

WESTERN AUSTRALIA

**OFFICIAL CORRUPTION
COMMISSION AMENDMENT
ACT 1996**

No. 29 of 1996

AN ACT to amend the *Official Corruption Commission Act 1988*, and for related purposes.

[Assented to 28 August 1996.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Official Corruption Commission Amendment Act 1996*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Official Corruption Commission Act 1988** is referred to as the principal Act.

Note: There is a note at the end of this Act showing how this Act affects the principal Act.

[* *Reprinted as at 19 March 1996.*]

Long title substituted

4. The long title to the principal Act is deleted and the following long title is substituted —

“

AN ACT to provide for an Anti-Corruption Commission to receive or initiate allegations of corruption, or of criminal or improper conduct of certain kinds, against police officers and other public officers and certain other people, to provide for the way in which such allegations are to be inquired into, investigated or otherwise dealt with, and for related purposes.

”.

Section 1 amended

5. Section 1 of the principal Act is amended by deleting “*Official Corruption*” and substituting the following —

“ *Anti-Corruption* ”.

Section 3 amended

6. Section 3 of the principal Act is amended —

- (a) by inserting after the section designation “3.” the subsection designation “(1)”;
- (b) by inserting the following definitions in the appropriate alphabetical positions —

“

“**applied provisions**” means sections 7, 9 to 17, 18 (2) to (11), 19 (1), 19A to 22, 24 to 30, 31 (2) and (3) and 32 to 34 of the *Royal Commissions Act 1968*;

“**appropriate authority**” means a person, body or organization who or which is empowered by a law of the State to take investigatory or other action, or both, in relation to corrupt conduct, criminal conduct, criminal involvement or serious improper conduct, but does not include an independent agency;

“**corrupt conduct**” means conduct referred to in section 7 (1) (a) (i) or (ii);

“criminal conduct” means conduct referred to in section 7 (1) (a) (iii), (iv), (v) or (vi);

“criminal involvement” means involvement referred to in section 7 (1) (b);

“further action” has the meaning given by section 7HA (1);

“independent agency” means the Parliamentary Commissioner, the Director of Public Prosecutions, the Auditor General or the Commissioner for Public Sector Standards;

“officer of the Commission” means an officer or other employee appointed under section 6 (1);

“public authority” means —

- (a) a body mentioned in Part 3 of Schedule V to the *Constitution Acts Amendment Act 1899*;
- (b) an authority, board, corporation, commission, council, committee, local government, regional local government or similar body established under a written law; or
- (c) a body that is the governing authority of a body referred to in paragraph (a) or (b);

“**public service officer**” has the same meaning as it has in the *Public Sector Management Act 1994*;

“**serious improper conduct**” means conduct referred to in section 7 (1) (c);

“**service provider**” means a person engaged under section 6D to provide services to the Commission;

“**special investigator**” means a special investigator appointed under section 6B;

”;

and

(c) by inserting the following subsection —

“

(2) A reference in this Act to the carrying out of further action by the Commission includes a reference to the carrying out of further action by a special investigator.

”.

Section 4 amended

7. Section 4 of the principal Act is amended —

(a) by inserting after the section designation “4.” the subsection designation “(1)”; and

(b) by inserting the following subsection —

“

(2) The Commission may receive information and otherwise perform its

functions in relation to acts, omissions or conduct alleged to have been done, omitted or engaged in by a person who was a public officer at the time of the alleged acts, omissions or conduct even if the person has since ceased to be a public officer.

”.

Division headings inserted in Part II

8. (1) Before section 5 of the principal Act the following heading is inserted in Part II —

“

Division 1 — Establishment, constitution and staff of the Commission

”.

(2) Before section 7I of the principal Act the following heading is inserted —

“

Division 8 — Financial provisions ”.

Section 5 amended and saving provisions

9. (1) Section 5 (1) of the principal Act is amended by deleting “Official Corruption” and substituting the following —

“ Anti-Corruption ”.

(2) After section 5 (1) of the principal Act the following subsection is inserted —

“

(1a) The Commission is a body corporate with perpetual succession.

”.

(3) Section 5 (2) of the principal Act is repealed and the following subsections are substituted —

“

(2) The Commission shall consist of 3 members appointed by the Governor of whom —

- (a) one shall be a person who has held office as a Judge or District Court Judge or is eligible for appointment as a Judge; and
- (b) 2 shall be persons who are not public officers otherwise than by reason of being appointed as members.

(2a) A person who is a judicial officer or who is or has been a member of the Police Force is not eligible to be a member of the Commission.

”.

(4) Section 5 (3) (c) of the principal Act is amended by deleting “Commissioner of Police” and substituting the following —

“ Solicitor General ”.

(5) After section 5 (3) of the principal Act the following subsections are inserted —

“

(3a) Before making a recommendation under subsection (3) the committee shall publish in a daily newspaper circulating throughout the State a notice calling for expressions of interest in appointment to the office of member of the Commission.

(3b) The committee shall consider expressions of interest lodged in accordance with the notice but may make a recommendation under subsection (3) whether

or not the person recommended has lodged an expression of interest.

”.

(6) Section 5 (4) of the principal Act is repealed and the following subsections are substituted —

“

(4) Subject to subsection (4a), a member shall hold office for such term, not exceeding 4 years, as is specified in the member’s instrument of appointment, and is eligible for reappointment.

(4a) A person is not eligible to be appointed as a member —

- (a) if the person has already held office as a member for not less than the prescribed period; or
- (b) for a term of office that would result in the person holding office as a member for more than the prescribed period.

(4b) In subsection (4a) —

“**prescribed period**” means an aggregate period of more than 8 years, whether in consecutive terms or otherwise.

”.

(7) Section 5 (5) of the principal Act is amended —

(a) by inserting after paragraph (a) the following paragraphs —

“

- (aa) the member becomes a judicial officer or a member of the Police Force;

(ab) in the case of a member appointed under subsection (2) (b), the member becomes a public officer otherwise than by reason of being appointed as a member;

”.

