIC Commissioner) is to be restricted in accordance with the terms of the caveat.

### **162C Classification of complaints**

- (1) Complaints are classified as follows:
  - (a) Category 1 complaints,
  - (b) Category 2 complaints,
  - (c) Category 3 complaints,
  - (d) Category 4 complaints.
- (2) A Category 1 complaint is a Category 1 complaint as defined in section 67 of the *Police Integrity Commission Act 1996*.

**Note.** The definition of that expression is as follows:

**Category 1 complaint** means a police complaint:

- (a) that is of a class or kind that the PIC Commissioner and the Ombudsman have agreed should be referred to the Commission, or
  - (b) that the PIC Commissioner has requested should be referred to the Commission, or
  - (c) that is of a class or kind prescribed by the regulations.
- (3) A Category 2 complaint is a complaint that does fall within Category 1, 3 or 4.
  - (4) A Category 3 complaint is a complaint that is of a class or kind referred to in section 132.
  - (5) A Category 4 complaint is a complaint that is of a class or kind referred to in section 139A.

### **162D Assignment to categories**

- (1) On receiving a complaint, the Ombudsman or the Commissioner of Police is to make an initial decision as to the category into which the complaint falls, based on this Act, the regulations and any agreements under this Act.

- (2) On receiving a complaint, the PIC is to make an initial decision as to whether or not the complaint falls within Category 1, based on this Act, the regulations and any guidelines issued by the PIC.
- (3) A complaint that involves conduct that could involve two or more categories is to be treated as falling within the higher or highest of them (Category 1 being treated as the highest category).
- (4) A complaint may be treated as a Category 2 complaint if there is doubt as to the category into which it falls.

**162E Reclassification of inappropriately classified complaints**

- (1) The Commissioner of Police may direct the reclassification of a Category 3 or 4 complaint at any time, if it appears that the complaint was inappropriately classified. This power is subject to any direction under subsection (2) or (3).
- (2) The Ombudsman may direct the reclassification of a Category 2, 3 or 4 complaint at any time, if it appears that the complaint was inappropriately classified. This is subject to any direction under subsection (3).
- (3) The PIC may direct the reclassification of a Category 2, 3 or 4 complaint as a Category 1 complaint at any time, if it appears that the complaint was inappropriately classified.
- (4) Nothing in this section prevents a direction being given under section 162F or 162G that a particular complaint be treated as a Category 1 or 2 complaint.

**162F Ombudsman may take over complaint**

- (1) The Ombudsman may at any time direct that a Category 3 or 4 complaint be treated as a Category 2 complaint. This power has effect subject to a direction under section 162G.
- (2) The complaint is then to be treated as a Category 2 complaint, even though it would not or may not otherwise fall within that category.

**162G Police Integrity Commission may take over complaint**

- (1) The Police Integrity Commission may at any time direct that a Category 2, 3 or 4 complaint be treated as a Category 1 complaint.
- (2) The complaint is then to be treated as a Category 1 complaint, even though it would not or may not otherwise fall within that category.

**162H No review of classification**

Judicial review of or involving the classification or reclassification of a complaint into a category (whether by way of appeal or otherwise) is not available.

**Division 8 Miscellaneous**

**163 Ombudsman may require further information from complainant**

- (1) For the purposes of the conciliation of a complaint under Division 3 or for the purpose of determining whether a complaint should be investigated under Division 5, the Ombudsman may, if the complainant is identified, do any one or more of the following:
  - (a) request a complainant to attend before the Ombudsman for the purpose of providing further information concerning the complaint,
  - (b) request the complainant to provide further written particulars concerning the complaint,
  - (c) request the complainant to verify by statutory declaration his or her complaint, or any particulars given by the complainant concerning his or her complaint.
- (2) The Ombudsman may withdraw the request if the complainant objects and the Ombudsman is satisfied that the grounds of the objection are well-founded.



- (3) If the Ombudsman makes a request (and it is not withdrawn), the Ombudsman is to take no further action in connection with the complaint concerned until the request is complied with or a reasonable time for compliance with the request has elapsed.
- (4) If the request is not complied with within a reasonable time, the Ombudsman may treat the complaint concerned as having been dealt with under Division 3 in a manner acceptable to the complainant. If the Ombudsman does so, the Ombudsman is to inform the Commissioner and the complainant accordingly.

