



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 Corruption 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 Corruption Commission by the proposed *Police Corruption 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 Corruption 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 administration as defined in the *Ombudsman Act 1974*.
- Proposed section 122A states that the Part will be subject to the proposed *Police Corruption 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 Corruption 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 72 of the proposed *Police Corruption Commission Act 1996*, and are intended to cover the more significant types of police corruption and misconduct.
  - 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 relating to internal management of the Police Service or complaints relating to matters of administration as defined in the *Ombudsman Act 1974*.
- The general scheme for dealing with complaints is that Category 1 complaints will be investigated or managed by the Police Corruption 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 Corruption Commission will have authority to take over any complaint.

**Schedule 1 [4], [5] and [6]** 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 Police Corruption Commission. These provisions will now be extended to information arising during the course of investigation by the Police Corruption Commission.

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

These amendments allow the Commissioner for the Police Corruption 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 Corruption Commission Act 1996*, and change the name and role of the Parliamentary Joint Committee established under that



Act. The Committee will now be known as the Committee on the Independent Commission Against Corruption and the Police Corruption Commission.

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 allow the Ombudsman to initiate an investigation into police conduct on his or her own motion. Other amendments bring provisions of the Act into line with provisions in the proposed *Police Corruption 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 Corruption Commission Act 1996*.

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

Various other Acts are amended in connection with the Police Corruption 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

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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 Corruption 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):

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*PCC Commissioner* means the Commissioner for the  
Police Corruption Commission.

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

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### [2]    Section 3

Insert after section 3 (2):

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

### [3]    Part 8A

Omit the Part. Insert instead:

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## 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:

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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

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(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.

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(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,      5
- (c)      corrupt conduct within the meaning of the *Independent Commission Against Corruption Act 1988* involving a police officer,
- (d)      conduct of a police officer:      10
  - (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      15
  - (iv)      that is based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations, or      20
  - (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 within the meaning of the *Ombudsman Act 1974* involving a police officer,      25
- (f)      a matter that concerns the internal management of the Police Service.

(3)      **Former police officers**      30

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.      35



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**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. 5

*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. 10

*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 Corruption Commission Act 1996*. 15
- (2) The Police Royal Commission and the Police Corruption 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). 20
- (3) The regulations may make provision for or with respect to guidelines to be observed by the Police Royal Commission and the Police Corruption Commission regarding the exercise of their respective functions concerning complaints. 25

**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. 30

- (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** 5

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 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 10

- (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: 15

(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 20  
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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.

**125 Making of complaints** 30

(1) **In writing**

A complaint must be in writing.

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

However, the Ombudsman or Police Corruption Commission 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 Ombudsman or Police Corruption Commission as soon as practicable. 5

(3) **Anonymous complaints**

It is not necessary for the complainant to be identified in a complaint. 10

(4) **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 15
- (b) it is lodged or received at the office of the Police Corruption Commission or of the Ombudsman while that office is open for business or it is received in that office by post or facsimile, or 20
- (c) it is addressed to the Police Corruption Commission or the Ombudsman and lodged at a Local Court, or
- (d) it is referred to the Police Corruption Commission or the Ombudsman by the Minister, by the Independent Commission Against Corruption or by the New South Wales Crime Commission. 25

(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. 30

(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 Corruption 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 Corruption Commission, or to the Ombudsman. 5

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. 10

**125A Complaints received by PCC** 15

If the Police Corruption 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 PCC Commissioner and the Ombudsman as requiring immediate notification to the Ombudsman, and 20
- (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 PCC Commissioner and the Commissioner of Police as not requiring immediate notification to the Commissioner of Police. 25

**125B Complaints received by Ombudsman**

If the Ombudsman receives a complaint, the Ombudsman must, as soon as practicable, cause a copy of the complaint to be sent to: 30

- (a) the Police Corruption Commission, if it is a Category 1 complaint, or

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- (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 immediate notification to the Commissioner of Police. 5

**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. 10

**127 Complaints received by police to be forwarded to PCC or Ombudsman 15**

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 Corruption Commission, in the case of a Category 1 complaint, or
- (b) the Ombudsman, unless:
  - (i) in the case of a Category 1 complaint—it is within a class or kind agreed on by the PCC Commissioner and the Ombudsman as not requiring immediate notification to the Ombudsman, or 25
  - (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 immediate notification to the Ombudsman. 30

**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 Corruption 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 Corruption 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 or ICAC or made by MP**

- (1) If:
  - (a) the Minister refers a complaint to the Police Corruption 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 Corruption 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. 30
- (3) If the ICAC refers a complaint to the Police Corruption Commission or the Ombudsman, the ICAC does not become the complainant.

