

STATE DRUG CRIME COMMISSION ACT 1985 No. 117

NEW SOUTH WALES



TABLE OF PROVISIONS

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Act binds Crown

PART II—THE STATE DRUG CRIME COMMISSION OF NEW SOUTH WALES

DIVISION 1—*Constitution and functions*

5. The Commission
6. Principal functions of the Commission
7. Liaison with other bodies
8. Incidental powers of Commission
9. Delegation by Commission
10. Commission may require information from certain State agencies
11. Search warrants
12. Seizure pursuant to search warrant—special provisions

DIVISION 2—*Hearings*

13. Hearings
14. Reimbursement of expenses of witnesses
15. Legal and financial assistance
16. Power to summon witnesses and take evidence
17. Power to obtain documents
18. Failure of witnesses to attend and answer questions, etc.
19. Applications to Supreme Court
20. False or misleading evidence
21. Protection of witnesses, etc.
22. Contempt of Commission
23. Protection of members, etc.

**PART III—THE STATE DRUG CRIME COMMISSION MANAGEMENT
COMMITTEE**

24. The Management Committee
25. Functions of the Management Committee
26. Commission may request reference
27. Directions and guidelines to Commission

PART IV—MISCELLANEOUS

28. Public sittings and bulletins
29. Secrecy
30. Furnishing of reports and information
31. Annual report
32. Staff of Commission
33. Employment of consultants, etc.
34. Counsel assisting Commission
35. Service of documents
36. Proceedings for offences
37. Regulations
38. Cessation of operation of Act

**SCHEDULE 1—PROVISIONS RELATING TO THE MEMBERS OF THE
COMMISSION**

**SCHEDULE 2—PROVISIONS RELATING TO THE PROCEDURE OF THE
COMMISSION**

**SCHEDULE 3—PROVISIONS RELATING TO THE PROCEDURE OF THE
MANAGEMENT COMMITTEE**

**SCHEDULE 4—PROVISIONS RELATING TO SEARCH WARRANTS ISSUED
UNDER SECTION 11**

STATE DRUG CRIME COMMISSION ACT 1985 No. 117

New South Wales



ANNO TRICESIMO QUARTO

ELIZABETHÆ II REGINÆ

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Act No. 117, 1985

An Act to constitute a Commission into illegal drug trafficking and related crime. [Assented to, 1st November, 1985.]

See also Miscellaneous Acts (State Drug Crime Commission) Amendment Act 1985.

State Drug Crime Commission 1985

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

PART I
PRELIMINARY

Short title

1. This Act may be cited as the "State Drug Crime Commission Act 1985".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Interpretation

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"business" includes—

- (a) any profession, trade, employment or vocational calling;
- (b) any transaction or transactions, whether lawful or unlawful, in the nature of trade or commerce (including the making of a loan); and
- (c) any activity, whether lawful or unlawful, carried on for the purposes of gain, whether or not the gain is of a pecuniary nature and whether the gain is direct or indirect;

"Chairperson" means the Chairperson of the Commission;

"Commission" means the State Drug Crime Commission of New South Wales constituted by this Act;

"document" includes any book, register or other record of information, however compiled, recorded or stored;

State Drug Crime Commission 1985

“imprisonment” includes penal servitude;

“indictable offence” means an offence which may be prosecuted on indictment;

“investigation” means an investigation under this Act;

“Judge” means a Judge of a court of the State;

“law enforcement agency” means—

(a) the Police Force;

(b) a Police Force of another State or a Territory of the Commonwealth;

(c) the Australian Federal Police; or

(d) any other authority or person responsible for the enforcement of the laws of the Commonwealth or of the State, another State or a Territory of the Commonwealth;

“legal practitioner” means a barrister or a solicitor of the Supreme Court;

“Management Committee” or “Committee” means the State Drug Crime Commission Management Committee constituted by this Act;

“member” means a member of the Commission, and includes the Chairperson;

“member of the staff of the Commission” means—

(a) a member of the staff referred to in section 32 (1) or (4);

(b) a person engaged under section 33 (1);

(c) a person referred to in section 32 (2) whose services are made use of by the Commission; or

(d) a member of the Police Force referred to in section 32 (3) who is performing services for the Commission;

“regulation” means a regulation made under this Act;

“relevant drug activity” means any circumstances implying, or any allegations, that a relevant drug offence may have been, or may be being, or may be about to be, committed;

“relevant drug offence” means a serious drug offence—

State Drug Crime Commission 1985

- (a) that involves substantial planning and organisation;
- (b) the time for the commencement of a prosecution for which has not expired; and
- (c) that is punishable by imprisonment for at least 3 years;

“serious drug offence” means—

- (a) an offence referred to in section 45A of the Poisons Act 1966—
 - (i) of supplying any drug of addiction or prohibited drug within the meaning of that Act;
 - (ii) of cultivating, supplying or possessing any prohibited plant within the meaning of that Act; or
 - (iii) of permitting any premises, as owner, occupier or lessee of the premises, to be used for the purpose of the cultivation or supply of any prohibited plant within the meaning of that Act or of being concerned in the management of any such premises;
- (b) a prescribed offence involving drugs or an offence of a prescribed kind involving drugs;
- (c) an offence, which involves theft, fraud, obtaining financial benefit by vice engaged in by others, extortion, violence, bribery, corruption or harbouring criminals, perpetrated in connection with an offence referred to in paragraph (a) or (b); or
- (d) an offence of attempting to commit, or of conspiracy or incitement to commit, an offence referred to in paragraph (a), (b) or (c).

(2) Where the Commission suspects that an offence that is not a relevant drug offence as defined in subsection (1) may be directly or indirectly connected with, or may be a part of, a course of activity involving the commission of a relevant drug offence as so defined, whether or not the Commission has identified the nature of that relevant drug offence, the first-mentioned offence shall, for so long as the Commission so suspects, be deemed, for the purposes of this Act, to be a relevant drug offence.

(3) In this Act—

State Drug Crime Commission 1985

- (a) a reference to a function includes a reference to a power, authority and duty; and
 - (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.
- (4) In this Act, a reference to a person who has special legal qualifications is a reference to a person who—
- (a) is or has been a Judge;
 - (b) is a barrister of not less than 5 years' standing;
 - (c) is a solicitor of not less than 7 years' standing; or
 - (d) is a barrister or a solicitor of less than 5 years' or 7 years' standing respectively, where at all times during a continuous period of not less than 7 years the person was on the roll of solicitors when not on the roll of barristers or on the roll of barristers when not on the roll of solicitors.
- (5) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

Act binds Crown

- 4. This Act binds the Crown in right of the State.
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PART II

THE STATE DRUG CRIME COMMISSION OF NEW SOUTH WALES

DIVISION 1—*Constitution and functions*

The Commission

- 5. (1) There is constituted by this Act a corporation under the corporate name of the "State Drug Crime Commission of New South Wales".
- (2) The Commission shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

State Drug Crime Commission 1985

(3) The Commission shall consist of 3 members who shall be appointed by the Governor.

(4) Of the members—

(a) two shall, in and by the instruments by which they are appointed, be appointed as full-time members; and

(b) one shall, in and by the instrument by which the member is appointed, be appointed as a part-time member.

(5) One of the full-time members shall, in and by the instrument by which the member is appointed, be appointed as Chairperson of the Commission.

(6) At least one of the full-time members shall be a person who has special legal qualifications.

(7) Schedule 1 has effect with respect to the members.

(8) Schedule 2 has effect with respect to the procedure of the Commission.

Principal functions of the Commission

6. (1) The principal functions of the Commission are—

(a) to investigate matters relating to a relevant drug activity referred to the Commission by the Management Committee;

(b) to assemble evidence that would be admissible in the prosecution of a person for a relevant drug offence arising out of any such matters and to furnish any such evidence to a Special Prosecutor;

(c) to furnish in accordance with this Act reports relating to illegal drug trafficking and related crime, which include, where appropriate, recommendations for changes in the laws of the State; and

State Drug Crime Commission 1985

- (d) to disseminate investigatory, technological and analytical expertise to such persons or bodies as the Commission thinks fit.