(b) by deleting “or” after paragraph (b);

(c) in paragraph (c) by deleting “Governor.” and substituting the following —

“ Governor; or ”;

and

(d) by inserting after paragraph (c) the following paragraph —

“

(d) the member is removed from office by resolution passed by both Houses of Parliament on the grounds of misbehaviour, incompetence, or mental or physical incapacity impairing the performance of his or her duties.

”.

(8) Section 5 (6) of the principal Act is amended by deleting “Governor shall appoint one of the members to” and substituting the following —

“

member who holds office under subsection (2) (a) shall

”.

(9) After section 5 (6) of the principal Act the following subsection is inserted —

“
 (7) At a meeting of the Commission 2 members
 constitute a quorum.
”.

(10) The body renamed as the Anti-Corruption Commission by subsection (1) is the same body as the Official Corruption Commission previously established under section 5 of the principal Act.

(11) Despite the amendments made to section 5 of the principal Act by subsections (3) to (6), a person who held office as a member of the Official Corruption Commission on 12 March 1996 and continued to hold that office immediately before the commencement of this section —

- (a) may continue in that office as a member of the Anti-Corruption Commission until the office becomes vacant by effluxion of time or by operation of section 5 (5) of the principal Act; and
- (b) is eligible to be appointed for a further term of office, or further terms of office, as a member of the Anti-Corruption Commission.

Section 6 amended

10. (1) Section 6 (1) of the principal Act is amended by inserting after “officers” the following —

“ and other employees ”.

(2) After section 6 (4) of the principal Act the following subsections are inserted —

“

(4a) In subsection (4b) —

“former public employee” means a person who, immediately before his or her appointment as an officer of the Commission, was employed for an indefinite period in a department of the Public Service.

(4b) If a former public employee ceases to be an officer of the Commission, he or she is entitled to employment as a public service officer in the department referred to in subsection (4a) at the same level of classification as he or she held immediately before becoming an officer of the Commission.

(4c) A person does not have an entitlement under subsection (4b) if his or her employment as an officer of the Commission was terminated, or he or she was dismissed, for substandard performance, breach of discipline or misconduct.

(4d) This section does not prevent the application of the provisions of the *Public Sector Management Act 1994* relating to the management of the redeployment and redundancy of employees to a person who is employed in a department under an entitlement under section (4b).

”.

Section 6A amended

11. (1) Section 6A (1) of the principal Act is amended by deleting “subsection (2), the Commission may by arrangement between the Commission and the Minister concerned” and substituting the following —

“ subsections (2) and (2a), the Commission may arrange to ”.

(2) Section 6A (2) of the principal Act is repealed and the following subsections are substituted —

“

(2) An arrangement under subsection (1) (other than an arrangement in relation to staff or facilities of the Police Force) shall be made with the Minister concerned on such terms as the Commission, the Minister concerned and the Minister for Public Sector Management agree.

(2a) An arrangement under subsection (1) in relation to staff or facilities of the Police Force shall be made with the Commissioner of Police on such terms as the Commission and the Commissioner of Police agree.

”.

Sections 6B, 6C, 6D and 6E, heading and section 6F inserted

12. After section 6A of the principal Act the following sections and heading are inserted —

“

Special investigators

6B. (1) The Commission may appoint a person who is or has been a barrister or solicitor of the Supreme Court, or the Supreme Court of another State or Territory, of not less than 5 years' standing and practice to be a special investigator to investigate, and report to the Commission on, an allegation, or allegations or class of allegations, specified —

- (a) in the instrument appointing the special investigator; or

(b) in a written notice given to the special investigator by the Commission.

(2) A special investigator shall perform his or her functions on such terms as the Commission and the special investigator agree.

(3) The terms referred to in subsection (2) may include terms as to the use by the special investigator of the services of officers of the Commission and seconded officers.

Contract staff

6C. (1) The Commission may enter into an agreement with any person or body for the performance of functions of the kind performed by officers of the Commission (including functions performed under a delegation under section 6E).

(2) A function that is the subject of an agreement under subsection (1) may be performed —

- (a) in accordance with the agreement; and
- (b) on such terms as are set out in the agreement.

(3) A person who performs functions under an agreement under subsection (1) is to be regarded as an officer of the Commission for the purposes of this Act and the provisions of this Act (other than section 6 (2) and (4) to (5)) apply to and in relation to such a person accordingly.

Service providers

6D. The Commission may engage any suitable person or body to provide the Commission with information, advice or other services of a professional,

technical or managerial nature on such terms as the Commission and the person or body agree.

Delegation

6E. (1) The Commission may, by instrument in writing, delegate any of its functions to a member, an officer of the Commission or a seconded officer.

(2) A member may, by instrument in writing, delegate to an officer of the Commission or a seconded officer any function delegated to the member under subsection (1).

(3) The following functions cannot be delegated —

- (a) the power of delegation conferred by this section;
- (b) a function of making a report under this Act;
- (c) the power to appoint a special investigator.

Division 2 — Functions of the Commission

Functions

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

- (a) to receive or initiate allegations of corrupt conduct, criminal conduct, criminal involvement or serious improper conduct about —
 - (i) police officers; and
 - (ii) other public officers;

- (b) to consider whether further action is needed in relation to an allegation and, if so, by whom that further action should be carried out;
- (c) to carry out further action in relation to allegations itself, if it is appropriate for it to do so, or to refer allegations to other authorities so that they can carry out further action;
- (d) to furnish reports and make recommendations on the outcome of further action taken in relation to allegations;
- (e) to furnish general reports and make general recommendations about matters relating to its functions;
- (f) to consult, co-operate and exchange information with independent agencies, appropriate authorities and —
 - (i) the Commissioner of the Australian Federal Police;
 - (ii) the Commissioner (however designated) of the police force of another State or a Territory;
 - (iii) the Chairman of the National Crime Authority established by the *National Crime Authority Act 1984* of the Commonwealth; and
 - (iv) any authority or body of this State, the Commonwealth, another State or a Territory that is authorized to conduct inquiries or investigations in relation to conduct in the nature of

corrupt conduct, criminal conduct, criminal involvement or serious improper conduct and is declared by the Minister to be an authority or body to which this paragraph applies;

- (g) to assemble evidence obtained in the course of its functions and —
 - (i) furnish to an independent agency or an appropriate authority, evidence which may be admissible in the prosecution of a person for a criminal offence against a written law or which may otherwise be relevant to the functions of the agency or authority; and
 - (ii) furnish to the Attorney General or a suitable authority of another State, a Territory, the Commonwealth or another country, evidence which may be admissible in the prosecution of a person for a criminal offence against a law of the jurisdiction concerned or which may otherwise be relevant to that jurisdiction;
- (h) to disseminate information to the public about matters relating to its functions; and
- (i) to do anything else that it is required or authorized to do under this Act or any other written law.