**164 Ombudsman may request further information from other persons**

- (1) For the purpose of determining whether a complaint should be investigated under Division 5, the Ombudsman may also request information from persons other than the complainant.
- (2) However, this section does not authorise the Ombudsman:
  - (a) to investigate the complaint or to collect information for the purposes of the investigation of the complaint or of a report under this Part, or
  - (b) to interview the police officer the subject of the complaint, or
  - (c) to require persons to provide information.

**165 Ombudsman may require Commissioner to provide information etc**

- (1) For the purposes of a conciliation of a complaint or for the purpose of determining whether a complaint should be investigated under Division 5, the Commissioner must, at the request of the Ombudsman, provide the Ombudsman:
  - (a) with an explanation of the policies, procedures and practices of the Police Service relevant to the conduct complained of, and

- (b) with such documentary and other information (including records of interviews) as the Ombudsman requests with respect to any inquiries made by the Commissioner or other police officers into the complaints, and
  - (c) to the extent to which the Commissioner is able to do so, with any explanation, comment or information sought by the Ombudsman in connection with the complaint.
- (2) The Ombudsman may withdraw any such request if the Commissioner objects and the Ombudsman is satisfied that the grounds of the objection are well-founded.
  - (3) The Ombudsman may, instead of making any such request, seek the information concerned from other police officers in accordance with arrangements agreed to by the Commissioner and the Ombudsman.

#### **166 Certain information to be confidential**

- (1) If the Commissioner is of the opinion that publication of any material or information:
  - (a) which, under this Part, the Commissioner or any other police officer is required to provide for the Ombudsman, or
  - (b) which, under the *Ombudsman Act 1974*, the Commissioner or any other police officer is required, in the course of an investigation under that Act of the conduct to which a complaint relates, to provide for the Ombudsman,might prejudice the investigation or prevention of crime, or otherwise be contrary to the public interest, the Commissioner is to inform the Ombudsman accordingly, giving the reasons for his or her opinion.
- (2) If the Ombudsman, pursuant to a requirement made under the *Ombudsman Act 1974* in the course of an investigation under that Act of the conduct to which a

complaint relates, receives material or information from a police officer, the Ombudsman may not, except as provided in subsection (3) (b) or with the consent of the Commissioner, publish that material or information, otherwise than to the Commissioner, until the expiration of 21 days after that receipt.

- (3) If the Ombudsman is provided with material or information in respect of which the Commissioner has given the opinion referred to in subsection (1), the Ombudsman:
- (a) may not, except as provided in paragraph (b), publish that material or information, and
  - (b) may, if in his or her opinion the circumstances so warrant, make in relation to that material or information a report to the Presiding Officer of each House of Parliament and must also provide the Minister with a copy of the report.

#### **167 Certain provisions of Ombudsman Act 1974 to apply**

Sections 17, 18 and 23 of the *Ombudsman Act 1974* apply to and in respect of the exercise by the Ombudsman of the functions conferred and imposed by this Part in the same way as they apply to and in respect of an investigation by the Ombudsman under the *Ombudsman Act 1974*.

#### **168 Information to be confidential**

Without limiting the operation of section 34 (1) (a) of the *Ombudsman Act 1974*, in the application of section 34 (1) of that Act to and in respect of information received in the course of the administration or execution of this Part, the reference in that subsection:

- (a) to a public authority—is to be construed as a reference to a police officer, and
- (b) to the head of that authority—is to be construed as a reference to the Commissioner, and
- (c) to the responsible Minister—is to be construed as a reference to the Minister administering this Act.



### **169 Ombudsman or officer as witness**

- (1) Neither the Ombudsman, nor an officer or special officer of the Ombudsman who is not a police officer, is competent or compellable, in any legal proceedings or in any proceedings before the Police Tribunal, to give evidence or produce documents in respect of any matter in which he or she is or was involved in the course of the administration or execution of this Part.
- (2) Subsection (1) does not apply to or in respect of any proceedings under section 37 of the *Ombudsman Act 1974* or under Part 3 of the *Royal Commissions Act 1923*.
- (3) Subsections (1) and (2) do not prejudice or affect the operation of section 35 of the *Ombudsman Act 1974* in relation to the administration and execution of this Act.