(2) If the Commission obtains any evidence in the course of its investigations, being evidence that would be admissible in the prosecution of a person for an indictable offence (other than evidence of a relevant drug offence which is furnished to a Special Prosecutor) against a law of New South Wales, of the Commonwealth, of a Territory or of another State, the Commission shall furnish that evidence to the Attorney General, together with any recommendation as to action the Commission considers should be taken in relation to that evidence.

(3) If the Commission obtains any information in the course of its investigations relating to the exercise of the functions of a Government Department, Administrative Office or local or public authority, the Commission may, if it considers it desirable to do so—

- (a) furnish that information or a report on that information to the relevant Minister; and
- (b) make to that Minister such recommendations (if any) relating to the exercise of the functions of the Department, Office or authority, as the Commission considers appropriate.

(4) The Commission shall furnish to the Management Committee full details of any evidence furnished to a Special Prosecutor or to the Attorney General under this section.

(5) In this section—

“Special Prosecutor” means a person within the office of the Solicitor for Public Prosecutions for the time being designated as a Special Prosecutor for the purposes of this Act.

Liaison with other bodies

7. The Commission may, with the approval of the Management Committee—

- (a) disseminate intelligence and information to the National Crime Authority and such law enforcement agencies as the Commission thinks appropriate; and

State Drug Crime Commission 1985

- (b) co-operate and consult with the National Crime Authority, the Australian Bureau of Criminal Intelligence, law enforcement agencies and such persons and other bodies as the Management Committee thinks appropriate.

Incidental powers of Commission

8. The Commission has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of its functions, and any specific powers conferred on the Commission by this Act shall not be taken to limit by implication the generality of this section.

Delegation by Commission

9. (1) The Commission may delegate to a member of the Commission the exercise of any of its functions, other than—

- (a) this power of delegation; and
(b) the power of the Commission to conduct hearings.

(2) A delegation under this section—

- (a) shall be in writing;
(b) may be general or limited; and
(c) may be revoked, wholly or partly, by the Commission.

(3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

(4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Commission.

(5) A delegation under this section does not prevent the exercise of a function by the Commission.

(6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

State Drug Crime Commission 1985

Commission may require information from certain State agencies

10. (1) A full-time member may, by notice in writing served on the principal officer of an agency, or on a person who is a member, officer or employee of an agency, require that principal officer, or that person, as the case may be, to furnish to the Commission, by writing signed by that principal officer, or by that person, within the time and in the manner specified in the notice, information so specified, being information that—

- (a) was acquired by the first-mentioned agency in the ordinary course of exercising its functions, or was acquired by that person in that person's capacity as such a member, officer or employee; and
- (b) is relevant to an investigation being conducted by the Commission.

(2) A full-time member may, by notice in writing served on the principal officer of an agency, require that principal officer—

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Commission or a member of the staff of the Commission; and
- (b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that relates to the exercise by the agency of its functions and is relevant to such an investigation.

(3) If a person who is required, by a notice served on the person under this section, to furnish information, or produce a document or thing, to a person specified in the notice (in this subsection referred to as the "specified person") claims to the specified person to be entitled to refuse to furnish the information or produce the document or thing, the specified person shall—

- (a) if satisfied that the claim is justified—inform the claimant that the requirement will not be insisted upon; or
- (b) in any other case—inform the claimant that the specified person is not so satisfied and, if the document or thing is not produced forthwith, refer the claim to the Commission for decision under section 19.

(4) Subject to the provisions of any enactment prescribed for the purposes of this subsection, but notwithstanding any other provision of a law of the State that prohibits the divulging or communicating of information or the production of a document or thing, a person shall not—

State Drug Crime Commission 1985

- (a) without reasonable excuse, fail to comply with a notice served on the person under subsection (1) or (2); or
- (b) in purported compliance with a notice served on the person under subsection (1), knowingly furnish information that is false or misleading.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(5) Subsection (4) does not apply in such circumstances as may be prescribed.

(6) In this section—

“agency” means—

- (a) a Government Department or Administrative Office;
- (b) any person appointed to an office by the Governor;
- (c) any statutory body representing the Crown;
- (d) any officer or temporary employee of the Public Service;
- (e) any person in the service of the Crown or of any statutory body representing the Crown;
- (f) any person in relation to whom or to whose functions an account is kept of administration or working expenses, where the account—
 - (i) is part of the accounts prepared pursuant to the Public Finance and Audit Act 1983;
 - (ii) is required by or under any Act to be audited by the Auditor-General;
 - (iii) is an account with respect to which the Auditor-General has powers under any law; or
 - (iv) is an account with respect to which the Auditor-General may exercise powers under a law relating to the audit of accounts where requested to do so by a Minister of the Crown;
- (g) any person entitled to be reimbursed expenses, from a fund of which an account mentioned in paragraph (f) is kept, of attending meetings or carrying out the business of any body constituted by an Act;

State Drug Crime Commission 1985

- (h) any holder of an office declared by the regulations to be an office of a public authority for the purposes of this Act;
- (i) any local government authority or any member or employee of a local government authority;
- (j) the Police Force; or
- (k) any person otherwise acting for or on behalf of, or in the place of, or as deputy or delegate of, any person described in any of the foregoing paragraphs;

“principal officer” means—

- (a) in relation to an agency that is a Government Department or Administrative Office—the person holding office or acting as Department Head in relation to the Department or Office;
- (b) in relation to any other agency—
 - (i) if the regulations declare an office to be the principal office in respect of the agency—the person holding or performing the duties of that office; or
 - (ii) in any other case—the person who constitutes the agency or, if the agency is constituted by 2 or more persons, the person who is entitled to preside at any meeting of the agency at which the person is present.

Search warrants

11. (1) In this section—

“authorised justice” means—

- (a) a Magistrate; or
- (b) a justice of the peace employed in the Local Courts Administration, Attorney General’s Department;

“thing” includes a document.

(2) A full-time member of the Commission may apply to an authorised justice for the issue of a search warrant if—

State Drug Crime Commission 1985

- (a) the Commission has reasonable grounds for suspecting that, on a particular day (in this section referred to as the "relevant day"), being the day on which, or a particular day within one month after the day on which, the application is made, there may be in or on any premises a thing or things of a particular kind connected with a matter relating to a relevant drug activity, being a matter into which the Commission is conducting an investigation (in this section referred to as "things of the relevant kind"); and
- (b) the Commission believes on reasonable grounds that, if a summons were issued for the production of the thing or things, the thing or things might be concealed, lost, mutilated or destroyed.

(3) An authorised justice to whom an application is made under subsection (2) may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising any member of the Police Force, or any other person, named in the warrant—

- (a) to enter the premises;
- (b) to search the premises for things of the relevant kind; and
- (c) to seize any things of the relevant kind found in or on the premises and deliver things so seized to the Commission.

(4) Schedule 4 has effect.

(5) A search warrant issued under this section shall—

- (a) include a statement of the purpose for which the warrant is issued, which shall include a reference to the matter relating to a relevant drug activity into which the Commission is conducting an investigation and with which the things of the relevant kind are connected; and

- (b) include a description of the kind of things authorised to be seized.

Seizure pursuant to search warrant—special provisions

12. (1) Where, in the course of searching, in accordance with the terms of a search warrant issued under section 11, for things of the relevant kind (within the meaning of that section), the person executing the warrant finds a thing that the person believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for a relevant drug offence, or for an indictable offence against the law of the Commonwealth, of a State or of a Territory, and the first-mentioned person believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence, that person may seize the thing and, if the thing is so seized, it shall be deemed, for the purposes of this Act, to have been seized pursuant to the warrant.