”.

(2) Subsection (1) (a) (i) does not limit or otherwise affect the operation of the definition of “public officer” in section 3 (1).

Section 7 repealed and a heading and section substituted

13. Section 7 of the principal Act is repealed and the following heading and section are substituted —

“

***Division 3 — Allegations of corrupt conduct,
criminal conduct, criminal involvement
or serious improper conduct***

Receipt or initiation of allegations

7. (1) Subject to subsection (3), the Commission shall —

- (a) receive information furnished to it by any person who alleges that a public officer has —
 - (i) corruptly acted or corruptly failed to act in the performance of the functions of his or her office or employment; or
 - (ii) corruptly taken advantage of his or her office or employment as a public officer to obtain any benefit for himself or herself or for another person; or
 - (iii) committed a scheduled offence whilst acting or purporting to act in his or her official capacity; or
 - (iv) committed an offence under section 552 of *The Criminal Code* by attempting, whilst acting or purporting to act in his or her official

- capacity, to commit a scheduled offence; or
- (v) committed an offence under section 553 of *The Criminal Code* by inciting, whilst acting or purporting to act in his or her official capacity, the commission of a scheduled offence; or
 - (vi) committed an offence under section 558 of *The Criminal Code* by conspiring, whilst acting or purporting to act in his or her official capacity, to commit a scheduled offence;
- (b) receive information furnished to it by any person who alleges that another person has been involved in criminal conduct engaged in by a public officer in such a manner that the other person could be regarded, under Chapter II of *The Criminal Code*, as having taken part in committing an offence, or as having committed an offence or as being an accessory after the fact to an offence;
- (c) receive information furnished to it by any person who alleges that a public officer has engaged in conduct (other than corrupt conduct or criminal conduct) that —
- (i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public body or public officer; or

- (ii) constitutes or involves the performance of the public officer's functions in a manner that is not honest or is not impartial; or
- (iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or
- (iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or another person,

and constitutes or could constitute —

- (v) an offence against the *Statutory Corporations (Liability of Directors) Act 1996* or any other written law; or
- (vi) a disciplinary breach providing reasonable grounds for the termination of a person's office or employment as a public service officer under the *Public Sector Management Act 1994* (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct);

and

- (d) consider, in the light of its own experience and knowledge and independently of any allegation referred to in paragraph (a), (b)

or (c) whether or not the Commission ought itself to allege —

- (i) that a public officer has engaged in corrupt conduct, criminal conduct or serious improper conduct; or
- (ii) that another person has been involved, in a manner described in paragraph (b), with criminal conduct engaged in by a public officer.

(2) The information referred to in subsection (1) (a), (b) or (c) may be furnished to the Commission orally or in writing, but the Commission may then seek from the person furnishing that information such further information, in such form as it thinks fit, as it may require to perform its functions.

(3) An allegation about the conduct of a person in his or her capacity as the holder of a judicial office shall not be received or initiated by the Commission unless the allegation relates to —

- (a) the commission or attempted commission of;
- (b) the incitement of the commission of; or
- (c) a conspiracy to commit,

an offence under section 121 of *The Criminal Code*.

(4) In subsection (3) —

“holder of a judicial office” has the same meaning as it has in section 121 of *The Criminal Code*.

”.

Sections 7A, 7B, 7C, 7D and 7E repealed

14. Sections 7A to 7E of the principal Act are repealed.

Section 7F amended

15. (1) Section 7F (2) (a) of the principal Act is amended by deleting “conduct or involvement referred to in section 7 (1) (a) or (aa)” and substituting the following —

“
corrupt conduct, criminal conduct, criminal
involvement or serious improper conduct
”.

(2) After section 7F (2) of the principal Act the following subsection is inserted —

“
(2a) A matter concerning corrupt conduct,
criminal conduct or criminal involvement shall be
reported to the Commission under subsection (2) as
soon as is reasonably practicable after the person
becomes aware of it.
”.

Section 7G amended

16. Section 7G of the principal Act is amended —

- (a) by inserting after the section designation “**7G.**” the subsection designation “(1)”;
- (b) in paragraph (a) by deleting “conduct or involvement referred to in section 7 (1) (a) or (aa)” and substituting the following —

“
corrupt conduct, criminal conduct, criminal
involvement or serious improper conduct
”.

- (c) in paragraph (b) by deleting “the kind referred to in section 7 (1) (a) or (aa) or both” and substituting the following —

“
corrupt conduct, criminal conduct, criminal involvement or serious improper conduct
”;

and

- (d) by inserting the following subsection —

“
(2) A matter concerning corrupt conduct, criminal conduct or criminal involvement shall be reported to the Commission under subsection (1) (a) as soon as is reasonably practicable after the Director of Public Prosecutions becomes aware of it.
”.

Section 7H amended

- 17.** Section 7H (1) of the principal Act is amended by deleting “conduct or involvement referred to in section 7 (1) (a) or (aa)” and substituting the following —

“
corrupt conduct, criminal conduct, criminal involvement or serious improper conduct
”.