### **170 Limitation on delegation of functions by Ombudsman**

- (1) The functions of the Ombudsman that may, under section 10 of the *Ombudsman Act 1974*, be delegated to a special officer of the Ombudsman (other than an Assistant Ombudsman) do not include:
  - (a) any power or duty to make a report under this Act, or
  - (b) the power to require additional information referred to in section 147 (2) of this Act.
- (2) The functions of the Ombudsman that may, under section 10 of the *Ombudsman Act 1974*, be delegated to an Assistant Ombudsman do not include any power or duty to make a report under this Act (other than a report under section 155, 156 or 160).

### **170A Provisions relating to reports**

- (1) **Tabling**  
A copy of a report made or furnished to the Presiding Officer of a House of Parliament under this Act must be laid before that House on the next sitting day of that House after it is received by the Presiding Officer.

(2) **Public reports**

If a report includes a recommendation by the Ombudsman that the report be made public forthwith, the Presiding Officer of a House of Parliament may make it public whether or not that House is in session and whether or not the report has been laid before that House.

(3) **Privileges and immunities**

A report that is made public by the Presiding Officer of a House of Parliament before it is laid before that House attracts the same privileges and immunities as it would if it had been laid before that House.

(4) **Report procedures**

A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.

**171 Liability to do duty continues**

This Part does not operate to absolve a police officer who receives a complaint from liability to perform any duty imposed on the police officer otherwise than by this Part.

**172 Publicity**

- (1) The Ombudsman is to cause to be prepared pamphlets briefly explaining the rights and duties of police officers and the public under this Part.
- (2) The pamphlets are to be written in the English language and in such other languages as the Ombudsman considers necessary.
- (3) The Ombudsman must:
  - (a) supply the Commissioner with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at each police station in the State, and the Commissioner is to distribute the pamphlets accordingly, and

- (b) supply the Director-General of the Attorney General's Department with sufficient quantities of the pamphlets to enable a reasonable supply of the pamphlets to be available at the office of each Local Court in the State, and the Director-General is to distribute the pamphlets accordingly, and
- (c) make such arrangements as the Ombudsman thinks fit with any government department or instrumentality or with any other body or organisation for making the pamphlets available, or distributing them, to any interested person, and
- (d) take such further or other action as the Ombudsman considers necessary to bring the provisions of this Part to the attention of interested persons.

#### **172A Certain documents privileged**

- (1) A document brought into existence for the purposes of this Part is not admissible in evidence in any proceedings other than an inquiry under section 197 or proceedings which concern the discipline of police officers and which are dealt with by:
  - (a) the Commissioner, or
  - (b) the Police Tribunal, or
  - (c) GREAT.
- (2) Subsection (1) does not apply to or in respect of:
  - (a) a document comprising a complaint, or
  - (b) a document published by order of, or under the authority of, the Presiding Officer of a House of Parliament or either House, or both Houses, of Parliament, or
  - (c) a document published under section 197 (5), or
  - (d) a document that a witness is willing to produce.
- (3) Subsections (1) and (2) do not operate to render admissible in evidence in any proceedings any document that would not have been so admissible if this section had not been enacted.



### **172B Consultation with Minister**

The Ombudsman may consult with the Minister about a complaint at any stage and may for that purpose disclose to the Minister any information relating to or arising in connection with the complaint, including:

- (a) any matters arising from an investigation of the complaint, and
- (b) any report or proposed report relating to the complaint, and
- (c) any action taken or proposed to be taken in connection with the complaint.

### **172C Action may be taken before report finalised**

- (1) Action (including disciplinary or criminal action) may be taken in relation to a complaint before the investigation of, or report by the Commissioner or Ombudsman relating to, the complaint has been finalised under this Part.
- (2) The views of the Ombudsman should, as far as practicable, be sought and taken into account before any such action is so taken.
- (3) This section has effect despite any other provision of this Part.

