

Passed by both Houses



New South Wales

Police Integrity Commission Amendment Bill 2006

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2006*



New South Wales

Police Integrity Commission Amendment Bill 2006

Act No , 2006

An Act to amend the *Police Integrity Commission Act 1996* to provide for a system of investigation, referral and oversight of complaints against certain members of NSW Police who are not police officers; to make consequential amendments to the *Independent Commission Against Corruption Act 1988*; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Police Integrity Commission Amendment Act 2006*.

2 Commencement

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

3 Amendment of Police Integrity Commission Act 1996 No 28

The *Police Integrity Commission Act 1996* is amended as set out in Schedule 1.

4 Amendment of Independent Commission Against Corruption Act 1988 No 35

The *Independent Commission Against Corruption Act 1988* is amended as set out in Schedule 2.

5 Repeal of Act

- (1) This Act is repealed on the day following the day on which all of the provisions of this Act have commenced.
- (2) The repeal of this Act does not, because of the operation of section 30 of the *Interpretation Act 1987*, affect any amendment made by this Act.

Schedule 1 Amendment of Police Integrity Commission Act 1996

(Section 3)

[1] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

administrative officer means any member of NSW Police other than a police officer.

administrative officer complaint means a complaint made under section 75A.

corrupt conduct of an administrative officer—see section 5A.

disciplinary proceedings means proceedings for a disciplinary offence.

former administrative officer means any person who is not an administrative officer but who has been an administrative officer at any time previously (whether before or after the commencement of Schedule 1 [1] to the *Police Integrity Commission Amendment Act 2006*).

former officer of the Commission means any person who is not an officer of the Commission but who has been an officer of the Commission at any time previously (whether before or after the commencement of Schedule 1 [1] to the *Police Integrity Commission Amendment Act 2006*).

[2] Section 4 (3A)

Omit the subsection.

[3] Section 5A

Insert after section 5:

5A Corrupt conduct of administrative officers

(1) Definition

For the purposes of this Act, *corrupt conduct* of an administrative officer means any conduct of an administrative officer that is corrupt conduct for the purposes of the *Independent Commission Against Corruption Act 1988*.

(2) **Former administrative officers**

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

[4] **Section 13A**

Insert after section 13:

13A Other functions regarding administrative officers

- (1) Other functions of the Commission include the following:
 - (a) to prevent corrupt conduct of administrative officers,
 - (b) to detect or investigate, or oversee other agencies in the detection or investigation of, corrupt conduct of administrative officers.
- (2) The Commission is, as far as practicable, required to turn its attention principally to serious corrupt conduct of administrative officers.
- (3) The reference in this section to *overseeing* other agencies in the detection or investigation of corrupt conduct of administrative officers is a reference to the provision by the Commission of guidance that relies on a system of guidelines prepared by it and progress reports and final reports furnished to it rather than the provision of detailed guidance in the planning and execution of such detection and investigation.
- (4) In overseeing other agencies for the purposes of this section, the Commission does not have a power of control or direction, and any such oversight is to be achieved by agreement. However, it is the duty of members of NSW Police to co-operate with the Commission in the exercise of its oversight functions and any other functions of the Commission.
- (5) However, nothing in subsection (2), (3) or (4):
 - (a) affects the capacity of the Commission to exercise any of the functions as 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.

[5] Section 15 Other functions regarding evidence and information collected

Insert “or administrative officer complaint” after “police complaint” in section 15 (1) (b) (i).

[6] Section 16 Provisions regarding assessments, opinions and recommendations

Insert “or corrupt conduct of an administrative officer” after “or other misconduct” in section 16 (1) (a).

[7] Section 16 (3)

Insert “or corrupt conduct of an administrative officer” after “police misconduct” wherever occurring.

[8] Section 23 Investigations generally

Omit section 23 (1). Insert instead:

- (1) The Commission may conduct an investigation:
 - (a) on its own initiative, or
 - (b) on a police complaint made or referred to it or on a police complaint of which it becomes aware, or
 - (c) on an administrative officer complaint made to it, or
 - (d) on a report made to it.

[9] Section 23 (2)

Insert “, administrative officer” after “police officer”.

[10] Section 23 (2)

Insert “or corrupt conduct of an administrative officer” after “police misconduct”.

[11] Section 23 (3) (c)

Insert “or administrative officer complaint” after “police complaint”.

[12] Section 30 Injunctions

Insert at the end of section 30 (2) (b):

- , or
- (c) it is necessary to restrain the conduct in order to prevent irreparable harm being done because of serious corrupt conduct, or suspected serious corrupt conduct, by an administrative officer.

[13] **Part 4A**

Insert after Part 4:

Part 4A Complaints against administrative officers

75A Complaints about possible corrupt conduct of administrative officers (cf ICAC Act s 10)

- (1) Any person may make a complaint to the Commission about a matter that concerns or may concern corrupt conduct of an administrative officer.
- (2) The Commission may investigate any such complaint or decide that the complaint need not be investigated.
- (3) The Commission may discontinue an investigation of any such complaint.