Part II Divisions 4, 5, 6 and 7 inserted

18. After section 7H of the principal Act the following Divisions are inserted —

“

Division 4 — Consideration of allegations and the need for further action

Decision as to whether further action needed

7HA. (1) The Commission shall examine each allegation and decide whether or not, in its opinion, investigatory or other action, or both, (in this Act called “**further action**”) for the purposes of this Act in relation to the allegation is warranted on reasonable grounds.

(2) When the Commission is deciding whether further action for the purposes of this Act in relation to an allegation is warranted on reasonable grounds, the matters to which it may have regard include the following —

- (a) the seriousness of the conduct or involvement to which the allegation relates;
- (b) whether or not, in the case of an allegation under section 7 (1) (a), (b) or (c), the allegation is frivolous or vexatious or is made in good faith;
- (c) whether or not the conduct or involvement to which the allegation relates is or has been the subject of appropriate investigatory or other action otherwise than for the purposes of this Act;

- (d) whether or not, in all the circumstances, the carrying out of further action for the purposes of this Act in relation to the allegation is justified or is in the public interest.

(3) If the Commission decides that further action for the purposes of this Act in relation to an allegation is warranted on reasonable grounds, it shall decide whether further action should be carried out by the Commission itself or whether the allegation should be referred to an independent agency or appropriate authority for further action.

(4) For the purpose of performing its functions under this section the Commission may —

- (a) make such preliminary inquiry, if any, as it considers necessary; and
- (b) consult any independent agency or appropriate authority.

Matters to be considered in deciding who should take further action

7HB. When the Commission is deciding whether further action in relation to an allegation should be carried out by the Commission itself or whether the allegation should be referred to an independent agency or appropriate authority for further action, the matters to which the Commission shall have regard include the following —

- (a) the seniority of any public officer to whom the allegation relates;
- (b) the seriousness of the conduct or involvement to which the allegation relates;

- (c) the need for there to be an independent investigation rather than an investigation by a public authority with which any public officer to whom the allegation relates is connected by membership or employment or in any other respect.

Informant to be notified of decision

7HC. The Commission shall, by written notice, inform a person who has made an allegation under section 7 (1) (a), (b) or (c) of any decision made by the Commission under section 7HA that further action in relation to the allegation for the purposes of this Act is not warranted on reasonable grounds.

Review of decisions that further action is not warranted

7HD. (1) A person may, within 30 days after having been informed under section 7HC, or such longer period as the Commission may allow, in writing request the Commission to review its decision that further action in relation to the allegation for the purposes of this Act is not warranted on reasonable grounds.

(2) On receiving a request under subsection (1), the Commission shall —

- (a) review; and
- (b) confirm or reverse,

the decision to which that request relates.

(3) If the Commission reverses the decision it shall also decide whether further action in relation to

the allegation should be carried out by the Commission itself or whether the allegation should be referred to an independent agency or appropriate authority for further action.

(4) The Commission shall inform the person who made the request under subsection (1) of its decision under subsection (2) (b) on the request within 15 days after the making of the request, or such longer period as is agreed between the Commission and the person.

(5) For the purpose of performing its functions under this section the Commission may —

- (a) make such preliminary inquiry, if any, as it considers necessary; and
- (b) consult any independent agency or appropriate authority.

Division 5 — Dealing with allegations

Further action by the Commission

7HE. (1) This section applies if the Commission decides under section 7HA (3), 7HD (3) or 7HF (4) that it should itself carry out further action in relation to an allegation.

(2) If an investigation is carried out —

- (a) Part IIB has effect if the investigation is carried out by a special investigator; and
- (b) sections 8H to 8K in Part IIB have effect if the investigation is carried out by officers of the Commission.

(3) The Commission or a special investigator may consult any independent agency or appropriate authority about the allegation.

(4) The Commission may at any time (whether or not the carrying out of further action by the Commission has been completed) decide to refer the allegation to an independent agency or appropriate authority for further action.

Further action by another agency or authority

7HF. (1) If the Commission decides under section 7HA (3), 7HD (3) or 7HE (4) that an allegation should be referred to an independent agency or appropriate authority for further action it shall, as soon as is practicable after making that decision, refer the allegation by forwarding a report on the allegation to the independent agency or appropriate authority.

(2) If an allegation is referred to an appropriate authority under subsection (1), the Commission may, in the report or by subsequent written notice —

- (a) recommend that the appropriate authority initiate and carry out an investigation into the allegation;
- (b) make a recommendation to the appropriate authority as to the period within which an investigation should be carried out; and
- (c) make such other recommendations to the appropriate authority as it thinks fit in relation to further action that should be carried out in relation to the allegation and the period within which it should be carried out.

(3) The Commission may from time to time, by written notice, amend a recommendation referred to in subsection (2).

(4) Despite having referred an allegation to an independent agency or appropriate authority under subsection (1), the Commission may at any time decide to itself carry out further action in relation to the allegation.

(5) Where an allegation has been referred to the Parliamentary Commissioner, subsection (4) does not apply unless the carrying out of further action by the Commission has been requested or agreed to by the Parliamentary Commissioner.

References to the Parliamentary Commissioner or Auditor General

7HG. (1) The Commission shall not decide under section 7HA (3), 7HD (3) or 7HE (4) that an allegation should be referred to the Parliamentary Commissioner or the Auditor General without having first consulted the Parliamentary Commissioner or the Auditor General, as the case may be.

(2) When an allegation is referred to the Parliamentary Commissioner under section 7HF (1), the reference is to be treated by the Parliamentary Commissioner as if it were a complaint duly made under section 17 of the *Parliamentary Commissioner Act 1971* and that Act applies to and in relation to that reference accordingly.

(3) Despite the proviso to section 14 (1a) of the *Parliamentary Commissioner Act 1971*, when an allegation about a member of the Police Force or Police Department is referred to the Parliamentary Commissioner under section 7HF (1), the

Parliamentary Commissioner may proceed to investigate that allegation whether or not the Commissioner of Police has had a reasonable opportunity to investigate the matter to which the allegation relates.