### **172D Investigation on Ombudsman's own motion**

- (1) Where it appears to the Ombudsman that any conduct of a police officer could be but is not the subject of a complaint under this Part, the Ombudsman may make the conduct the subject of an investigation under the *Ombudsman Act 1974*.
- (2) The Ombudsman may make preliminary inquiries for the purpose of deciding whether to make any such conduct the subject of an investigation under the *Ombudsman Act 1974*.
- (3) Section 156 applies to such an investigation as if the Ombudsman had made a complaint about the conduct.

**[6] Part 9, Division 1A, heading**

Insert “or Police Integrity Commission” after “Police Royal Commission”.

**[7] Section 181A Definition and operation of Division**

Omit the definition of *Police Royal Commission*. Insert instead:

*Police Royal Commission* means a Royal Commission to which the *Royal Commission (Police Service) Act 1994* applies.

**[8] Section 181B Dismissal of police officers—information arising out of Police Royal Commission or Police Integrity Commission**

Insert “or the Police Integrity Commission” after “Police Royal Commission” in section 181B (1).

**[9] Section 181C Acceptance of resignation of police officers in certain cases**

Insert “or the Police Integrity Commission” after “Police Royal Commission” in section 181C (b).

**[10] Section 200 Bribery or corruption**

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

Insert instead:

(4) An offence under this section is an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 7 years, or both.

**[11] Section 207 Proceedings for offences**

Omit "Proceedings" from section 207 (1).

Insert instead "Except where otherwise expressly provided by this Act, proceedings".

**[12] Section 207 (3) and (4)**

Insert after section 207 (2):

- (3) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.
- (4) If, in accordance with subsection (3), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is 50 penalty units or imprisonment for 2 years, or both.

**[13] Section 219 Regulations**

Insert after section 219 (2):

- (2A) The regulations may make provision for or with respect to the functions of the Commissioner, the Ombudsman, the Police Integrity Commission and other persons in connection with the handling of complaints against police officers under the legislative scheme constituted by this Act, the *Ombudsman Act 1974* and the *Police Integrity Commission Act 1996*.



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## Schedule 2    **Amendment of Confiscation of Proceeds of Crime Act 1989**

(Section 4)

### [1]    **Section 4 Definitions**

Insert “or Commissioner for the Police Integrity Commission” after “Director of Public Prosecutions” in paragraph (a) of the definition of *appropriate officer* in section 4 (1).

### [2]    **Section 4**

Renumber paragraph (e) of the definition of *prescribed authority* as paragraph (f), and insert before that paragraph:

(e)    the Police Integrity Commission, or

### [3]    **Section 88A**

Insert after section 88:

#### **88A Commissioner for the Police Integrity Commission**

(1)    The Commissioner for the Police Integrity Commission may exercise any function under this Act only:

(a)    after consultation with the Director of Public Prosecutions, or

(b)    in conformity with an arrangement referred to in section 84 of the *Police Integrity Commission Act 1996*,

and must consider whether any such function should instead be exercised by the Director.

(2)    It is intended that the Commissioner for the Police Integrity Commission will exercise a function under this Act only in connection with matters arising during or out of the Police Integrity Commission’s own investigations. However, this subsection does not provide any grounds for an appeal against or any other challenge to the exercise by the Commissioner of any such function.

## **Schedule 3 Amendment of Independent Commission Against Corruption Act 1988**

(Section 5)

### **[1] Section 3 Definitions**

Insert in alphabetical order in section 3 (1):

*hearing* means a hearing under this Act.

### **[2] Section 3 (1)**

Insert “, and (without limitation) includes a preliminary investigation referred to in section 20A” after “Act” in the definition of *investigation*.

### **[3] Section 20A**

Insert after section 20:

#### **20A Preliminary investigations**

- (1) An investigation may be in the nature of a preliminary investigation.
- (2) A preliminary examination can be conducted, for example, for the purpose of assisting the Commission:
  - (a) to discover or identify conduct that might be made the subject of a more complete investigation under this Act, or
  - (b) to decide whether to make particular conduct the subject of a more complete investigation under this Act.
- (3) Nothing in this section affects any other provision of this Act.

**[4]      Section 41 Authority conferred by warrant**

Insert “, or a senior Commission investigator, named in and” after “Force” where firstly occurring in section 41 (2).