(2) Where a thing is seized pursuant to a search warrant issued under section 11—

- (a) the Commission may retain the thing if, and for so long as, retention of the thing by the Commission is reasonably necessary for the purposes of an investigation to which the thing is relevant; and
- (b) if the retention of the thing by the Commission is not, or ceases to be, reasonably necessary for such purposes, the Commission shall cause the thing to be delivered to—
- (i) if the thing may be used in evidence in proceedings of a kind referred to in subsection (5)—the authority or person responsible for taking the proceedings; or
- (ii) if subparagraph (i) does not apply—the person who appears to the Commission to be entitled to the possession of the thing,

State Drug Crime Commission 1985

unless the Commission has furnished the thing to the Attorney General in accordance with section 6 (2).

(3) The Commission may, instead of delivering a thing in accordance with subsection (2) (b) (ii), deliver the thing to the Attorney General for the purpose of assisting in the investigation of criminal offences, where the Commission is satisfied that the thing is likely to be useful for that purpose.

(4) In this section, "thing" includes a document.

(5) Without limiting the generality of section 11 (2) (a), a reference in section 11 to a thing connected with a matter relating to a relevant drug activity, being a matter into which the Commission is conducting an investigation, includes a reference to a thing that may be used in evidence in proceedings for the taking, by or on behalf of the Crown in right of the State, of civil remedies in respect of a matter connected with, or arising out of, an offence to which the relevant drug activity relates.

DIVISION 2—Hearings

Hearings

13. (1) For the purposes of an investigation the Commission may hold hearings.

(2) At a hearing at least one of the members constituting the hearing shall be a person who has special legal qualifications.

(3) Subject to subsection (2), Schedule 2 applies, so far as it is capable of application, at a hearing before the Commission as if the hearing were a meeting of the Commission.

(4) At a hearing before the Commission—

(a) a person giving evidence may be represented by a legal practitioner; and

State Drug Crime Commission 1985

- (b) if, by reason of the existence of special circumstances, the Commission consents to a person who is not giving evidence being represented by a legal practitioner—the person may be so represented.

(5) A hearing before the Commission shall be held in private and the Commission may give directions as to the persons who may be present during the hearing or a part of the hearing.

(6) Nothing in a direction given by the Commission under subsection (5) prevents the presence, when evidence is being taken at a hearing before the Commission, of—

- (a) a person representing the person giving evidence; or
(b) a person representing, pursuant to subsection (4), a person who, by reason of a direction given by the Commission under subsection (5), is entitled to be present.

(7) Where a hearing before the Commission is being held, a person (other than a member, counsel assisting the Commission in relation to the matter that is the subject of the hearing or a member of the staff of the Commission approved by the Commission) shall not be present at the hearing unless the person is entitled to be present by reason of a direction given by the Commission under subsection (5) or by reason of subsection (6).

(8) At a hearing before the Commission for the purposes of an investigation—

- (a) counsel assisting the Commission generally or in relation to the matter to which the investigation relates;
(b) any person authorised by the Commission to appear before it at the hearing; or
(c) any legal practitioner representing a person at the hearing pursuant to subsection (4),

may, so far as the Commission thinks appropriate, examine or cross-examine any witness on any matter that the Commission considers relevant to the investigation.

(9) The Commission may direct that—

- (a) any evidence given before it;

State Drug Crime Commission 1985

- (b) the contents of any document, or a description of any thing, produced to the Commission or seized pursuant to a search warrant issued under section 11;
- (c) any information that might enable a person who has given evidence before the Commission to be identified; or
- (d) the fact that any person has given or may be about to give evidence at a hearing,

shall not be published, or shall not be published except in such manner, and to such persons, as the Commission specifies, and the Commission shall give such a direction if the failure to do so might prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

(10) Where—

- (a) a person has been charged with an offence before a court of the State; and
- (b) the court considers that it may be desirable in the interests of justice that particular evidence given before the Commission, being evidence in relation to which the Commission has given a direction under subsection (9), be made available to the person or to a legal practitioner representing the person,

the court may give to the Commission a certificate to that effect and, if the court does so, the Commission shall make the evidence available to the court.

(11) Where—

- (a) the Commission makes evidence available to a court in accordance with subsection (10); and
- (b) the court, after examining the evidence, is satisfied that the interests of justice so require,

the court may make the evidence available to the person charged with the offence concerned or to a legal practitioner representing the person.

(12) A person who—

- (a) is present at a hearing in contravention of subsection (7); or

State Drug Crime Commission 1985

- (b) makes a publication in contravention of a direction given under subsection (9),

is guilty of an offence punishable, upon conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding one year, or both.

Reimbursement of expenses of witnesses

14. A witness appearing before the Commission shall be paid out of money provided by Parliament in respect of the expenses of the witness's attendance an amount ascertained in accordance with the prescribed scale or, if there is no prescribed scale, such amount as the Commission determines.

Legal and financial assistance

15. (1) A witness who is appearing or is about to appear before the Commission may make an application to the Attorney General for the provision of assistance under this section in respect of the witness's appearance.

(2) A person who proposes to make, or has made, an application to the Supreme Court—

- (a) under section 19 (2) for an order of review in respect of a decision of the Commission; or
- (b) under section 19 (8) in relation to a document,

may make an application to the Attorney General for the provision of assistance under this section in respect of the application to the Supreme Court.

(3) Where an application is made by a person under subsection (1) or (2), the Attorney General may, if satisfied that—

- (a) it would involve substantial hardship to the person to refuse the application; or
- (b) the circumstances of the case are of such a special nature that the application should be granted,

State Drug Crime Commission 1985

authorise, out of money provided by Parliament, the provision to that person, either unconditionally or subject to such conditions as the Attorney General determines, of such legal or financial assistance in respect of the appearance of that person before the Commission, or the application by that person to the Supreme Court, as the case may be, as the Attorney General determines.

Power to summon witnesses and take evidence

16. (1) A member may summon a person to appear before the Commission at a hearing to give evidence and to produce such documents or other things (if any) as are referred to in the summons.

(2) A summons under subsection (1) requiring a person to appear before the Commission at a hearing shall be accompanied by a copy of the notice, or of each of the notices, by which the matter or matters to which the hearing relates was or were referred to the Commission by the Management Committee.

(3) A summons under subsection (1) requiring a person to appear before the Commission at a hearing shall, unless the Commission is satisfied that, in the particular circumstances of an investigation to which the hearing relates, it would prejudice the effectiveness of the investigation for the summons to do so, set out, so far as is reasonably practicable, the general nature of the matters in relation to which the Commission intends to question the person, but nothing in this subsection prevents the Commission from questioning the person in relation to any matter that relates to an investigation.

(4) The member presiding at a hearing before the Commission may require a person appearing at the hearing to produce a document or other thing.

(5) The Commission may, at a hearing, take evidence on oath or affirmation and for that purpose—

- (a) a member may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the member presiding at the hearing; and

State Drug Crime Commission 1985

- (b) a member, or a person who is an authorised person in relation to the Commission, may administer an oath or affirmation to a person so appearing at the hearing.

(6) In this section, a reference to a person who is an authorised person in relation to the Commission is a reference to a person authorised in writing, or a person included in a class of persons authorised in writing, for the purposes of this section by the Chairperson.

Power to obtain documents

17. (1) A member may, by notice in writing served on a person, require the person—

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Commission or a member of the staff of the Commission; and
- (b) to produce at that time and place to the person so specified a document or thing specified in the notice, being a document or thing that is relevant to an investigation.

(2) A notice may be issued under this section in relation to an investigation whether or not a hearing before the Commission is being held for the purposes of the investigation.

(3) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

Penalty: \$1,000 or imprisonment for 6 months, or both.

(4) The provisions of section 18 (3) to (15), inclusive, apply in relation to a person who is required to produce a document or thing by a notice served on the person under this section in the same manner as they apply in relation to a person who is required to produce a document or thing at a hearing before the Commission and so apply as if a reference in those provisions to section 18 (2) were a reference to subsection (3) of this section.