(4) When an allegation is referred to the Auditor General under section 7HF (1), the Auditor General is to investigate the allegation and the *Financial Administration and Audit Act 1985* applies to the investigation as if it were an investigation under section 80 (b) of that Act.

(5) Nothing in the *Financial Administration and Audit Act 1985* prevents the Auditor General, or any person referred to in section 91 of that Act, from disclosing to the Commission, or an officer of the Commission, or a special investigator, information obtained in the course of an investigation under subsection (4).

Appropriate authority to report to the Commission

7HH. (1) When an allegation is referred to an appropriate authority under section 7HF (1), the appropriate authority shall perform its functions in relation to the allegation and, as soon as possible after performing those functions, forward a report to the Commission as to the further action the appropriate authority has carried out in relation to the allegation.

(2) The Commission may from time to time, by written notice, request an appropriate authority to forward a report to it —

- (a) stating the progress made with, or outcome of, action recommended by the Commission under section 7HF; or

- (b) stating why such action has not been carried out, or has not been carried out within the period recommended by the Commission,

and the appropriate authority shall comply with that request.

(3) The Commission shall consider every report forwarded to it by an appropriate authority under subsection (1) or (2).

Informant can be advised of the outcome of further action

7HI. The Commission may inform a person who has made an allegation as to the outcome of further action carried out by the Commission or an appropriate authority in relation to the allegation if —

- (a) the person requests the information; and
- (b) the Commission considers that it is reasonable in the circumstances to give the information.

Person investigated can be advised of the outcome of the investigation

7HJ. The Commission may inform a person to whom an allegation relates as to the outcome of any investigation carried out by the Commission or an appropriate authority in relation to the allegation if —

- (a) the person requests the information; or

- (b) the Commission considers that giving the information to the person is in the person's best interests,

and the Commission considers that giving the information to the person will not prejudice the carrying out of any further action in relation to the allegation.

***Division 6 — Reports to Parliament or Minister
on specific matters***

Report on further action by the Commission

7HK. After carrying out further action in relation to an allegation the Commission may report in writing to each House of Parliament —

- (a) on the facts disclosed as a result of the further action; or
- (b) on any request made by a person to whose alleged conduct or involvement the further action related that the facts disclosed as a result of the further action be publicly disclosed.

Report on further action by an appropriate authority

7HL. (1) After considering any report forwarded to it by an appropriate authority under section 7HH (1) or (2) (in this section called "**the first report**"), the Commission may report in writing to each House of Parliament —

- (a) on the facts disclosed in the first report; or

- (b) on any request made by a person to whose alleged conduct or involvement the first report relates that the facts disclosed in the first report be publicly disclosed.

(2) During or after the carrying out of further action by an appropriate authority to whom or which an allegation has been referred under section 7HF (1), the Commission may report in writing to each House of Parliament that the Commission considers that further action is not being, or has not been, properly, efficiently or expeditiously carried out.

Reports to Presiding Officers, the Minister, other Ministers or a standing committee

7HM. (1) A report of the kind mentioned in section 7HK or 7HL may be made by the Commission to the Presiding Officer of each House of Parliament if Parliament has been prorogued or the Legislative Assembly has expired or been dissolved.

(2) If a Presiding Officer receives a report under subsection (1) the Presiding Officer as soon as reasonably practicable shall cause that report to be laid before the relevant House.

(3) A report of the kind mentioned in section 7HK or 7HL may be made by the Commission to the Minister, or another Minister or a standing committee instead of to each House of Parliament or their Presiding Officers if, for any reason, the Commission considers it appropriate to do so.

Contents of reports

7HN. (1) Before reporting any facts adverse to a person or body in a report under this Division, the Commission shall give the person or body a reasonable opportunity to make representations to it concerning those facts.

(2) A report under this Division is not to include a recommendation or opinion that a specified person should be prosecuted for a specified or unspecified criminal offence against a written law.

(3) Subject to subsection (2), the Commission may make any recommendation that it thinks fit in a report made under this Division.

(4) Without limiting subsection (3), the Commission may, in a report made under this Division —

- (a) recommend that further inquiry or investigation into any matter be carried out by a Royal Commission, or by an Inquiry Panel appointed under the *Local Government Act 1995*, or in such other manner as the Commission may recommend; and
- (b) recommend the terms of reference of any such inquiry or investigation.

Public disclosure of findings

7HO. If, following the making by the Commission of a report under this Division, either House of Parliament or a standing committee approves the public disclosure of facts disclosed in the report, a person may, despite section 11B, publicly disclose

those facts, whether by publication in any newspaper or other written publication or by radio or television or otherwise.

Division 7 — General reports

Statistical and general information

7HP. In its annual report under the *Financial Administration and Audit Act 1985* the Commission shall include statistical information, and such information of a general nature as it thinks fit, about allegations of corrupt conduct, criminal conduct, criminal involvement or serious improper conduct —

- (a) which it has received or initiated under section 7; or
- (b) as to which it has received information from independent agencies or appropriate authorities.

Special reports

7HQ. The Commission may, at any time, make a special report to the Presiding officer of each House of Parliament on any administrative or general policy matter relating to the functions of the Commission.

Periodical reports to Parliament

7HR. (1) Rules of Parliament under section 12 may require the Commission to report to each House of Parliament or a standing committee, as and when prescribed in the Rules, as to the general activities and operations of the Commission.

(2) The Commission is not required to provide detailed operational information in a report under subsection (1).

”.

Section 7I amended and saving provision

19. (1) Section 7I (2) of the principal Act is amended by deleting “Official Corruption” and substituting the following —

“ Anti-Corruption ”.

(2) The fund renamed as the Anti-Corruption Commission Fund by subsection (1) is the same fund as the Official Corruption Commission Fund previously referred to in section 7I (2) of the principal Act.

Section 8A amended

20. After section 8A (2) of the principal Act the following subsection is inserted —

“

(2a) Information supplied by a person as requested under this section is not admissible in evidence against that person in any civil or criminal proceedings (except contempt proceedings or proceedings for an offence against this Act).