**[5]      Section 41 (2)**

Insert “or senior Commission investigator” after “Force” where secondly occurring.

**[6]      Section 41 (3)**

Insert after section 41 (2):

(3)      In this section:

*senior Commission investigator* means an officer of the Commission who is designated by the Commissioner as a senior investigator and who is issued by the Commissioner with means of identification as such a senior Commission investigator.

**[7]      Section 50**

Omit the section. Insert instead:

**50 Protection of witnesses and persons assisting Commission**

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

- (a)      to protect the safety of any such person, or
- (b)      to protect any such person from intimidation or harassment.



- (2) In this section, a reference to a person who is assisting the Commission is a reference to a person who:
  - (a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing, or
  - (b) has produced or proposes to produce a document or other thing to the Commission under this Act, or
  - (c) has assisted, is assisting or is to assist the Commission in some other manner.
- (3) Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public official:
  - (a) to provide any protection referred to in subsection (1), or
  - (b) to provide personnel or facilities or both to assist in providing that protection, or
  - (c) to otherwise assist in the provision of that protection.
- (4) The Commissioner of Police, or such a public authority or public official, is under a duty to comply with any such direction as far as reasonably possible.
- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person and containing directions of a kind or kinds referred to in subsection (3).
- (6) A person who contravenes an order applying to the person under subsection (5) without reasonable excuse is guilty of an indictable offence.  
  
Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.
- (7) Nothing in this section affects the *Witness Protection Act 1995*.

**[8] Section 82 Offences relating to obtaining information**

Insert "in a material particular" after "false or misleading".

**[9] Section 93**

Omit the section. Insert instead:

**93 Injury to witness or person assisting Commission**

- (1) A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of:

- (a) his or her assisting the Commission, or
- (b) any evidence given by him or her before the Commission,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

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

- (a) has appeared, is appearing or is to appear as a witness before the Commission, or
- (b) has complied with or proposes to comply with a requirement under section 21 or 22, or
- (c) has assisted, is assisting or is to assist the Commission in some other manner.

**[10] Section 94**

Omit the section. Insert instead:

**94 Dismissal of witness, or person assisting Commission, by employer**

- (1) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Commission is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (2) In this section, a reference to a person assisting the Commission is a reference to a person who:
- (a) has appeared, is appearing or is to appear as a witness before the Commission, or
  - (b) has complied with or proposes to comply with a requirement under section 21 or 22, or
  - (c) has assisted, is assisting or is to assist the Commission in some other manner.
- (3) In any proceedings for an offence against this section, it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (1).

**[11] Section 96 Bribery of officer of Commission**

Omit "5 years" wherever occurring. Insert instead "7 years".

**[12] Part 10A**

Insert after Part 10:

**Part 10A Special powers**

**101A Definitions**

In this Part:

*Commission investigator* means an officer of the Commission who is designated by the Commissioner as an investigator and who is issued by the Commissioner with means of identification as such an investigator.

*Commission surveillance officer* means an officer of the Commission who is designated by the Commissioner as a surveillance officer and who is issued by the Commissioner with means of identification as such an officer.



*seconded police officer* means:

- (a) a member of the Australian Federal Police, or
- (b) a member of the Police Force of another State or Territory, or
- (c) a member of the Police Force of any country prescribed by the regulations for the purposes of this Part,

who is seconded or otherwise engaged to assist the Commission.

**101B Commission investigator who is seconded police officer to have all powers of NSW police officer**

- (1) A Commission investigator who is a seconded police officer has and may exercise all the functions (including powers, immunities, liabilities and responsibilities) that a police officer of the rank of constable duly appointed under the *Police Service Act 1990* has and may exercise under any law of the State (including the common law and this Act).
- (2) Those functions extend to functions conferred after the commencement of this Part.
- (3) A Commission investigator has and may exercise those functions by virtue of this section only when acting in the person's capacity as an officer of the Commission.
- (4) This section does not operate to subject a Commission investigator to the control and direction of the Commissioner of Police or any other police officer when acting in the person's capacity as an officer of the Commission.
- (5) A complaint about the conduct of a Commission investigator when exercising the functions of a police officer may not be made under Part 8A of the *Police Service Act 1990*.