75B Duty to notify Commission of possible corrupt conduct of administrative officers (cf ICAC Act s 11)

- (1) This section applies to the following officers:
 - (a) the Ombudsman,
 - (b) the Commissioner of Police,
 - (c) the principal officer of a public authority,
 - (d) 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 corrupt conduct of an administrative officer.
- (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) 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.
- (6) In this section, **public authority** has the same meaning as it has in the *Independent Commission Against Corruption Act 1988*.

[14] Section 93A

Insert after section 93:

93A Former officers of the Commission

- (1) For the avoidance of doubt, conduct may be dealt with, or continue to be dealt with, under this Act even though any officer of the Commission involved has ceased to be an officer of the Commission.
- (2) Accordingly, references in this Act to an officer of the Commission extend, where appropriate, to include a former officer of the Commission.
- (3) Without limiting subsection (2), appropriate references to which that subsection applies include references in provisions of this Act that concern:
 - (a) complaints about, or investigating or otherwise dealing with, the conduct of an officer of the Commission, or
 - (b) obtaining information, documents or other things from, or requiring answers or evidence to be given or produced by, an officer of the Commission (whether in connection with the officer's own conduct or the conduct of another officer of the Commission).

[15] Section 129 Functions of ICAC where police officers or administrative officers involved

Insert "or administrative officers" after "police officers" wherever occurring.

[16] Section 130 Functions of PIC where other public officials involved

Insert "or administrative officers" after "police officers" wherever occurring.

[17] Section 131 Arrangements between PIC and ICAC

Insert "or corrupt conduct of an administrative officer" after "police misconduct" in section 131 (1) (a).

[18] Section 131 (1) (b)

Insert "(other than by a police officer or administrative officer)" after "*Independent Commission Against Corruption Act 1988*".

[19] Section 131 (1) (c)

Insert "or both administrative officers and other public officials" after "public officials".

[20] Section 131 (1) (d)

Insert “or both administrative officers and other public officials” after “public officials”.

[21] Section 132 Other roles of ICAC not affected

Omit “13 (1) (d)–(k)”. Insert instead “13 (1) (e), (i), (j) and (k)”.

[22] Section 135 Complaints by public officials

Insert “or administrative officer” after “police officer” in section 135 (1).

[23] Section 141 Proceedings for offences

Omit section 141 (4). Insert instead:

(4) Proceedings for an alleged offence under any of the following provisions of this Act may be commenced within 3 years after the commission of the alleged offence:

- (a) section 25,
- (b) sections 52, 53, 54 and 56,
- (c) section 104 (c),
- (d) section 106.

[24] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Police Integrity Commission Amendment Act 2006

[25] Schedule 3

Insert at the end of the Schedule (with appropriate Part and clause numbering):

**Part Provisions consequent on enactment of
Police Integrity Commission Amendment
Act 2006**

Definition

In this Part:

amending Act means the *Police Integrity Commission Amendment Act 2006*.

Application of amendments to previous conduct of administrative officers

- (1) Except as provided by subclause (2), the amendments made to this Act by the amending Act concerning the detection and investigation of corrupt conduct of administrative officers or former administrative officers extend to conduct that occurred (or is alleged to have occurred) before the relevant commencement day.
- (2) This Act (as in force immediately before the relevant commencement day) continues to apply to the investigation of a complaint about the conduct of an administrative officer that was made before that day.
- (3) In this clause, *relevant commencement day* means the day on which Schedule 1 [4] to the amending Act commences.

Application of amendment to section 141

- (1) The amendment made to section 141 (4) by Schedule 1 [23] to the amending Act applies to offences committed (or alleged to have been committed) on or after the commencement of that amendment.
- (2) Section 141 (4), as in force immediately before the commencement of Schedule 1 [23] to the amending Act, continues to apply to offences committed (or alleged to have been committed) before that commencement.

**Schedule 2 Amendment of Independent
Commission Against Corruption Act
1988**

(Section 4)

[1] Section 11 Duty to notify Commission of possible corrupt conduct

Insert after section 11 (2):

- (2A) Despite subsection (2), the Commissioner of Police is not under a duty to report to the Commission any matter that concerns or may concern corrupt conduct of a police officer or administrative officer (within the meaning of the *Police Integrity Commission Act 1996*) unless the Commissioner of Police suspects on reasonable grounds that the matter also concerns or may concern corrupt conduct of another public official.

[2] Section 13 Principal functions

Insert after section 13 (1):

- (1A) Subsection (1) (d) and (f)–(h) do not extend to the conduct of police officers or administrative officers within the meaning of the *Police Integrity Commission Act 1996*.