”.

Part IIB inserted

21. After section 8B of the principal Act the following Part is inserted —

“

PART IIB — INVESTIGATIONS

Definition

8C. In this Part —

“**investigation**” means an investigation under Part II, Division 5.

Powers and immunities of a Royal Commission to apply to a special investigator

8D. (1) For the purposes of carrying out investigations, and furnishing reports to the Commission, a special investigator has the powers of a Royal Commission and the Chairman of a Royal Commission under the applied provisions.

(2) The applied provisions have effect as if they were enacted in this Act with such modifications as are set out in this Part or are otherwise required, and in terms made applicable to investigations and reporting by a special investigator.

Interpretation of terms in the applied provisions

8E. In the applied provisions as they have effect under this Act —

- (a) a reference to a Royal Commission, a Commissioner or the Chairman of a Royal Commission is a reference to a special investigator;
- (b) a reference to a Royal Commission's inquiry is a reference to an investigation by a special investigator;
- (c) a reference to a person appointed by the Attorney General to assist a Royal Commission is a reference to a person appointed or engaged by the Commission to assist a special investigator or whose services are used by a special investigator; and

- (d) “**documents**” includes things that are documents within the meaning of section 79B of the *Evidence Act 1906*.

Hearings and representation

8F. (1) Any evidence taken under the applied provisions in the course of an investigation shall be taken in private.

(2) Section 19A (a) of the applied provisions has effect as if “authorized by the Commission to appear before it for the purpose of representing that witness is entitled to be present” were deleted and the following were inserted —

“
is entitled to be present for the purpose of representing that witness
”.

(3) Section 22 of the applied provisions has effect as if “authorized by a Commission to appear before it” were deleted and the following were inserted —

“
entitled or authorized under section 19A to be present
”.

(4) Section 31 (3) of the applied provisions has effect as if —

- (a) “authorized by the Commission to appear before it” were deleted and the following were inserted —

“
entitled or authorized under section 19A to be present
”;
and

(b) after “so appointed” the following were inserted —

“ , entitled ”.

Witness entitled to know the nature of the investigation

8G. Before the evidence of a witness is taken on oath under the applied provisions in the course of an investigation, the witness is entitled to be informed of the general scope and purpose of the investigation.

Power to request statements of information or documents

8H. (1) In carrying out an investigation, the Commission or a special investigator may, by written notice, request a public authority or public officer to produce a statement of information.

(2) A request under subsection (1) must specify or describe the information concerned and specify the manner in which, and period within which, the statement is to be produced.

(3) A request under subsection (1) may specify a person or class of persons who may satisfy the request on behalf of the public authority or public officer.

(4) A person who fails, without reasonable excuse, to produce a statement as requested under this section commits an offence.

Penalty: \$8 000 or imprisonment for 2 years.

(5) A request under subsection (1) must be complied with despite any rule of law which, in proceedings in a court, might justify an objection to compliance with a like request on grounds of public interest.

(6) A statement produced by a person as requested under subsection (1) is not admissible in evidence against that person in any civil or criminal proceedings (except contempt proceedings or proceedings for an offence against this Act).

(7) Section 8B applies in relation to an investigation as if, in subsection (1) of that section, the reference to a preliminary inquiry were a reference to an investigation and the words “orally or” were deleted.

Power to enter premises

8I. (1) For the purposes of carrying out an investigation, the Commission or a special investigator may at any time enter any premises occupied or used by a public authority or public officer in that capacity and —

- (a) inspect the premises and anything in or on them; and
- (b) take copies of any documents in or on the premises.

(2) A public authority or public officer shall make available to the Commission or a special investigator such facilities as are necessary to enable the powers conferred by subsection (1) to be exercised.

(3) The powers conferred by this section may be exercised despite any rule of law which, in proceedings in a court, might justify an objection to an inspection of the premises or to the production of a document or other thing on grounds of public interest.

Duty of secrecy not to apply to disclosure of information to the Commission

8J. Any requirement under the applied provisions or section 8H or 8I to answer questions, give evidence, produce documents, books, writings or information or make facilities available has effect despite any duty of secrecy or other restriction on disclosure imposed under a written law, whether enacted before or after the commencement of section 21 of the *Official Corruption Commission Amendment Act 1996*, and a person who complies with such a requirement does not commit any offence by reason of that compliance.

Legal professional privilege

8K. (1) Subject to subsection (2), nothing in this Act prevents a person who is required under the applied provisions or section 8H or 8I to answer questions, give evidence, produce documents, books, writings or information or make facilities available from claiming legal professional privilege as a reason for not complying with that requirement.

(2) Subsection (1) does not apply to any privilege of a public authority or public officer in that capacity.

Fees to witnesses and interpreters

8L. The regulations made under section 119 of the *Evidence Act 1906* apply in relation to witnesses and

interpreters in proceedings at which the evidence of witnesses is taken on oath under the applied provisions in the course of an investigation.

”.

Sections 10 and 10A inserted

22. After section 9 of the principal Act the following sections are inserted —

“

Disclosure of interests

10. (1) A member who has a material personal interest in a matter in respect of which the Commission is performing its functions shall, as soon as possible after the relevant facts have come to the knowledge of the member, disclose the nature of the interest at a meeting of the Commission.

Penalty: \$8 000 or imprisonment for 2 years.

(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting.

(3) A person who is an officer of the Commission or a seconded officer and who has a material personal interest in a matter in respect of which the Commission is performing its functions shall, as soon as possible after the relevant facts have come to the knowledge of the person, disclose the nature of the interest to the Commission.

Penalty: \$8 000 or imprisonment for 2 years.

(4) The Commission is to ensure that a person who has disclosed an interest in a matter under subsection (1) or (3) is not involved in considering, inquiring into or investigating that matter unless the

Commission is satisfied that the involvement of the person would not prejudice the consideration, inquiry or investigation of the matter.