**[13] Section 111 Secrecy**

Insert "or disciplinary proceedings" after "prosecution" wherever occurring in section 111 (3) and (4) (b).

**[14] Section 111A, 111B**

Insert after section 111:

**111A Secrecy provisions in other Acts**

The following provisions do not apply to the divulging of information, or the production of any document or other thing, pursuant to a requirement made by or under this Act:

- (a) section 15 (Secrecy) of the *Companies (Administration) Act 1981*,
- (b) section 206 (Disclosure of information relating to Police Board functions) of the *Police Service Act 1990*.

**111B Privacy Committee Act 1975**

- (1) **Disclosure of information by members or officers of Privacy Committee**

Section 20 of the *Privacy Committee Act 1975* does not apply to the disclosure of information for the purposes of any proceedings for an offence under this Act.

- (2) **Members or officers of Privacy Committee as witnesses**

Section 21 of the *Privacy Committee Act 1975* does not apply in respect of any proceedings for an offence under this Act.

**[15] Section 112 Publication of evidence etc**

Insert after section 112 (1):

- (1A) The Commission is not to give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.

**[16] Section 116 Proceedings for offences**

Insert after section 116 (3):

- (4) Proceedings for an alleged offence under section 80 (c) or 81 may be commenced within 3 years after the commission of the alleged offence.



## Schedule 4 Amendment of Ombudsman Act 1974

(Section 6)

### [1] Section 5 Definitions

Omit the definition of *Joint Committee* from section 5 (1).  
Insert instead:

*Joint Committee* means the joint committee called the Committee on the Office of the Ombudsman and the Police Integrity Commission, constituted under this Act.

### [2] Section 31A Constitution of Joint Committee

Insert "and the Police Integrity Commission" after "Ombudsman".

### [3] Section 31A (2)

Insert at the end of section 31A:

- (2) The Joint Committee has and may exercise the functions conferred or imposed on it by or under this Act, the *Police Integrity Commission Act 1996*, or any other Act.

### [4] Section 31B Functions

Omit "The functions of the Joint Committee are as follows" from section 31B (1).

Insert instead "The Joint Committee has the following functions under this Act".

### [5] Section 31BA Power to veto proposed appointments

Omit "Ombudsman or Director of Public Prosecutions" from section 31BA (1).

Insert instead "Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission".

**[6] Section 31BA (5)**

Insert after section 31BA (5) (b):

, and

- (c) in the context of an appointment of Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission, a reference to the Minister administering section 7 or 88 (as appropriate) of the *Police Integrity Commission Act 1996*.

**[7] Section 31H Confidentiality**

Omit "Ombudsman or Director of Public Prosecutions" from section 31H (1A) and (1C) wherever occurring.

Insert instead "Ombudsman, Director of Public Prosecutions, Commissioner for the Police Integrity Commission or Inspector of the Police Integrity Commission".

**[8] Section 35A Immunity of Ombudsman and others**

Omit "this Act" from section 35A (1).

Insert instead "this or any other Act".

**[9] Section 37 Offences**

Insert after section 37 (3):

- (4) A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of:
- (a) his or her making a complaint to the Ombudsman, or
  - (b) his or her assisting the Ombudsman, or
  - (c) any evidence given by him or her to the Ombudsman,

is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (5) An employer who dismisses any employee from his or her employment, or prejudices any employee in his or her employment, for or on account of the employee assisting the Ombudsman is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (6) In any proceedings for an offence against subsection (5), it lies on the employer to prove that any employee shown to have been dismissed or prejudiced in his or her employment was so dismissed or prejudiced for some reason other than the reasons mentioned in subsection (5).
- (7) In this section, a reference to a person assisting the Ombudsman is a reference to a person who:
- (a) has appeared, is appearing or is to appear as a witness before the Ombudsman, or
  - (b) has complied with or proposes to comply with a requirement under section 18, or
  - (c) has assisted, is assisting or is to assist the Ombudsman in some other manner.

**[10] Section 38**

Omit the section. Insert instead:

**38 Proceedings for offences**

- (1) Except where otherwise expressly provided by this Act, proceedings for an offence against this Act are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.
- (2) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.