(5) If a person who is required to produce a document or thing by a notice served on the person under this section claims to the person (in this subsection referred to as the “relevant person”) to whom the claimant is required to produce it that the claimant is entitled to refuse to produce the document or thing, the relevant person shall—

- (a) if satisfied that the claim is justified—inform the claimant that the requirement will not be insisted upon; or

State Drug Crime Commission 1985

- (b) in any other case—inform the claimant that the relevant person is not so satisfied and, if the document or thing is not produced forthwith, refer the claim to the Commission for decision under section 19.

Failure of witnesses to attend and answer questions, etc.

18. (1) A person served with a summons to appear as a witness at a hearing before the Commission shall not, without reasonable excuse—

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by a member.

(2) A person appearing as a witness at a hearing before the Commission shall not, without reasonable excuse—

- (a) when required pursuant to section 16 either to take an oath or make an affirmation—refuse or fail to comply with the requirement;
- (b) refuse or fail to answer a question that the person is required to answer by the member presiding at the hearing; or
- (c) refuse or fail to produce a document or thing that the person was required to produce by a summons under this Act served as prescribed.

(3) Where—

- (a) a legal practitioner is required to answer a question or produce a document at a hearing before the Commission; and
- (b) the answer to the question would disclose, or the document contains, a privileged communication made by or to the legal practitioner in the capacity of a legal practitioner,

the legal practitioner is entitled to refuse to comply with the requirement unless the person to whom or by whom the communication was made agrees to the legal practitioner complying with the requirement but, where the legal practitioner refuses to comply with the requirement, the legal practitioner shall, if so required by the member presiding at the hearing, furnish to the Commission the name and address of the person to whom or by whom the communication was made.

(4) Subject to subsections (5), (7), (9) and (11), it is a reasonable excuse for the purposes of subsection (2) for a natural person—

State Drug Crime Commission 1985

- (a) to refuse or fail to answer a question put to the person at a hearing before the Commission; or
- (b) to refuse or fail to produce a document or thing that the person was required to produce at a hearing before the Commission,

that the answer to the question, or the production of the document or thing, as the case may be, might tend to incriminate the person.

(5) It is not a reasonable excuse for the purposes of subsection (2) for a person—

- (a) to refuse or fail to answer a question put to the person at a hearing before the Commission; or
- (b) to refuse or fail to produce a document or thing that the person was required to produce at a hearing before the Commission,

that the answer to the question or the production of the document or thing might tend to prove the person's guilt of an offence against a law of the State if the Attorney General, or a person authorised by the Attorney General, being the person holding a prescribed office, has given to the first-mentioned person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against that person for an offence against a law of the State other than proceedings in respect of the falsity of evidence given by that person and the Attorney General, or the person so authorised, states in the undertaking—

- (c) that, in his or her opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by the first-mentioned person; and
- (d) the general nature of those grounds.

(6) The Commission may recommend to the Attorney General that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Commission or to produce a document or thing at a hearing before the Commission be given an undertaking in accordance with subsection (5).

(7) It is not a reasonable excuse for the purposes of subsection (2) for a person—

- (a) to refuse or fail to answer a question put to the person at a hearing before the Commission; or

State Drug Crime Commission 1985

- (b) to refuse or fail to produce a document or thing that the person was required to produce at a hearing before the Commission,

that the answer to the question or the production of the document or thing might tend to prove the person's guilt of an offence against a law of the Commonwealth or of a Territory if the Director of Public Prosecutions of the Commonwealth has given to the person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against the person for an offence against a law of the Commonwealth or of a Territory other than proceedings in respect of the falsity of evidence given by the person and the Director of Public Prosecutions states in the undertaking—

- (c) that, in his or her opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by the person; and
- (d) the general nature of those grounds.

(8) The Commission may recommend to the Director of Public Prosecutions of the Commonwealth that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Commission or to produce a document or thing at a hearing before the Commission be given an undertaking in accordance with subsection (7).

(9) It is not a reasonable excuse for the purposes of subsection (2) for a person—

- (a) to refuse or fail to answer a question put to the person at a hearing before the Commission; or
- (b) to refuse or fail to produce a document or thing that the person was required to produce at a hearing before the Commission,

that the answer to the question or the production of the document or thing might tend to prove the person's guilt of an offence against a law of another State if the Attorney General of that State, or a person authorised by that Attorney General, being the person holding the office of Director of Public Prosecutions, or a similar office, of that State, has given to the first-mentioned person an undertaking in writing that any answer given or document or thing produced, as the case may be, or any information, document or thing obtained as a direct or indirect consequence of the answer or the production of the first-mentioned document or thing, will not be used in evidence in any proceedings against that person for an offence against a law of that State other than proceedings in respect of the falsity of evidence given by that person and the Attorney General of that State, or the person so authorised, states in the undertaking—

State Drug Crime Commission 1985

- (c) that, in his or her opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by the first-mentioned person; and
- (d) the general nature of those grounds.

(10) The Commission may recommend to the Attorney General of another State that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Commission or to produce a document or thing at a hearing before the Commission be given an undertaking in accordance with subsection (9).

(11) For the purposes of subsection (2)—

- (a) it is not a reasonable excuse for a corporation to refuse or fail to produce a document or thing that the production of the document or thing might tend to incriminate the corporation; and
- (b) it is not a reasonable excuse for a natural person to refuse or fail to produce a document that is, or forms part of, a record of an existing or past business (not being, in the case of a person who is or has been an employee, a document that sets out details of earnings received by the person in respect of the person's employment and does not set out any other information) that the production of the document might tend to incriminate the person.

(12) Subsections (5), (7), (9) and (11) do not apply where the offence in respect of which the answer to a question or the production of a document or thing, as the case requires, might tend to incriminate a person is an offence with which the person has been charged and the charge has not been finally dealt with by a court or otherwise disposed of.

(13) It is a reasonable excuse for the purposes of subsection (2) for a person to refuse to produce a document or thing if it relates to pending proceedings, being proceedings in which a charge has been laid for the relevant offence.

(14) A person who contravenes subsection (1), (2) or (3) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

(15) For the purposes of this section, the Northern Territory shall be deemed to be a State and not a Territory.

Applications to Supreme Court

19. (1) Where—

State Drug Crime Commission 1985

- (a) a person claims to be entitled to refuse to furnish information or produce a document that the person is required to furnish or produce pursuant to a notice under section 10;
- (b) a person claims to be entitled to refuse to produce a document that the person is required to produce pursuant to a notice under section 17; or
- (c) a person claims to be entitled to refuse to answer a question put to the person, or to produce a document that the person was required to produce, at a hearing before the Commission,

the Commission shall decide as soon as practicable whether in its opinion the claim is justified and notify the person of its decision.

(2) If the person is dissatisfied with the decision, the person may apply to the Supreme Court for an order of review in respect of the decision.

(3) Where the Commission decides that a claim by a person that the person is entitled to refuse to produce a document is not justified, the person is not entitled to make an application to the Supreme Court under subsection (2) in respect of the decision unless the person has produced the document to the Commission or placed the document in the custody of the appropriate officer of that Court, and, where the person has so produced the document and makes such an application, the Commission shall cause the document to be placed in the custody of the appropriate officer of that Court.

(4) On an application for an order of review in respect of a decision of the Commission under subsection (1), the Supreme Court may, in its discretion, make an order—

- (a) affirming the decision; or
- (b) setting aside the decision.