Voting by interested members

10A. (1) Without limiting section 10 (4), a member who has a material personal interest in a matter that is being considered by the Commission —

- (a) shall not vote whether at a meeting or otherwise —
 - (i) on the matter; or
 - (ii) in relation to a proposed resolution under subsection (4) in relation to the matter, whether in relation to that or a different member;

and

- (b) shall not be present while the matter, or a proposed resolution of the kind referred to in paragraph (a) (ii), is being considered at a meeting.

(2) Subsection (1) does not apply if the Commission constituted by the other members has at any time passed a resolution that —

- (a) specifies the member, the interest and the matter; and
- (b) states that the other members are satisfied that the interest should not disqualify the member from considering or voting on the matter.

”.

Section 11 amended

23. (1) Section 11 (2) of the principal Act is repealed and the following subsections are inserted —

“

(2) Subsection (1) does not prevent the divulging or communicating of information or the production of a document —

- (a) to another person referred to in subsection (1) in connection with the performance of that other person's functions under this Act;
- (b) to a Royal Commission, an Inquiry Panel under the *Local Government Act 1995*, an independent agency, an appropriate authority, or any other body or authority to which section 6F (1) (f) applies, which is conducting an investigation or inquiry into a matter that is the subject of, or is related to, an allegation;
- (c) for the purposes of proceedings for an offence instituted as a result of an investigation;
- (d) for the purposes of proceedings for any perjury or any offence under the *Royal Commissions Act 1968*, or under this Act, alleged to have been committed in any proceedings upon an investigation;
- (e) for the purposes of consultation with an independent agency or appropriate authority about a matter relevant to the functions of the Commission; or

- (f) under reciprocal arrangements for the exchange of information made between the Commission and an independent agency, appropriate authority or other body or authority to which section 6F (1) (f) applies.

(2a) Subsection (1) does not prevent the Commission from divulging information, or making a statement, about the performance of the functions of the Commission to any person or to the public or a section of the public if the Commission considers that it is in the interests of any person, or in the public interest, to divulge that information, or make that statement, in that manner.

(2b) The Commission shall not divulge information or make a statement under subsection (2a) with respect to a particular allegation where the disclosure of that information, or the making of that statement, is likely to interfere with the carrying out of investigatory or other action in relation to that or any other allegation or the making of a report under this Act.

(2c) The Commission shall not, in disclosing information or making a statement under subsection (2a) with respect to a particular allegation —

- (a) set out opinions that are, either expressly or impliedly, critical of any person unless the Commission has complied with subsection (2d); or
- (b) disclose the name of a person who made the allegation or any other matter that would enable a person who made the allegation to be identified unless it is fair and reasonable in all the circumstances to do so.

(2d) Where the Commission proposes to disclose information or make a statement setting out opinions referred to in subsection (2c) (a) it shall, before doing so, afford the person to whom the opinions relate the opportunity to appear before it and to make submissions, either orally or in writing, in relation to the matter.

”.

(2) After section 11 (3) of the principal Act the following subsection is inserted —

“

(4) If, under this Act —

- (a) evidence or information is furnished, divulged or communicated; or
- (b) a document is produced,

to a person or body on the understanding that the evidence, information or document is confidential, the person or body is subject to the provisions of this section in relation to the evidence, information or document.

”.

Schedule 1 repealed and a Schedule substituted

24. Schedule 1 to the principal Act is repealed and the following Schedule is substituted —

“

SCHEDULE 1 — OFFENCES UNDER THE CRIMINAL CODE

[Section 3]

Offence under section 60 or 61, or any section in Chapter XII, XIII, XVI, XX, XXXIII A, XXXVI, XXXVII, XL, XLI, XLII, XLIV A, XLIX or LV, of *The Criminal Code*.

”.

Various sections amended

25. The principal Act is amended as set out in the Table to this section —

Table

Provision amended	Amendment
s. 3 (definition of “allegation”)	Delete “(aa) or (ab)”, substitute — “ (b), (c) or (d) ”.
s. 3 (definitions of “Commission” and “the Fund”)	Delete “Official Corruption”, substitute — “ Anti-Corruption ”.
s. 3 (definition of “preliminary inquiry”)	Delete “7 (1) (ac)”, substitute — “ 7HA (4) (a) or 7HD (5) (a) ”.
s. 3 (definition of “public officer”)	Delete “and also includes a member of Parliament”.
s. 3 (definition of “standing committee”)	Delete “Parliament;” in paragraph (b), substitute — “ Parliament, appointed to monitor or review the performance of the functions of the Commission; ”.
Part II heading	Delete “ OFFICIAL CORRUPTION ”, substitute — “ ANTI-CORRUPTION ”.

- s. 5 (5) (a) Delete “he resigns his”, substitute —
“ the member resigns from ”.
- s. 5 (5) (b) Delete “he”, substitute —
“ the member ”.
- s. 5 (5) (c) Delete “he”, substitute —
“ the member ”.
After “his”, insert —
“ or her ”.
- s. 6 (4) Delete “an officer of the Public Service” in both places where it occurs, substitute —
“ a public service officer ”.
Delete “he”, substitute —
“ the officer ”.
- s. 6 (4) and (5) After “his”, wherever it occurs, insert —
“ or her ”.
- s. 6 (5) Delete “becomes an officer of the Public Service”, substitute —
“ becomes a public service officer (whether under an entitlement under subsection (4b) or otherwise) ”.

- Delete “an officer of the Public Service and”, substitute —
“ a public service officer and ”.
- s. 6 (6) Delete “he commences his”, substitute —
“ commencing ”.
After “, he”, insert —
“ or she ”.
After “him”, insert —
“ or her ”.
- s. 6A (3) Delete “he commences his”, substitute —
“ commencing ”.
After “, he”, insert —
“ or she ”.
After “him”, insert —
“ or her ”.
- s. 7F (1) and (5) Delete “public authority” wherever it occurs, substitute in each case —
“ notifying authority ”.
- s. 7F (2) (b) After “his”, insert —
“ or her ”.