- (3) If, in accordance with subsection (2), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is:
- (a) in the case of an individual—the smaller of:
    - (i) a fine of 50 penalty units or imprisonment for 2 years, or both, or
    - (ii) the maximum penalty otherwise applicable to the offence when committed by an individual, or
  - (b) in the case of a corporation—the smaller of:
    - (i) a fine of 100 penalty units, or
    - (ii) the maximum penalty otherwise applicable to the offence when committed by a corporation.

## **Schedule 5 Amendment of Royal Commission (Police Service) Act 1994**

(Section 7)

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

Omit section 26 (1). Insert instead:

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

### **[2] Section 26 (3)–(7)**

Insert after section 26 (2):

- (3) Any such arrangements may (but need not) involve the Commissioner directing the Commissioner of Police or a prescribed public authority or prescribed public official:
  - (a) to provide any protection referred to in subsection (1), or
  - (b) to provide personnel or facilities or both to assist in providing that protection, or
  - (c) to otherwise assist in the provision of that protection.
- (4) The Commissioner of Police, or such a public authority or public official, is under a duty to comply with any such direction as far as reasonably possible.

- (5) Any such arrangements may (but need not) involve the Commissioner making orders applying to a specified person and containing directions of a kind or kinds referred to in subsection (3).
- (6) A person who contravenes an order applying to the person under subsection (5) without reasonable excuse is guilty of an indictable offence.  
  
Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.
- (7) Nothing in this section affects the *Witness Protection Act 1995*.

**[3] Section 41 Proceedings for offences**

Omit "Proceedings".

Insert instead "Except where otherwise expressly provided by this Act, proceedings".

**[4] Section 41 (2) and (3)**

Insert at the end of section 41:

- (2) If an offence against this Act is an indictable offence, a Local Court may nevertheless hear and determine the proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and prosecutor consent.
- (3) If, in accordance with subsection (2), a Local Court convicts a person of such an offence, the maximum penalty that the court may impose is 50 penalty units or imprisonment for 2 years, or both.



## Schedule 6 Amendment of other Acts

(Section 8)

### 6.1 Defamation Act 1974 No 18

#### [1] Section 17S

Insert after section 17R:

#### **17S Matters arising under the Police Integrity Commission Act 1996**

- (1) There is a defence of absolute privilege for a publication:
  - (a) to or by the Police Integrity Commission, or
  - (b) to or by the Commissioner for the Police Integrity Commission as Commissioner, or
  - (c) to or by the Inspector of the Police Integrity Commission as Inspector, or
  - (d) to any officer of the Commission or officer of the Inspector (within the meaning of the *Police Integrity Commission Act 1996*) as such an officer.
- (2) This section applies in relation to any hearing before the Police Integrity Commission or Inspector of the Police Integrity Commission or any other matter relating to the powers, authorities, duties or functions of the Commission or Inspector.

#### [2] Schedule 2 Proceedings of Public Concern and Official and Public Documents and Records

Insert at the end of clause 2 (inserting the appropriate item number):

- ( ) proceedings at a hearing held in public by the Police Integrity Commission or Inspector of the Police Integrity Commission.

## 6.2 Freedom of Information Act 1989 No 5

### Schedule 2 Exempt bodies and offices

Insert at the end of the Schedule:

The Police Integrity Commission—corruption prevention, complaint handling, investigative and report functions.

The office of Inspector of the Police Integrity Commission—operational auditing, complaint handling, investigative and report functions.

## 6.3 Protected Disclosures Act 1994 No 92

### [1] Section 4 Definitions

Insert in alphabetical order:

*PIC* means the Police Integrity Commission constituted under the *Police Integrity Commission Act 1996*.

*PIC Inspector* means the Inspector of the Police Integrity Commission appointed under the *Police Integrity Commission Act 1996*.

*PIC officer* means an officer of the Commission, as defined in the *Police Integrity Commission Act 1996*.

*PICI officer* means an officer of the Inspector, as defined in the *Police Integrity Commission Act 1996*.

### [2] Section 4

Insert at the end of paragraph (c) of the definition of *investigating authority*:

, or

(d) the PIC, or

(e) the PIC Inspector.

**[3] Section 4**

Insert at the end of paragraph (c) of the definition of *investigation Act*:

, or

(d) the *Police Integrity Commission Act 1996*.