**130 Intelligence matters**

- (1) The Ombudsman and the Commissioner of Police may agree that a particular complaint (not being a Category 1 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.
- (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. 10
- (4) The complainant is to be informed that the complaint will not be investigated under this Act. 15
- (5) The Ombudsman must furnish the PCC with information about such a direction and such a complaint as soon as practicable.
- (6) An excluded complaint is to be treated as excluded from this Part, but nothing in this section affects any power of the PCC with regard to it. 20
- (7) The Ombudsman may consent to an excluded complaint being treated as a complaint within this Part, or may require that it be so treated.

**Division 3      Conciliation** 25

**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. 30

**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. 35

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**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. 5
- (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: 10

- (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, 15
- (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. 20
- (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. 25
- (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** 30

- (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 disciplinary proceedings** 5

- (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 disciplinary proceedings against the police officer. 10
- (2) The statement is inadmissible only if the disciplinary proceedings relate to the conduct that is the subject of the complaint.

**138 Audit by Ombudsman of conciliation by police officers** 15

- (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: 20
- (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. 25
- (3) The Ombudsman may make recommendations to the Commissioner about the conciliation of complaints under this Division.



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**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.

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**Division 4 Complaints relating to internal management or administration****139A Application of Division**

This Division applies to a complaint that is of a class or kind that the Ombudsman and the Commissioner of Police have agreed:

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- (a) may require mere managerial action (for example, a complaint alleging conduct by a police officer that involves a breach of police internal management rules, requirements or standards), or
- (b) appears to deal with conduct within the meaning of the *Ombudsman Act 1974* and should be referred to the Ombudsman to be dealt with under that Act.

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**139B Application of Part to internal management complaints**

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

**139C Dealing with internal management complaints**

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.

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**Division 5 Investigations****140 Investigations of complaints by Commissioner at discretion**

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- (1) The Commissioner may cause a complaint to be investigated under this Division.

- (2) The Commissioner must, as soon as practicable after causing a complaint to be investigated, notify the Ombudsman of that fact.

**141 Investigations of complaints by Commissioner when directed by Ombudsman**

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- (1) The Commissioner must cause a complaint to be investigated under this Division if the Ombudsman determines that the complaint should be investigated and duly notifies the Commissioner accordingly.
- (2) In determining whether a complaint should be investigated, the Ombudsman may have regard to such matters as the Ombudsman 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 a formal investigation, or 15
- (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 20
- (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. 25
- (3) Without affecting the generality of subsection (2), the Ombudsman is not to determine that a complaint, in which the complainant is not identified, should be investigated, unless of the opinion: 30
- (a) that the complaint appears to contain sufficient information to enable an investigation to be carried out, and 35

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- (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 5
  - (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. 10
- (4) The notification to the Commissioner of a determination of the Ombudsman that a complaint be investigated:
- (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 15
  - (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. 20
- (5) If the Ombudsman determines that a complaint should be investigated by the Commissioner, the Ombudsman:
- (a) must notify the complainant of that fact and of the Ombudsman's reasons for the determination, if the complainant is identified, and 25
  - (b) may also notify the police officer whose conduct is the subject of the complaint.
- (6) If the Ombudsman determines that a complaint should not be investigated by the Commissioner, the Ombudsman must: 30
- (a) notify the complainant of that fact and of the Ombudsman's reasons for the determination, if the complainant is identified, and
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- (b) send to the Commissioner a copy of the notification and of the complaint to which it relates.

**141A 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. 5
- (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. 10

**142 Conduct of investigation by Commissioner**

- (1) An investigation under this Division by the Commission is to be conducted by such police investigative staff as are selected by the Commissioner or in accordance with arrangements approved by the Commissioner. 15
- (2) The police officer or police officers carrying out an investigation under this Division are to have regard to any matters specified by the Ombudsman as needing to be examined or taken into consideration. 20

**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. 25  
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- (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**

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- (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. 10
- (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 15
- (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 20
- (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. 25
- (4) If the Ombudsman does not, within 28 days, grant a consent applied for under this section, the Commissioner may, within 14 days thereafter, apply to the President of the Police Tribunal for that consent. 30

- (5) The President of the Police Tribunal may:
- (a) grant the consent applied for subject to such conditions (if any) as are specified by the President, or
  - (b) refuse to grant the consent, 5
- and must notify the decision to the Commissioner, the Ombudsman and, if the complainant is identified, the complainant.
- (6) The President of the Police Tribunal may authorise another member of the Police Tribunal to deal with an application to the President under this section. 10
- (7) 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. 15
- (8) 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. 20

#### **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. 25
- (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. 30  
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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.