- s. 7F (5) (b) Delete “*Public Service Act 1978*, the chief executive officer”, substitute —
- “ *Public Sector Management Act 1994*, the chief executive officer or chief employee ”.
- s. 7F (7) Delete “**public authority**”, substitute —
- “ **notifying authority** ”.
- Delete “*Public Service Act 1978*”, substitute —
- “ *Public Sector Management Act 1994* ”.
- s. 7I (3) (b) After “6A” insert —
- “ or an agreement referred to in section 6B, 6C or 6D ”.
- s. 8A (2) Delete “and is liable to a penalty of \$2 000”.
- After the subsection insert —
- “ Penalty: \$8 000 or imprisonment for 2 years. ”.
- s. 8B (2) Delete “and is liable to a penalty of \$2 000”.
- After the subsection insert —
- “ Penalty: \$8 000 or imprisonment for 2 years. ”.

s. 9 (1) Delete “or a seconded officer”,
substitute —

“ , a seconded officer, a
special investigator, a
service provider or a
member or employee of a
service provider ”.

s. 11 (1) Delete “or a seconded officer”,
substitute —

“ , a seconded officer, a
special investigator, a
service provider or a
member or employee of a
service provider ”.

Delete “the performance of a duty
under or in connection with this Act
or in”, substitute —

“ or in connection with ”.

s. 11 (1) (a) Delete “by him in his”, substitute —

“ in his or her ”.

Delete “or seconded officer and”,
substitute —

“ , seconded officer, special
investigator, service
provider or member or
employee of a service
provider ”.

s. 11 (3) (a) Delete the paragraph and “or” following it, substitute —

“ (a) divulge or communicate to a standing committee or to a person assisting, and authorized for the purposes of this paragraph by, a standing committee information received in his or her capacity as a member; or ”.

s. 11 (3) (b) Before “person”, insert —

“ a ”.

s. 11A (1) (f) Delete the paragraph and “or” following it, substitute —

“ (f) has been or is, or has been or is employed by or acting on behalf of, an independent agency or appropriate authority to whom or which an allegation has been referred under section 7HF (1); or ”.

s. 11B (1) (a) After “received”, insert —

“ or initiated ”.

- s. 11B (2) (a) Delete “or a seconded officer”,
substitute —
“ , a seconded officer, a
service provider or a
member or employee of a
service provider ”.
- s. 11B (2) (b) Delete the paragraph, substitute —
“ (b) a standing committee
of any report. ”.
- s. 11C (1) (a) and (b) Delete “or his”, substitute —
“ , his or her ”.
- s. 11C (2) After “a preliminary inquiry”,
insert —
“ or with an investigation
under Part II, Division 5 ”.
After “the preliminary inquiry”,
insert —
“ or investigation ”.
- s. 11C (3) After “he”, insert —
“ or she ”.

Amendment of other Acts

26. The Acts referred to in the Table to this section are amended as set out in that Table.

Table

Act amended	Amendment
<i>Commission on Government Act 1994</i>	In Schedule 1, Item 13, delete “Official Corruption”, substitute — “ Anti-Corruption ”.
<i>Financial Administration and Audit Act 1985</i>	In Schedule 1, delete “Official Corruption Commission”, insert in the appropriate alphabetical position — “ A n t i - C o r r u p t i o n Commission ”.
<i>Freedom of Information Act 1992</i>	In Schedule 2, delete “The Official Corruption Commission”, insert in the appropriate alphabetical position — “ The Anti-Corruption Commission ”.
<i>Parliamentary Commissioner Act 1971</i>	In section 13 (2) (da) — (a) delete “Official Corruption”, substitute — “ Anti-Corruption ”; and (b) delete “ <i>Official Corruption</i> ”, substitute — “ <i>Anti-Corruption</i> ”.

In section 23 (1) (c) —

- (a) delete “Official Corruption”,
in both places, substitute, in
each case —

“ Anti-Corruption ”;

- (b) delete “*Official Corruption*”,
substitute —

“ *Anti-Corruption* ”; and

- (c) delete “**Official
Corruption**”, substitute —

“ **Anti-Corruption** ”.

*Salaries and Allowances
Act 1975*

In section 7 (1) —

- (a) delete “Official Corruption”,
substitute —

“ Anti-Corruption ”; and

- (b) delete “*Official Corruption*”,
substitute —

“ *Anti-Corruption* ”.

Reprint of principal Act

27. (1) The principal Act as amended by this Act may be reprinted before this Act comes into operation, and for the purposes of the *Reprints Act 1984* the principal Act as so amended is to be regarded as a written law.

(2) In a reprint under subsection (1) provisions of the principal Act as reprinted may be renumbered or redesignated in arithmetical or alphabetical order and, if that occurs, relevant cross-references in the principal Act are to be adjusted.

=====

NOTE: Provisions of the *Official Corruption Commission Act 1988* amended, substituted or inserted by sections of this Act.

Section or other provision of the <i>Official Corruption Commission Act 1988</i>	How affected	Section(s) of this Act
Long title	substituted	4
s. 1	amended	5
s. 3	amended	6 and 25
s. 4	amended	7
Part II	heading amended . . .	25
Part II, Divisions 1 to 8 .	headings inserted . . .	8, 12, 13 and 18
s. 5	amended	9 and 25
s. 6	amended	10 and 25
s. 6A	amended	11 and 25
ss. 6B to 6F	inserted	12
s. 7	substituted	13
ss. 7A to 7E	repealed	14
s. 7F	amended	15 and 25
s. 7G	amended	16
s. 7H	amended	17
s. 7HA to HR	inserted	18
s. 7I	amended	19 and 25
s. 8A	amended	20 and 25
s. 8B	amended	25
Part IIB	heading inserted . . .	21
ss. 8C to 8L	inserted	21
s. 9	amended	25
ss. 10 and 10A	inserted	22
s. 11	amended	23 and 25
s. 11A	amended	25
s. 11B	amended	25
s. 11C	amended	25
Schedule 1	substituted	24