(5) Where the Supreme Court makes an order under subsection (4) setting aside a decision by the Commission that a claim by a person that the person was entitled to refuse to produce a document is not justified—

- (a) unless paragraph (b) applies—the Supreme Court shall make a further order directing that the document be delivered to the person;

State Drug Crime Commission 1985

(b) if the Supreme Court—

- (i) makes the first-mentioned order for the reason that the person was entitled, on the ground that production of the document might tend to incriminate the person, to refuse to produce the document;
- (ii) is satisfied that the person was not entitled on any other ground to refuse to produce the document; and
- (iii) is satisfied that an undertaking of a kind referred to in section 18 (5), (7) or (9) has, or 2 or more such undertakings have, been given to the person and that the person, if now required to produce the document at a hearing before the Commission, would not be entitled to refuse so to produce it,

the Supreme Court shall make a further order directing that the document be delivered to the Commission; and

(c) if the Supreme Court—

- (i) makes the first-mentioned order for the reason that, or for reasons including the reason that, the person was entitled, on the ground that production of the document might tend to incriminate the person, to refuse to produce the document; and
- (ii) makes a further order directing that the document be delivered to the person,

evidence of production of the document by the person to the Commission, or of the placing of the document by the person in the custody of the appropriate officer of the Supreme Court, as the case may be, for the purposes of the application on which the orders were made is not admissible in proceedings against the person for an offence against a law of the State, other than proceedings in respect of the falsity of evidence given by the person.

(6) A prosecution for an offence under section 17 or 18 shall not be commenced in respect of a refusal or failure by a person to produce a document or answer a question—

State Drug Crime Commission 1985

- (a) if the person has claimed to be entitled to refuse to produce the document or answer the question, as the case may be, and the Commission decides that, in its opinion, the claim is not justified—until the expiration of the period of 5 days (excluding days on which the appropriate Registry of the Supreme Court is closed) immediately after the Commission has notified the person of the decision; or
- (b) if the person has made an application to the Supreme Court under subsection (2) for an order of review in respect of a decision by the Commission that, in its opinion, a claim by the person to be entitled to refuse to produce the document or answer the question is not justified—until the application and any appeal from an order made by the Supreme Court on the application have been determined or otherwise disposed of.

(7) An order of the Supreme Court under subsection (4) is, subject to any appeal from that order, conclusive for the purposes of any other proceedings.

(8) Where a person who is required to produce a document pursuant to a notice under section 17, or who is required to produce a document at a hearing before the Commission, claims that—

- (a) the document contains—
 - (i) particular matter (in this subsection referred to as the “relevant matter”) relating to the personal affairs of the person, not being matter relating to the activities of an existing or past business; or
 - (ii) in the case of a person who is or has been an employee—particular matter (in this subsection also referred to as the “relevant matter”), being details of earnings received by the person in respect of the person’s employment; and
- (b) the person would, if the document had contained only the relevant matter, have been entitled, on the ground that production of the document might tend to incriminate the person, to refuse so to produce the document,

the person may, whether or not the person has made an application to the Supreme Court under subsection (2) in respect of a decision by the Commission in relation to the document, make an application to the Supreme Court for an order under this subsection and, if such an application is made and the document is produced to that Court, then, subject to subsection (5) (a), that Court—

State Drug Crime Commission 1985

- (c) if it is satisfied that the claim is justified—may, subject to paragraph (d), make such order as it thinks fit for the excision or concealment of the part of the document that contains the relevant matter and shall, if it makes such an order, make a further order directing that the document be delivered to the Commission after the first-mentioned order has been complied with;
- (d) if it is satisfied that an undertaking of a kind referred to in section 18 (5), (7) or (9) has, or 2 or more such undertakings have, been given to the person and that the person would not, if the document contained only the relevant matter and the person were now required to produce the document to the Commission, be entitled, on the ground that production of the document might tend to incriminate the person, to refuse so to produce it—shall make an order directing that the document be delivered to the Commission; and
- (e) if paragraph (d) does not apply and that Court does not make an order of the kind first referred to in paragraph (c)—shall make an order directing that the document be delivered to the Commission.

(9) A person is not entitled to make an application under subsection (8) in relation to a document unless the person has, on the day on which the document was to be produced to the Commission or on such later day as the Commission (whether on or after the first-mentioned day) allows, given to the Commission a notice in writing stating that the person proposes to make an application for an excision or concealment order in relation to the document.

(10) A person is not entitled to make an application to the Supreme Court under subsection (8) in relation to a document unless the person has produced the document to the Commission or placed the document in the custody of the appropriate officer of that Court, and, where the person has so produced the document and makes such an application, the Commission shall cause the document to be placed in the custody of the appropriate officer of that Court.

(11) Where—

- (a) a person makes a claim as mentioned in subsection (8) in relation to particular matter (in this subsection referred to as the “relevant matter”) contained in a document; and

State Drug Crime Commission 1985

- (b) the Supreme Court, being satisfied that the claim is justified, makes in relation to the document an order of the kind first referred to in subsection (8) (c),

evidence of production of the document by the person to the Commission, or of the placing of the document by the person in the custody of the appropriate officer of that Court, as the case may be, for the purposes of the application on which the order is made is, in so far as the document contains the relevant matter, not admissible in any proceedings against the person for an offence against a law of the State, other than proceedings in respect of the falsity of evidence given by the person.

(12) A prosecution for an offence under section 17 or 18 shall not be commenced in respect of a refusal or failure by a person to produce a document—

- (a) if the person has given to the Commission in accordance with subsection (9) a notice relating to the document—until the expiration of the period of 5 days (excluding days on which the appropriate Registry of the Supreme Court is closed) immediately after the date of the requirement to produce the document; or
- (b) if the person has made an application under subsection (8) in relation to the document—until the application, and any appeal from an order made by the Supreme Court on the application, have been determined or otherwise disposed of.

(13) An application by a person to the Supreme Court under subsection (2) or (8)—

- (a) shall be made in such manner as is prescribed by rules of court;
- (b) shall set out the grounds of the application; and
- (c) shall be lodged with the appropriate Registry of the Supreme Court within the period of 5 days (excluding days on which that Registry is closed) immediately after—
- (i) in the case of an application under subsection (2)—the date on which the Commission notified the person of the decision to which the application relates; or
- (ii) in the case of an application under subsection (8)—the date of the requirement to produce the document to which the application relates,

State Drug Crime Commission 1985

or within such further period as that Court (whether before or after the expiration of the first-mentioned period) allows.

(14) The Supreme Court has jurisdiction with respect to matters arising under this section.

(15) In this section, unless the contrary intention appears—

“appropriate officer” means the officer of the Supreme Court prescribed by rules of court as the appropriate officer for the purposes of this section;

“appropriate Registry” means the Registry of the Supreme Court prescribed by rules of court as the appropriate Registry for the purposes of this section;

“document” includes any thing.

(16) Where a decision of the Commission under subsection (1) relates to 2 or more questions, or to 2 or more documents, the decision shall, to the extent to which it relates to a particular question or document, be deemed, for the purposes of this Act, to constitute a separate decision relating to that question or document only.

(17) Where a person gives to the Commission in accordance with subsection (9) a notice relating to 2 or more documents, the notice shall, to the extent to which it relates to a particular document, be deemed, for the purposes of this Act, to constitute a separate notice relating to that document only.

False or misleading evidence

20. (1) A person shall not, at a hearing before the Commission, give evidence that is, to the knowledge of the person, false or misleading in a material particular.

(2) A contravention of subsection (1) is an indictable offence and, subject to this section, is punishable, upon conviction, by a fine not exceeding \$20,000 or by imprisonment for a period not exceeding 5 years, or both.

(3) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

State Drug Crime Commission 1985

(4) Where, in accordance with subsection (3), a court of summary jurisdiction convicts a person of an offence against subsection (1), the penalty that the court may impose is a fine not exceeding \$2,000 or imprisonment for a period not exceeding one year, or both.

Protection of witnesses, etc.

21. Where it appears to the Chairperson that, by reason of the fact that a person—

- (a) is to appear, is appearing or has appeared at a hearing before the Commission to give evidence or to produce a document or thing; or
- (b) proposes to produce or has produced a document or thing to the Commission pursuant to this Act otherwise than at a hearing before the Commission,

the safety of the person may be prejudiced or the person may be subject to intimidation or harassment, the Chairperson may make such arrangements (including arrangements with the Minister or with members of the Police Force) as are necessary to avoid prejudice to the safety of the person, or to protect the person from intimidation or harassment.