**145 Proceedings to be instituted if warranted** 5

- (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. 10
- (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. 15

**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: 20
- (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 25
- (c) states the result of the investigation, including any adverse findings, and
- (d) recommends the appropriate action to be taken (where relevant): 30
- (i) to correct unacceptable conduct, or
- (ii) to prevent a recurrence of unacceptable conduct, or
- (iii) to punish unacceptable conduct. 35



- (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**

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- (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 10
  - (b) provide the Ombudsman with such comments on the report and statements as the Commissioner thinks fit, and 15
  - (c) specify what action should, in the opinion of the Commissioner, be taken with respect to the complaint to which the investigation related.
- (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. 20  
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**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 under the *Ombudsman Act 1974*. 30

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- (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 140 that the complaint is being investigated, or 5
  - (b) the Ombudsman notifies the Commissioner pursuant to section 141 of the Ombudsman's determination that the complaint should be investigated, 10
- 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. 15

#### 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. 20
- (2) More than one such application may be made, but no such application may be made after the relevant period has expired.
- (3) 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. 25
- (4) If the Ombudsman does not, within 28 days, grant the extension applied for under this section, the Commissioner may, within 14 days thereafter, apply to the President of the Police Tribunal for that extension. 30

- (5) The President of the Police Tribunal may:
- (a) grant the extension applied for subject to such conditions (if any) as are specified by the President, or
  - (b) refuse to grant the extension, 5
- and must notify the decision to the Commissioner, the Ombudsman and, if the complainant is identified, the complainant.
- (6) The President of the Police Tribunal may authorise another member of the Police Tribunal to deal with an application to the President under this section. 10
- (7) If an application for an extension is made to the Ombudsman in accordance with this section, the relevant period is extended until:
- (a) the application is granted by the Ombudsman, or 15
  - (b) the application is withdrawn, or
  - (c) if the application is not granted by the Ombudsman:
    - (i) the time for the making of an application to the President of the Police Tribunal for that extension expires, or 20
    - (ii) if an application is made within that time to the President—the application is dealt with by the President or withdrawn.
- (8) If an extension is granted by the Ombudsman or the President of the Police Tribunal, the relevant period is extended by the period specified by the Ombudsman or President when granting the extension. 25
- 150 Extension of time where application for deferral of investigation etc 30**
- (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:



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- (a) the application is granted by the Ombudsman, or
- (b) the application is withdrawn, or
- (c) if the application is not granted by the Ombudsman:
- (i) the time for the making of an application to the President of the Police Tribunal for that consent expires, or 5
- (ii) if an application is made within that time to the President—the application is dealt with by the President or withdrawn. 10
- (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 or the President of the Police Tribunal, the relevant period is taken: 15
- (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 investigation 20**
- (1) If, after receiving the material and information referred to in section 147, the Ombudsman is not satisfied that the complaint to which the information relates was properly investigated under this Division, or is of the opinion that the report under section 146 is unsatisfactory, the Ombudsman must report to the Commissioner accordingly, specifying what are, in his or her opinion, the deficiencies in the investigation or in the report. 25
- (2) The Commissioner is, on receipt of the Ombudsman's report, and if required to do so: 30
- (a) to cause a further investigation to be conducted in order to remedy the deficiencies referred to in the report, or
- (b) to cause a further report to be prepared, 35
- as directed by the Ombudsman.
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- (3) This Division (including this section) applies to and in respect of a further investigation under this section in the same way as it applies to an initial investigation.

**152 Investigation under Ombudsman Act 1974 after completion of police investigation**

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- (1) If, after considering all the material and information provided for the Ombudsman under this Division, the Ombudsman is neither satisfied that a complaint has not been sustained nor satisfied that the complaint has been sustained, the Ombudsman may: 10
- (a) make the conduct to which the complaint relates the subject of an investigation under the *Ombudsman Act 1974*, or
- (b) having regard to the public interest, determine that no further investigation of the complaint should be carried out. 15
- (2) If the Ombudsman determines under subsection (1) (b) that no further investigation of a complaint should be carried out:
- (a) the Ombudsman must, if the complainant is identified, notify the complainant accordingly, giving the reasons for the determination, and must send a copy of the notification to: 20
- (i) the Commissioner, and
- (ii) the police officer whose conduct was the subject of the complaint, and 25
- (b) the complaint is, for the purposes of this Act, taken not to have been sustained.

