



New South Wales

Police Integrity Commission Amendment Act 2012 No 26

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Police Integrity Commission Act 1996 No 28	3



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Act No 26, 2012

An Act to amend the *Police Integrity Commission Act 1996* to implement recommendations arising from the statutory review of the Act under section 146; and for other purposes. [Assented to 8 May 2012]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Integrity Commission Amendment Act 2012*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Police Integrity Commission Act 1996 No 28

[1] Section 3

Omit the section. Insert instead:

3 Principal objects of Act

The principal objects of this Act are:

- (a) to establish an independent, accountable body whose principal function is to detect, investigate and prevent police corruption and other serious officer misconduct, and
- (b) to provide special mechanisms for the detection, investigation and prevention of serious officer misconduct and other officer misconduct, and
- (c) to protect the public interest by preventing and dealing with officer misconduct, and
- (d) to provide for the auditing and monitoring of particular aspects of the operations and procedures of the NSW Police Force and the New South Wales Crime Commission.

[2] Section 4 Definitions

Insert in alphabetical order:

officer misconduct means police misconduct, corrupt conduct of an administrative officer or misconduct of a Crime Commission officer.

[3] Section 4 (1A)

Insert after section 4 (1):

(1A) Serious and other misconduct

References in provisions of this Act to “serious” officer misconduct and “other” officer misconduct are intended for general guidance and are not intended to indicate a precise distinction between the two concepts.

[4] Section 5 Police misconduct

Omit section 5 (4).

[5] Sections 13–13C

Omit the sections. Insert instead:

13 Principal functions

- (1) The principal functions of the Commission are as follows:
 - (a) to prevent officer misconduct,
 - (b) to detect or investigate, or manage or oversee other agencies in the detection or investigation of, officer misconduct,
 - (c) to receive and assess all matters not completed by the Police Royal Commission, to treat any investigations or assessments of the Police Royal Commission as its own, to initiate or continue the investigation of any such matters where appropriate, and otherwise to deal with those matters under this Act, and to deal with records of the Police Royal Commission as provided by this Act.
- (2) The Commission is, as far as practicable, required to turn its attention principally to serious officer misconduct.
- (3) The reference in this section to *managing* other agencies in the detection or investigation of officer misconduct is a reference to the provision by the Commission of detailed guidance in the planning and execution of such detection or investigation.
- (4) The reference in this section to *overseeing* other agencies in the detection or investigation of officer misconduct is a reference to the provision by the Commission of a lower level of such guidance, relying rather on a system of guidelines prepared by it and progress reports and final reports furnished to it.
- (5) In managing or overseeing other agencies for the purposes of this section, the Commission does not have a power of control or direction, and any such management or oversight is to be achieved by agreement. However, it is the duty of members of the NSW Police Force and Crime Commission officers to co-operate with the Commission in the exercise of its management and oversight functions and any other functions of the Commission.
- (6) However, nothing in subsection (2), (3), (4) or (5):
 - (a) affects the capacity of the Commission to exercise any of the functions referred to in subsection (1), or
 - (b) provides a ground for any appeal or other legal or administrative challenge to the exercise by the Commission of any of those functions.

[6] Section 33 Public and private hearings

Insert after section 33 (3):

- (3A) Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a hearing wholly or partly in public, the Commission is to consider the following:
- (a) the benefit of exposing to the public, and making it aware of, officer misconduct,
 - (b) the seriousness of the allegation or complaint being investigated,
 - (c) any risk of undue prejudice to a person's reputation (including by not holding the hearing in public),
 - (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.

[7] Section 75B Duty to notify Commission of possible corrupt conduct of administrative officers

Omit the section.

[8] Section 75D Duty to notify PIC of possible misconduct of Crime Commission officers

Omit the section.

[9] Part 4C

Insert after Part 4B:

Part 4C Reporting misconduct

75D Duty to notify Commission of possible officer misconduct (cf ICAC Act s 11)

- (1) This section applies to the following officers:
- (a) the Ombudsman,
 - (b) the Crime Commissioner,
 - (c) the Commissioner of Police,
 - (d) the principal officer of a public authority,
 - (e) an officer who constitutes a public authority.

- (2) An officer to whom this section applies is under a duty to report to the Commission any matter that the officer suspects on reasonable grounds concerns or may concern officer misconduct.
- (3) The Commission may issue guidelines as to what matters need or need not be reported.
- (4) This section has effect despite any duty of secrecy or other restriction on disclosure.
- (5) For the purposes of this section, the regulations may prescribe who is the principal officer of a public authority, but in the absence of regulations applying in relation to a particular public authority, the principal officer is the person who is the head of the authority, its most senior officer or the person normally entitled to preside at its meetings.

[10] Section 89 Principal functions of Inspector

Insert after section 89 (1) (b):

- (b1) to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and

[11] Section 89 (1A)

Insert after section 89 (1):

- (1A) Without affecting the power of the Inspector to make a report under Part 8, the Inspector may, at any time:
 - (a) make a recommendation or report concerning any matter relating to the functions of the Inspector under this section that the Inspector considers may effectively be dealt with by recommendation or report under this section, and
 - (b) provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any other affected person.

[12] Section 101 Special reports

Insert “any of the following” after “on”.

[13] Section 101 (c)

Insert after section 101 (b):

- (c) any other matter relating to the exercise of a function to audit, deal with or assess any matter under section 89 that the Inspector considers warrants the making, in the public interest, of a special report.

[14] Section 137A

Insert after section 137:

137A Persons to be heard

- (1) Before including in a report any comment about a person that the Commission or the Inspector considers is adverse, the Commission or Inspector must, so far as practicable:
 - (a) inform that person of the substance of the grounds of the adverse comment, and
 - (b) give the person an opportunity to make submissions.
- (2) The Commission is taken to have complied with this section if it has held a hearing under section 32 at which the person who is the subject of the adverse comment concerned was informed of the substance of the grounds of the adverse comment and given an opportunity to make submissions.
- (3) This section applies only to the following reports:
 - (a) a report by the Commission in relation to any matter that has been or is the subject of an investigation by the Commission,
 - (b) a report by the Inspector in relation to any complaint.

[15] Section 146 Review of Act

Omit "A further such review is" from section 146 (2A).

Insert instead "Further such reviews are".

[16] Section 146 (2A)

Insert "and after the period of 5 years from the date of assent to the *Police Integrity Commission Amendment Act 2012*" after "2005".

[17] Schedule 3 Savings, transitional and other provisions

Omit clause 1. Insert instead:

1 Savings and transitional regulations

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

[18] Schedule 3, Part 11

Insert after Part 10:

**Part 11 Provision consequent on enactment of
Police Integrity Commission Amendment
Act 2012**

22 Reports

Section 137A (as inserted by the *Police Integrity Commission Amendment Act 2012*) does not apply to reports prepared before the commencement of that section.

[Second reading speech made in—

Legislative Assembly on 7 March 2012

Legislative Council on 2 May 2012]