Contempt of Commission

22. A person shall not—

- (a) obstruct or hinder the Commission or a member in the exercise of the functions of the Commission; or
- (b) disrupt a hearing before the Commission.

Penalty: \$2,000 or imprisonment for one year, or both.

Protection of members, etc.

23. (1) A member has, in the exercise of functions as a member in relation to a hearing before the Commission, the same protection and immunity as a Judge of the Supreme Court.

(2) A legal practitioner assisting the Commission or representing a person at a hearing before the Commission has the same protection and immunity as a barrister has in appearing for a party in proceedings in the Supreme Court.

State Drug Crime Commission 1985

(3) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness has the same protection as a witness in proceedings in the Supreme Court.

PART III

THE STATE DRUG CRIME COMMISSION MANAGEMENT
COMMITTEE

The Management Committee

24. (1) There is constituted by this Act a State Drug Crime Commission Management Committee consisting of 4 members of whom—

- (a) one shall be the Minister for Police and Emergency Services;
- (b) one shall be the Commissioner of Police;
- (c) one shall be the Chairman or another member of the National Crime Authority for the time being nominated for the purpose by that Authority; and
- (d) one shall be the Chairperson of the Commission,

or any person acting in any such office.

(2) The Management Committee shall have and may exercise the functions conferred or imposed on it by or under this or any other Act.

(3) A member of the Management Committee or, if the member fails to do so, the Minister may appoint a person to attend, in the place of the member, a meeting of the Committee at which the member is not present and a person so appointed shall, when attending a meeting of the Committee in the place of a member, be deemed to be the member.

(4) If for any reason there is a vacancy in the office of a member of the Management Committee, the Governor may appoint a person to act in that office.

(5) While a person is acting as a member of the Management Committee the person has and may exercise all the functions of the member.

State Drug Crime Commission 1985

(6) A member of the Commission who is not otherwise entitled to be present at a meeting of the Management Committee may, with the consent of the members of the Committee present at the meeting, be present at the meeting and participate in the discussion of matters arising at the meeting.

(7) Schedule 3 has effect with respect to the procedure of the Management Committee.

Functions of the Management Committee

25. (1) The principal functions of the Management Committee are—

- (a) to refer (by a written notice) relevant drug activities to the Commission for investigation;
- (b) to review and monitor generally the work of the Commission; and
- (c) to give approvals for the purposes of section 7.

(2) The Management Committee shall, before referring a matter to the Commission for investigation, consider whether ordinary police methods of investigation into the matter are likely to be effective.

(3) The Management Committee may, by the terms of the reference, impose limitations on the carrying out of an investigation by the Commission into relevant drug activity referred to the Commission for investigation.

Commission may request reference

26. (1) The Commission may, if it considers it appropriate to do so, request the Management Committee to refer a matter relating to relevant drug activity to the Commission for investigation.

(2) A request by the Commission under subsection (1) shall be in writing and may be accompanied by such written submissions as the Commission thinks fit.

Directions and guidelines to Commission

27. (1) The Management Committee may give directions and furnish guidelines to the Commission with respect to the exercise of its functions and the Commission shall comply with any such directions or guidelines.

(2) The Management Committee may give directions and furnish guidelines to the Commission with respect to the internal management of the Commission and the Commission shall comply with any such directions or guidelines.

State Drug Crime Commission 1985

PART IV

MISCELLANEOUS

Public sittings and bulletins

28. (1) The Commission may hold sittings in public for the purpose of informing the public of, or receiving submissions in relation to, the general conduct of its operations.

(2) At a sitting held under subsection (1), the Commission may be constituted by one or more members.

(3) Subject to subsection (2), Schedule 2 applies, so far as it is capable of application, in relation to a sitting held under subsection (1) as if the sitting were a meeting of the Commission.

(4) The Commission may publish bulletins for the purpose of informing the public of the general conduct of its operations.

(5) The Commission shall not—

(a) divulge in the course of a sitting held under subsection (1); or

(b) include in a bulletin published under subsection (4),

any matter the disclosure of which to members of the public could prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

Secrecy

29. (1) This section applies to—

(a) a member of the Commission; and

(b) a member of the staff of the Commission.

(2) A person to whom this section applies who, either directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's functions under this Act, and either while the person is or after the person ceases to be a person to whom this section applies—

State Drug Crime Commission 1985

- (a) makes a record of any information; or
- (b) divulges or communicates to any person any information,

being information acquired by the person by reason of, or in the course of, the exercise of functions under this Act, is guilty of an offence punishable, on conviction, by a fine not exceeding \$5,000 or imprisonment for a period not exceeding one year, or both.

(3) A person to whom this section applies shall not be required to produce in any court any document that has come into the person's custody or control in the course of, or by reason of, the exercise of functions under this Act, or to divulge or communicate to a court a matter or thing that has come to the person's notice in the exercise of functions under this Act, except where the Commission, or a member in the member's official capacity, is a party to the relevant proceedings or it is necessary to do so—

- (a) for the purpose of carrying into effect the provisions of this Act; or
- (b) for the purposes of a prosecution instituted as a result of an investigation conducted by the Commission in the exercise of its functions.

(4) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to.

Furnishing of reports and information

30. (1) The Commission shall keep the Management Committee informed of the general conduct of its operations in the exercise of its functions and, if the Committee requests the Commission to provide to it information concerning a specific matter relating to the Commission's operations in the exercise of its functions, the Commission shall comply with the request.

(2) A report made by the Commission under this Act that sets out any finding that an offence has been committed, or makes any recommendation for the institution of a prosecution in respect of an offence, shall not be released to the public by the Commission unless the Management Committee, in the special circumstances of the case, approves.

Annual report

31. (1) The Commission shall, within the period of 4 months after each 30 June, prepare a report of its operations during the year that ended on that 30 June and furnish the report to the Management Committee for transmission, together with such comments on the report as the Committee thinks fit, to the Minister.

(2) A report by the Commission under this section in relation to a year shall include the following:

- (a) a description of the matters that were referred during that year to the Commission for investigation;
- (b) a description, which may include statistics, of any patterns or trends, and the nature and scope, of drug trafficking that have come to the attention of the Commission during that year in the course of its investigations;
- (c) any recommendations for changes in the laws of the State, or for administrative action, that, as a result of the exercise of its functions, the Commission considers should be made;
- (d) the general nature and the extent of any information furnished by the Commission during that year to a law enforcement agency;
- (e) the extent to which its investigations have resulted in the prosecution in that year of persons for offences;
- (f) particulars of the number and results of—
 - (i) applications made to the Supreme Court under section 19 (2) for orders of review in respect of decisions of the Commission; and
 - (ii) other court proceedings involving the Commission; being applications and proceedings that were determined, or otherwise disposed of, during that year.

(3) A report by the Commission under this section shall not—

- (a) identify persons as being suspected of having committed offences; or
- (b) identify persons as having committed offences unless those persons have been convicted of those offences.

(4) In any report by the Commission under this section the Commission shall take reasonable care to ensure that the identity of a person is not revealed if to reveal it might, having regard to any material appearing in the report, prejudice the safety or reputation of a person or prejudice the fair trial of a person who has been or may be charged with an offence.

State Drug Crime Commission 1985

(5) For the purpose of enabling the final report of the Commission to be prepared and dealt with in accordance with this section, the Minister may give directions as to the manner and time of preparation, but not the contents, of that report.

(6) The Minister shall cause a copy of—

- (a) a report of the Commission under this section that is received by the Minister; and
- (b) any comments made on the report by the Management Committee, being comments that accompanied the report,

to be laid before each House of Parliament within 15 sitting days of that House after the report is received by the Minister.

(7) For the purposes of subsection (6), sitting days shall be counted whether or not they occur in the same session.

Staff of Commission

32. (1) Such staff as may be necessary to enable the Commission to exercise its functions shall be employed under the Public Service Act 1979.