**153 Investigation under Ombudsman Act 1974 before completion of police investigation**

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- (1) The Ombudsman may, if satisfied that it is in the public interest to do so, make the conduct to which a complaint relates the subject of an investigation under the *Ombudsman Act 1974*.

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- (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 before the results of any such investigation have been considered by the Ombudsman. 5
- (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. 10

**154 Other police investigations not affected**

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. 15

**Division 6 Reports 20****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 this Part and having regard to such other matters as the Ombudsman thinks fit, satisfied that the subject-matter of a complaint has been satisfactorily dealt with in the Police Service, the Ombudsman is: 25
- (a) to provide a copy of the finalised report to the complainant, if the complainant is identified, and
- (b) to furnish a report to the Commissioner, indicating the Ombudsman is satisfied that the subject-matter of the complaint has been dealt with satisfactorily in the Police Service. 30



- (2) The Commissioner is then to provide a copy of both reports to the police officer whose conduct was the subject of the complaint.

**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: 5
- (a) gives appropriate details of the investigation (having regard to any guidelines issued by the Commissioner and other matters that the Ombudsman thinks relevant), and 10
  - (b) states the result of the investigation, including any adverse findings, and
  - (c) recommends the appropriate action to be taken (where relevant): 15
    - (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. 20
- (2) The Ombudsman is to provide a copy of the report to:
- (a) the complainant, if the complainant is 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

**157 Recommendation in report under section 156**

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

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- (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
  - (c) that reasons be given for the conduct, or
  - (d) that any law or practice relating to the conduct be changed, or 10
  - (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. 15
  - (2) The nature of the action that the Commissioner may propose in the notification includes:
    - (a) that the police officer be admonished, or 20
    - (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 is not, however, to contain particulars of any penalty proposed to be imposed. 25
- (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 30

- (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 refer the issue to the President of the Police Tribunal. 10
- (5) The President of the Police Tribunal may:
  - (a) determine the issue, or 15
  - (b) decline to do so,

and must notify the decision to the Commissioner and the Ombudsman.
- (6) The President of the Police Tribunal may determine the issue: 20
  - (a) by directing the Commissioner to give the Ombudsman the notification under subsection (1) forthwith or within a period specified in the direction, or
  - (b) by directing the Commissioner to consider taking action of the nature specified in the direction, or 25
  - (c) by directing the Commissioner to take action of the nature proposed by the Commissioner forthwith or within a period specified in the direction. 30
- (7) Any direction given by the President of the Police Tribunal under this section is to be carried into effect by the Commissioner.



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- (8) The President of the Police Tribunal may authorise another member of the Police Tribunal to deal with an issue referred to the President under this section.
- (9) Nothing in this section:
- (a) permits the President of the Police Tribunal to review a determination made by the Ombudsman that a complaint has been sustained, or 5
  - (b) affects the exercise by the Police Tribunal of its jurisdiction under any other provision of this Act.

**159 Notification of action taken on report**

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- (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. 15
- (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: 20
- (a) appropriate, and
  - (b) taken within a reasonable time.

**160 Report to complainant**

The Ombudsman: 25

- (a) may from time to time report to the complainant (if identified) on the progress of an investigation under Division 5 into the complaint, and
- (b) must report to the complainant (if identified) on the results of the investigation, and 30

- (c) may make to the complainant such comments on the investigation and its consequences as the Ombudsman thinks fit.

**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. 10

**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 Commissioner. 15

**Division 7      Complaints Information System**

**162A Complaints Information System** 20

- (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 25
  - (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 30
  - (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.

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- (2) Protocols and memoranda of understanding may be entered into by the PCC 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 PCC or the Ombudsman must be registered in the Complaints Information System.
- (2) Despite subsection (1), the PCC 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) Despite subsection (1), the Ombudsman may direct that information about an excluded complaint under section 130:
- (a) not be entered in the System, or
  - (b) be removed from the System, or 25
  - (c) be entered or re-entered in the System.
- (4) The PCC and officers of the PCC approved by the PCC Commissioner are to have unrestricted access to all information in the System.
- (5) 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 placed by the PCC. 30



- (6) The PCC 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.