**[4] Section 4**

Insert “, and (without limitation), includes a PIC officer or a PICI officer” after “investigating authority” in the definition of *public official*.

**[5] Section 5 Relationship of this Act and other Acts**

Omit “13 (2) and (4)”. Insert instead “13 (2), (4) and (4B)”.

**[6] Section 12A**

Insert after section 12:

**12A Disclosure concerning police**

- (1) To be protected by this Act, a disclosure by a public official to the PIC must:
  - (a) be made in accordance with the *Police Integrity Commission Act 1996*, and
  - (b) be a disclosure that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by a police officer.
- (2) To be protected by this Act, a disclosure by a public official to the PIC Inspector must:
  - (a) be made in accordance with the *Police Integrity Commission Act 1996*, and



- (b) be a disclosure of information that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the PIC, a PIC officer or a PICI officer.
- (3) To be protected by this Act, a disclosure by a public official to an investigating authority (being the Auditor-General, the Commission or the Ombudsman) concerning the PIC or a PIC officer must relate to a matter referred by the PIC Inspector to the investigating authority under section 95 of the *Police Integrity Commission Act 1996*.

**[7] Section 13 Disclosures about investigating authorities**

Insert after section 13 (4):

- (4A) Despite section 10, a disclosure by a public official to the Commission that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the PIC Inspector, the PIC Inspector or a PICI officer has engaged or proposes to engage in conduct of a kind that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act.
- (4B) The Commission may investigate, and report, in accordance with the *Independent Commission Against Corruption Act 1988* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (4A).

**6.4 Public Sector Management Act 1988 No 33**

**Schedule 1 Departments**

Insert in alphabetical order of Departments:

Police Integrity Commission

\*Commissioner for the Police  
Integrity Commission

**6.5 Search Warrants Act 1985 No 37**

**Section 10 Definitions**

Insert in alphabetical order of Acts in the definition of *search warrant*:

section 45 of the *Police Integrity Commission Act 1996*,

**6.6 Telecommunications (Interception) (New South Wales) Act 1987 No 290**

**[1] Section 3 Definitions**

Omit "or" from paragraph (e) of the definition of *agency* in section 3 (1) and insert after that paragraph:

(e1) the Police Integrity Commission,

(e2) the Police Royal Commission, or

**[2] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *certifying officer*:

, or

(d) in the case of the Police Integrity Commission—the Commissioner or an Assistant Commissioner of that Commission, or

(e) in the case of the Police Royal Commission—the Police Royal Commissioner.

**[3] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *chief officer*:

, or

- (d) in the case of the Police Integrity Commission—the Commissioner of that Commission,
- (e) in the case of the Police Royal Commission—the Police Royal Commissioner.

**[4] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *eligible authority*:

, or

- (d) the Police Integrity Commission, or
- (e) the Police Royal Commission.

**[5] Section 3 (1)**

Insert at the end of paragraph (c) of the definition of *officer*:

, or

- (d) in the case of the Police Integrity Commission—an officer of the Commission (as defined in the *Police Service Act 1990*), or
- (e) in the case of the Police Royal Commission—an officer of the Police Royal Commission as defined in the *Police Integrity Commission Act 1996*.

**[6] Section 3 (1)**

Insert in alphabetical order in section 3 (1):

*Police Royal Commission* and *Police Royal Commissioner* have the same meanings as in the *Police Integrity Commission Act 1996*.

**[7] Section 21 Disclosure by persons under the Minister's administration**

Omit "or" at the end of paragraph (b) (iv), and insert after paragraph (b) (v):

- (vi) the *Police Integrity Commission Act 1996*,  
or
- (vii) the *Royal Commission (Police Service) Act 1994*, or



## 6.7 Witness Protection Act 1995 No 87

### Section 44 Relationship with other witness protection arrangements

Insert at the end of paragraph (b):

, or

- (c) section 26 of the *Royal Commission (Police Service) Act 1994*, or
- (d) section 51 of the *Police Integrity Commission Act 1996*.

[Minister's second reading speech made in—  
Legislative Assembly on 4 June 1996  
Legislative Council on 17 June 1996]

BY AUTHORITY