(2) The Commission may—

- (a) with the approval of the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a Government Department, Administrative Office or public authority.

(3) Without affecting the generality of subsection (2), the Commission may—

- (a) with the approval of the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for one or more members of the Police Force to be made available to perform services for the Commission.

State Drug Crime Commission 1985

(4) The Commission may—

- (a) for any purpose approved by the Minister; and
- (b) on such terms and conditions as may be approved by the Public Service Board,

employ such casual staff as may be required by the Commission in exercising its functions.

(5) The Public Service Act 1979 does not apply to or in respect of the employment of casual staff under subsection (4) and a person is not, as a member of that casual staff, subject to that Act.

(6) While a member of the Police Force is a member of the staff of the Commission by reason of performing services for the Commission, the member shall retain rank, seniority and remuneration as a member of the Police Force and may continue to act as a constable.

Employment of consultants, etc.

33. (1) The Commission may, with the approval of the Management Committee, engage, under agreements in writing, persons having suitable qualifications and experience as consultants to, or to perform services for, the Commission.

(2) The terms and conditions of engagement of persons engaged under subsection (1) are such as are from time to time determined by the Commission with the approval of the Management Committee.

Counsel assisting Commission

34. The Attorney General may appoint a legal practitioner to assist the Commission as counsel, either generally or in relation to a particular matter or matters.

Service of documents

35. For the purposes of this Act, service of a document on a person may be effected—

- (a) on a natural person—
 - (i) by delivering it to the person personally; or

State Drug Crime Commission 1985

(ii) by leaving it at, or by sending it by pre-paid post to, the residential or business address of the person last known to the person serving the document; or

(b) on a body corporate—by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate,

or in any other way in which service could have been effected had this section not been enacted.

Proceedings for offences

36. Except where otherwise expressly provided by this Act, proceedings for an offence against this Act shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

Regulations

37. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding \$1,000.

(3) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind;
or

(c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.

*State Drug Crime Commission 1985***Cessation of operation of Act**

38. (1) This Act, unless sooner repealed, shall cease to be in force—

(a) subject to paragraph (b)—at the end of 31 December 1989; or

(b) if the Governor so directs by proclamation published in the Gazette—at the end of such other day (not earlier than 31 December 1988 and not later than 31 December 1990) as is specified therein.

(2) One or more than one proclamation may be made and published under subsection (1) (b), but any such proclamation has no effect unless it is made and published on or before the day at the end of which this Act would, but for the proclamation, cease to be in force.

SCHEDULE 1

(Sec. 5 (7))

PROVISIONS RELATING TO THE MEMBERS OF THE COMMISSION

Age of members

1. (1) Subject to subclause (2), a person of or above the age of 65 years is not eligible to be appointed as a member or to act in the office of a member.

(2) In the case of a person who is, and is expected to continue to be, a Judge, the reference in subclause (1) to the age of 65 years shall be construed as a reference to the age of 70 years.

Acting members and acting Chairperson

2. (1) The Governor may, from time to time, appoint a person to act in the office of a member other than the Chairperson during the illness or absence of the member, and the person, while so acting, shall have and may exercise all the functions of the member and shall be deemed to be a member.

(2) The Governor may, from time to time, appoint a member to act in the office of Chairperson during the illness or absence of the Chairperson, and the member, while so acting, shall have and may exercise all the functions of the Chairperson and shall be deemed to be the Chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

State Drug Crime Commission 1985

SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE MEMBERS OF THE COMMISSION—
continued

- (a) a vacancy in the office of a member or the Chairperson shall be deemed to be an absence from office of the member or Chairperson, as the case may be; and
- (b) a member shall be deemed to be absent from office as a member during any period when the member acts in the office of the Chairperson pursuant to an appointment under subclause (2).

Terms of office

3. Subject to this Schedule, a member shall hold office for such period as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

Remuneration

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

Appointment of Judge as member not to affect tenure, etc.

5. (1) The appointment of a person who is the holder of a judicial office as a member or acting member, or service by a person who is the holder of a judicial office as a member or acting member, does not affect the person's tenure of that judicial office or the person's rank, title, status, precedence, salary, allowances or other rights or privileges as the holder of that judicial office and, for all purposes, the person's service as a member or acting member shall be taken to be service as the holder of that judicial office.

(2) In this section, "judicial office" means an office of Judge.

Filling of vacancy in office of member

6. If the office of any member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Casual vacancies

- 7. (1) A member shall be deemed to have vacated office if the member—
 - (a) dies;

*State Drug Crime Commission 1985*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE COMMISSION—
continued

- (b) being a full-time member, absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence is occasioned by illness or other unavoidable cause;
- (c) being the part-time member, absents himself or herself from 4 consecutive meetings of the Commission of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (e) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act 1958 or a person under detention under Part VII of that Act;
- (f) being a full-time member, engages in any paid employment outside the duties of the office of member, except with the consent of the Minister;
- (g) resigns the office by instrument in writing addressed to the Minister;
- (h) being—
 - (i) a member who is not a Judge, attains the age of 65 years; or
 - (ii) a member who is a Judge, attains the age of 70 years; or
- (i) is removed from office by the Governor under subclause (2) or (3).

(2) The Governor may remove a member from office for incapacity, incompetence or misbehaviour.

(3) Without affecting the generality of subclause (2), the Governor may remove from office a member who contravenes the provisions of clause 8.

Disclosure of pecuniary interests

8. (1) A member who has a direct or indirect pecuniary interest—
- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Commission; or
 - (b) in a thing being done or about to be done by the Commission,
- shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Commission.
- (2) A disclosure by a member at a meeting of the Commission that the member—
- (a) is a member, or is in the employment, of a specified company or other body;
 - (b) is a partner, or is in the employment, of a specified person; or
 - (c) has some other specified interest relating to a specified company or other body or a specified person,

State Drug Crime Commission 1985

SCHEDULE 1—*continued*PROVISIONS RELATING TO THE MEMBERS OF THE COMMISSION—
continued

shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Commission shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Commission from time to time.

(4) After a member has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member shall not, unless the Minister otherwise determines—

- (a) be present during any deliberation of the Commission, or take part in any decision of the Commission, with respect to that matter; or
- (b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Commission or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises by reason only of any prescribed circumstance.

(7) A reference in this clause to a meeting of the Commission includes a reference to a meeting of a committee of the Commission.

Effect of certain other Acts

9. (1) The Public Service Act 1979 does not apply to or in respect of the appointment of a member and a member is not, as a member, subject to that Act.

(2) Where by or under any other Act provision is made requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or prohibiting the person from engaging in employment outside the duties of that office, that provision shall not operate to disqualify the person from holding that office and also the office of the part-time member or from accepting and retaining any remuneration payable to the person under this Act as the part-time member.

(3) The office of the part-time member shall for the purposes of any Act be deemed not to be an office or place of profit under the Crown.

Liability of members, etc.

10. No matter or thing done by the Commission, any member or any person acting under the direction of the Commission shall, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject a member or a person so acting personally to any action, liability, claim or demand.

State Drug Crime Commission 1985

SCHEDULE 2

(Sec. 5 (8))

PROVISIONS RELATING TO THE PROCEDURE OF THE COMMISSION

Meetings of Commission

1. (1) The Chairperson may, at any time, convene a meeting of the Commission.
- (2) The Chairperson shall convene such meetings of the Commission as, in the Chairperson's opinion, are necessary for the efficient exercise of its functions.
- (3) The procedure for the calling of meetings of the Commission and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Commission.

Quorum

2. The quorum for a meeting of the Commission is 2 members.

Presiding member

3. (1) The Chairperson or, in the absence of the Chairperson, another member elected as chairperson for the meeting by the members present shall preside at a meeting of the Commission.
- (2) The person presiding at any meeting of the Commission has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Commission at which a quorum is present shall be the decision of the Commission.