**162C Classification of complaints**

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- (1) Complaints are classified as follows:

- (a) Category 1 complaints,
- (b) Category 2 complaints,
- (c) Category 3 complaints,
- (d) Category 4 complaints.

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- (2) A Category 1 complaint is a Category 1 complaint as defined in section 72 of the *Police Corruption Commission Act 1996*.

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

**relevant police complaint** means a police complaint:

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- (a) that is of a class or kind that the PCC Commissioner and the Ombudsman have agreed should be referred to the Commission, or
- (b) that the PCC Commissioner has requested should be referred to the Commission, or
- (c) that is of a class or kind prescribed by the regulations.

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- (3) A Category 2 complaint is a complaint alleging conduct by a police officer that does not amount to conduct 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.

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- (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.

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- (2) On receiving a complaint, the PCC 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 PCC.
- (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 PCC 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.

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

- (1) The Police Corruption Commission may at any time direct that a Category 2, 3 or 4 complaint be treated as a Category 1 complaint. 5
- (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. 10

**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** 15

**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: 20
  - (a) request a complainant to attend before the Ombudsman for the purpose of providing further information concerning the complaint, 25
  - (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. 30
- (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.



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- (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: 30
  - (a) with an explanation of the policies, procedures and practices of the Police Service relevant to the conduct complained of, and 35

- (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 35

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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:

(a) may not, except as provided in paragraph (b), publish that material or information, and 10

(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

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: 25

(a) to a public authority—is to be construed as a reference to a police officer, and 30

(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. 5  
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- (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. 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. 25
- (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). 30

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**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.

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**(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.

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**(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.

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**(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.

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**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.

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**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.

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- (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 5
  - (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 10  
15
  - (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 20
  - (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** 25

- (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: 30
  - (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 5
  - (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. 10

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

Insert "or Police Corruption Commission" after "Police Royal Commission". 15

**[5] Section 181B Dismissal of police officers—information arising out of Police Royal Commission or Police Corruption Commission**

Insert "or the Police Corruption Commission" after "Police Royal Commission" in section 181B (1). 20

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

Insert "or the Police Corruption Commission" after "Police Royal Commission" in section 181C (b).

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

(Section 4)

### **[1]      Section 4 Definitions**

Insert "or Commissioner for the Police Corruption Commission" 5  
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 10  
paragraph (f), and insert before that paragraph:

(e)    the Police Corruption Commission, or

### **[3]      Section 88A**

Insert after section 88:

#### **88A Commissioner for the Police Corruption Commission**

(1)    The Commissioner for the Police Corruption 15  
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 20  
section 89 of the *Police Corruption 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 25  
Corruption Commission will exercise a function under  
this Act only in connection with matters arising during or  
out of the Police Corruption Commission's own  
investigations. However, this subsection does not  
provide any grounds for an appeal against or any other 30  
challenge to the exercise by the Commissioner of any  
such function.

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

(Section 5)

**[1]      Section 3 Definitions**

5

Insert in section 3 (1) in alphabetical order:

*hearing* means a hearing under this Act.

**[2]      Section 3 (1)**

Omit the definition of *Joint Committee*. Insert instead:

*Joint Committee* means the joint committee called the  
Committee on the Independent Commission Against  
Corruption and the Police Corruption Commission  
constituted by this Act.

10

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

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

15

**[4]      Section 41 (2)**

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

**[5]      Section 41 (3)**

20

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.

25



Omit the section. 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) 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) Nothing in this section affects the *Witness Protection Act 1995*.

5

**[7] Section 63 Constitution of Joint Committee**

Insert “and the Police Corruption Commission” after “Independent Commission Against Corruption”.

**[8] Section 63 (2)**

Insert at the end of section 63:

10

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

**[9] Section 64 Functions**

15

Omit “The functions of the Joint Committee are as follows” from section 64 (1).

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

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

20

Insert “in a material particular” after “false or misleading”.

**[11]    Section 93**

Omit section 93. 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: 5
- (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. 10
- 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 15
- (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. 20

**[12]    Section 94**

Omit section 94. 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. 25
- Maximum penalty: 200 penalty units or imprisonment for 5 years, or both. 30



- (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

**[13] Part 10A** 15

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. 20

***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. 25

***seconded police officer*** means:

- (a) a member of the Australian Federal Police, or 30
- (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.

5

**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). 10
- (2) Those functions extend to functions conferred after the commencement of this Part. 15
- (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. 20
- (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*. 25

**[14] Section 111 Secrecy**

Insert "or disciplinary proceedings" after "prosecution" wherever occurring in section 111 (3) and (4) (b). 30

**[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.

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**[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.