Minutes

5. The Commission shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Commission.

State Drug Crime Commission 1985

SCHEDULE 2—*continued*PROVISIONS RELATING TO THE PROCEDURE OF THE COMMISSION—
*continued***First meeting of Commission**

6. The Chairperson shall call the first meeting of the Commission in such manner as the Chairperson thinks fit.

SCHEDULE 3

(Sec. 24 (7))

PROVISIONS RELATING TO THE PROCEDURE OF THE MANAGEMENT
COMMITTEE**Meetings of Committee**

1. (1) Meetings of the Management Committee shall be held at such times and places as are from time to time agreed upon by the members of the Committee.

(2) The procedure for the calling of meetings of the Management Committee and for the conduct of business at those meetings shall, subject to this Act, be as determined by the Committee.

Quorum

2. The quorum for a meeting of the Management Committee is 3 members.

Presiding member

3. (1) The Minister for Police and Emergency Services or, in the absence of that Minister, another member of the Management Committee elected as the presiding member for the meeting by the members present shall preside at a meeting of the Committee.

(2) The person presiding at any meeting of the Management Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Management Committee at which a quorum is present shall be the decision of the Committee.

Minutes

5. The Management Committee shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Committee.

First meeting of Committee

6. The Minister for Police and Emergency Services shall call the first meeting of the Management Committee in such manner as that Minister thinks fit.

State Drug Crime Commission 1985

SCHEDULE 4

(Sec. 11 (4))

PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER
SECTION 11**Interpretation**

1. In this Schedule, except in so far as the context or subject-matter otherwise indicates or requires—

“authorised justice” has the meaning ascribed thereto in section 11;

“occupier”, in relation to any premises, includes a person in charge of the premises;

“occupier’s notice” means an occupier’s notice referred to in clause 4;

“search warrant” means a search warrant issued under section 11.

Application for warrant

2. (1) An application for a search warrant shall be made in writing.

(2) An authorised justice shall not issue a search warrant unless—

(a) the application for the warrant sets out the grounds on which the warrant is being sought;

(b) the applicant has given the authorised justice, either orally or in writing, such further information (if any) as the authorised justice requires concerning the grounds on which the warrant is being sought; and

(c) the information given by the applicant is verified before the authorised justice on oath or affirmation or by affidavit.

(3) An authorised justice may administer an oath or affirmation or take an affidavit for the purposes of an application for a search warrant.

Record of proceedings before authorised justice

3. (1) An authorised justice who issues a search warrant shall cause a record to be made of all relevant particulars of the grounds the authorised justice has relied on to justify the issue of the warrant.

(2) Any matter that might disclose the identity of a person shall not be recorded pursuant to this clause if the authorised justice is satisfied that the safety of any person might thereby be jeopardised.

Notice to occupier of premises entered pursuant to warrant

4. (1) An authorised justice shall prepare and furnish an occupier’s notice to the person to whom the authorised justice issues a search warrant.

(2) An occupier’s notice furnished in relation to a search warrant—

(a) shall specify—

(i) the name of the person who applied for the warrant;

(ii) the name of the authorised justice who issued the warrant;

(iii) the date and the time when the warrant was issued; and

State Drug Crime Commission 1985

SCHEDULE 4—*continued*

PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER SECTION
11—*continued*

- (iv) the address or other description of the premises the subject of the warrant; and
- (b) shall contain a summary of the nature of the warrant and the powers conferred by the warrant.
- (3) A person executing a search warrant shall—
 - (a) upon entry into or onto the premises or as soon as practicable thereafter, serve the occupier's notice on a person who appears to be an occupier of the premises and to be of or above the age of 18 years; or
 - (b) if no such person is then present in or on the premises, serve the occupier's notice on the occupier of the premises, either personally or in such other manner as the authorised justice who issued the warrant may direct, as soon as practicable after executing the warrant.
- (4) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed by the authorised justice who issued the search warrant if that authorised justice is satisfied that there are reasonable grounds for the postponement.
- (5) Service of an occupier's notice pursuant to subclause (3) (b) may be postponed on more than one occasion, but shall not be postponed on any one occasion for a period exceeding 6 months.

Duty to show warrant

5. A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.

Use of force to enter premises, etc.

6. (1) A person authorised to enter premises pursuant to a search warrant may use such force as is reasonably necessary for the purpose of entering the premises.

(2) A person authorised to search premises pursuant to a search warrant may, if it is reasonably necessary to do so, break open any receptacle in or upon the premises for the purposes of that search.

Use of assistants to execute warrant

7. A person may execute a search warrant with the aid of such assistants as the person considers necessary.

Execution of warrant by day or night

8. (1) A search warrant may be executed by day, but shall not be executed by night unless the authorised justice, by the warrant, authorises its execution by night.

(2) In subclause (1)—

“by day” means during the period between 6 a.m. and 9 p.m. on any day;

State Drug Crime Commission 1985

SCHEDULE 4—*continued*

PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER SECTION
11—*continued*

“by night” means during the period between 9 p.m. on any day and 6 a.m. on the following day.

Expiry of warrant

9. A search warrant ceases to have effect—
- (a) on the expiration of the period of 1 month after its issue;
 - (b) if it is withdrawn by the authorised justice who issued the warrant; or
 - (c) when it is executed,

whichever first occurs.

Report to authorised justice on execution of warrant, etc.

10. (1) The person to whom a search warrant is issued shall furnish a report in writing to the authorised justice who issued the warrant—

- (a) stating whether or not the warrant was executed;
- (b) if the warrant was executed—setting out briefly the result of the execution of the warrant (including a brief description of anything seized);
- (c) if the warrant was not executed—setting out briefly the reasons why the warrant was not executed; and
- (d) stating whether or not an occupier’s notice has been served in connection with the execution of the warrant.

(2) A report with respect to a search warrant shall be made within 10 days after the execution of the warrant or the expiry of the warrant, whichever first occurs.

Death, absence, etc., of authorised justice who issued warrant

11. Where the authorised justice who issued a search warrant has died, has ceased to be an authorised justice or is absent—

- (a) a report required to be furnished to that authorised justice pursuant to clause 10; or
- (b) a power exercisable by that authorised justice under clause 4 (3) (b) or (4),

shall be furnished to, or may be exercised by, as the case may be, any other authorised justice.

Defects in warrants

12. A search warrant is not invalidated by any defect, other than a defect which affects the substance of the warrant in a material particular.

Telephone search warrant

13. (1) In this section, “telephone” includes radio, telex and any other communication device.

(2) A person may make application by telephone for a search warrant.

(3) An authorised justice shall not issue a search warrant upon an application made by telephone unless the authorised justice is satisfied that the warrant is required urgently and that it is not practicable for the application to be made in person.

State Drug Crime Commission 1985

SCHEDULE 4—*continued*PROVISIONS RELATING TO SEARCH WARRANTS ISSUED UNDER SECTION
11—*continued*

- (4) If it is not practicable for an application for a search warrant to be made by telephone directly to an authorised justice, the application may be transmitted to the authorised justice by another person on behalf of the applicant.
- (5) An authorised justice who issues a search warrant upon an application made by telephone shall—
- (a) complete and sign the warrant;
 - (b) inform the person who made the application of the terms of the warrant and of the date and the time when it was signed; and
 - (c) prepare and furnish an occupier's notice to the person who made the application or inform that person of the terms of an occupier's notice.
- (6) Where a search warrant is issued upon an application made by telephone, the applicant—
- (a) shall complete a form of search warrant in the terms indicated by the authorised justice under subclause (5) and write on it the name of that authorised justice and the date and the time when the warrant was signed; and
 - (b) where the applicant was not furnished with an occupier's notice—shall complete a form of occupier's notice in the terms indicated by the authorised justice under subclause (5).
- (7) A form of search warrant and a form of occupier's notice completed in accordance with subclause (6) shall be deemed to be a search warrant issued, and an occupier's notice prepared and furnished, in accordance with this Act.
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