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## Schedule 4      Amendment of Ombudsman Act 1974

(Section 6)

### [1]      Section 13 Decision for investigation

Insert after section 13 (2):

- (2A) Where it appears to the Ombudsman that any conduct of a police officer or former police officer could be but is not the subject of a complaint under Part 8A of the *Police Service Act 1990*, the Ombudsman may make the conduct the subject of an investigation under this Act. 5

### [2]      Section 13AA Preliminary inquiries 10

Omit "conduct of a public authority" from section 13AA (1).  
Insert instead "conduct or police conduct".

### [3]      Section 13AA (2)

Omit "the conduct under section 12".  
Insert instead "conduct or police conduct under this or any other Act". 15

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

Omit "this Act" from section 35A (1).  
Insert instead "this or any other Act".

### [5]      Section 37 Offences 20

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 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. 30

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. 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 15

- (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 20  
(c) has assisted, is assisting or is to assist the Ombudsman in some other manner.

**[6] Section 38**

Omit the section. Insert instead: 25

**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. 30

Police Legislation Amendment Bill 1996

Schedule 4      Amendment of Ombudsman Act 1974

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- (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. 5
- (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 10
    - (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: 15
    - (i) a fine of 100 penalty units, or
    - (ii) the maximum penalty otherwise applicable to the offence when committed by a corporation.



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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**

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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**

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

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## Schedule 6      Amendment of other Acts

(Section 8)

### 6.1      Defamation Act 1974 No 16

#### [1]      Section 17S

Insert after section 17R:

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#### **17S Matters arising under the Police Corruption Commission Act 1996**

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

### 6.2      Freedom of Information Act 1989 No 5

#### **Schedule 2 Exempt bodies and offices**

Insert at the end of the Schedule:

20

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

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**6.3 Protected Disclosures Act 1994 No 92**

**[1] Section 4 Definitions**

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

, or

5

(d) the Police Corruption Commission.

**[2] Section 4**

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

, or

10

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

**[3] Section 18A**

Insert after section 18:

**18A Disclosures about Police Corruption Commission**

(1) In this section:

15

*officer of the PCC* means an officer of the Commission, as defined in the *Police Corruption Commission Act 1996*.

*PCC* means the Police Corruption Commission.

*PCC Inspector* means the Inspector of the Police Corruption Commission. 20

(2) A disclosure by a public official to the PCC Inspector of information that tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the PCC or an officer of the PCC is protected by this Act in the same way and to the same extent as if the PCC Inspector were listed in the definition of *investigating authority* in section 4. 25



- (3) A disclosure by a public official to an investigating authority (other than the PCC or the PCC Inspector) of information is not protected by this Act, unless the PCC Inspector has referred the matter to the investigating authority under section 95 of that Act. 5
- (4) A disclosure referred to in this section is protected by this Act only if it satisfies all the other applicable requirements of this Part.

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

##### **Schedule 1 Departments** 10

Insert in alphabetical order of Departments:

Police Corruption Commission	*Commissioner for the Police Corruption Commission
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#### **6.5 Search Warrants Act 1985 No 37**

##### **Section 10 Definitions** 15

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

section 45 of the *Police Corruption Commission Act 1996*,

#### **6.6 Telecommunications (Interception) (New South Wales) Act 1987 No 290** 20

##### **[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 Corruption Commission, 25
- (e2) the Police Royal Commission, or

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

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

, or

- (d) in the case of the Police Corruption Commission—the Commissioner or an Assistant Commissioner of that Commission, or 5
- (e) in the case of the Police Royal Commission—the Police Royal Commissioner.

**[3] Section 3 (1)** 10

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

, or

- (d) in the case of the Police Corruption Commission—the Commissioner of that Commission, 15
- (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 *elegible authority*: 20

, or

- (d) the Police Corruption 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 Corruption Commission—an officer of the Commission (as defined by the *Police Service Act 1990*), or 5
- (e) in the case of the Police Royal Commission—an officer of the Police Royal Commission as defined in the *Police Corruption Commission Act 1996*.

**[6]      Section 3 (1)** 10

Insert in alphabetical order in section 3 (1):

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

**[7]      Section 21 Disclosure by persons under the Minister's administration** 15

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

- (vi) the *Police Corruption Commission Act 1996*, or 20
- (vii) the *Royal Commission (Police Service) Act 1994*, or



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**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 56 of the *Police Corruption Commission Act 1996*.

