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at 1 November 1996

WESTERN AUSTRALIA

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# ANTI-CORRUPTION COMMISSION ACT 1988

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# ANTI-CORRUPTION COMMISSION ACT 1988

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.

*[Long title inserted by No. 29 of 1996 s.4.]*

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## **PART I — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Anti-Corruption Commission Act 1988*<sup>1, 1a</sup>.

[Section 1 amended by No. 29 of 1996 s.5.]

### **Commencement**

2. This Act shall come into operation on such day as is fixed by proclamation<sup>1</sup>.

### **Interpretation**

3. (1) In this Act, unless the contrary intention appears —

“**allegation**” means an allegation referred to in section 13 (1) (a), (b), (c) or (d);

“**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;

“**Commission**” means the Anti-Corruption Commission established under section 5;

“**corrupt conduct**” means conduct referred to in section 13 (1) (a) (i) or (ii);

**“criminal conduct”** means conduct referred to in section 13 (1) (a) (iii), (iv), (v) or (vi);

**“criminal involvement”** means involvement referred to in section 13 (1) (b);

**“Deputy Director of Public Prosecutions”** means a person for the time being holding or acting in the office of Deputy Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991*;

**“Deputy Parliamentary Commissioner”** means a person for the time being holding the office of Deputy Parliamentary Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1971*;

**“Director of Public Prosecutions”** means a person for the time being holding or acting in the office of Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991*;

**“further action”** has the meaning given by section 17 (1);

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

**“member”** means a member of the Commission;

**“member of the staff of the Director of Public Prosecutions”** means a member of the staff referred to in section 30 of the *Director of Public Prosecutions Act 1991*;

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

**“officer of the Parliamentary Commissioner”** has the meaning given to “officer of the Commissioner” by the *Parliamentary Commissioner Act 1971*;

**“Parliamentary Commissioner”** means a person for the time being holding or acting in the office of the Parliamentary Commissioner for Administrative Investigations under the *Parliamentary Commissioner Act 1971*;

**“preliminary inquiry”** means a preliminary inquiry referred to in section 17 (4) (a) or 20 (5) (a);

**“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 officer”** has the same meaning as in *The Criminal Code*;

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

**“scheduled offence”** means an offence specified in the Schedule;

**“seconded officer”** means a person of whose services the Commission makes use under an arrangement referred to in section 7 (1);

**“serious improper conduct”** means conduct referred to in section 13 (1) (c);



**“service provider”** means a person engaged under section 10 to provide services to the Commission;

**“special investigator”** means a special investigator appointed under section 8;

**“standing committee”** means —

- (a) a standing committee of either House of Parliament; or
- (b) a joint standing committee of both Houses of Parliament,

appointed to monitor or review the performance of the functions of the Commission;

**“the Fund”** means the Anti-Corruption Commission Fund referred to in section 35 (2).

(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 3 amended by No. 14 of 1994 s.5; No. 29 of 1996 ss.6 and 25.]*

## **Application**

4. (1) The Commission may receive information and otherwise perform its functions in relation to acts, omissions or conduct occurring before or after the coming into operation of this Act.

(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.

*[Section 4 amended by No. 14 of 1994 s.18; No. 29 of 1996 s.7.]*

**PART II — THE ANTI-CORRUPTION COMMISSION**

*[Heading amended by No. 29 of 1996 s.25.]*

***Division 1 — Establishment, constitution and staff of the Commission***

*[Heading inserted by No. 29 of 1996 s.8.]*

**Anti-Corruption Commission**

5. (1) There is established by this section a Commission by the name of the Anti-Corruption Commission.

(2)<sup>1b</sup> The Commission is a body corporate with perpetual succession.

(3)<sup>1b</sup> 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.

(4)<sup>1b</sup> 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.

(5)<sup>1b</sup> The appointments referred to in subsection (3) shall be made in accordance with the recommendation of a committee consisting of —

- (a) the Chief Justice;
- (b) the Chief Judge of the District Court; and
- (c) the Solicitor General.

(6)<sup>1b</sup> Before making a recommendation under subsection (5) 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.

(7)<sup>1b</sup> The committee shall consider expressions of interest lodged in accordance with the notice but may make a recommendation under subsection (5) whether or not the person recommended has lodged an expression of interest.

(8)<sup>1b</sup> Subject to subsection (9), 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.

(9)<sup>1b</sup> 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.

(10)<sup>1b</sup> In subsection (9) —

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

(11)<sup>1b</sup> The office of a member becomes vacant if —

- (a) the member resigns from office by written notice addressed to the Governor;
- (b)<sup>1b</sup> the member becomes a judicial officer or a member of the Police Force;
- (c)<sup>1b</sup> in the case of a member appointed under subsection (3) (b), the member becomes a public officer otherwise than by reason of being appointed as a member;

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- (d)<sup>1b</sup> the member is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;
  - (e)<sup>1b</sup> the member is removed from office by the Governor on the grounds of misbehaviour, incompetence, or mental or physical incapacity impairing the performance of his or her duties and proved to the satisfaction of the Governor; or
  - (f)<sup>1b</sup> 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.
- (12)<sup>1b</sup> The member who holds office under subsection (3) (a) shall be the chairman of the Commission.
- (13)<sup>1b</sup> At a meeting of the Commission 2 members constitute a quorum.

*[Section 5 amended by No. 14 of 1994 s.6; No. 29 of 1996 ss.9<sup>2</sup> and 25.]*

**Staff of the Commission**

**6.** (1) The Commission may appoint such officers and other employees as it considers necessary for the purpose of enabling the functions of the Commission properly to be performed.

(2) Subject to this Act, the terms and conditions of service of officers of the Commission shall be such as the Commission determines.

(3) Part 3 of the *Public Sector Management Act 1994* does not apply to officers of the Commission.

(4) When a public service officer becomes an officer of the Commission the officer is entitled to retain all his or her existing and accruing rights, including any rights under the *Superannuation and Family Benefits Act 1938*, as if his or her service as such an officer were a continuation of his or her service as a public service officer.

(5)<sup>1b</sup> In subsection (6) —

**“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.

(6)<sup>1b</sup> 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 (5)<sup>1b</sup> at the same level of classification as he or she held immediately before becoming an officer of the Commission.

(7)<sup>1b</sup> A person does not have an entitlement under subsection (6) 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.

(8)<sup>1b</sup> 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 (6).

(9)<sup>1b</sup> When a person ceases to be an officer of the Commission and becomes a public service officer (whether under an entitlement under subsection (6) or otherwise) his or her service as an officer of the Commission shall be regarded as service in the Public Service for the purposes of determining his or her rights as a public service officer and for the purposes of the *Superannuation and Family Benefits Act 1938*.

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(10)<sup>1b</sup> An officer of the Commission shall, before commencing duties as such, take an oath or affirmation, to be administered by the chairman of the Commission, that, except in accordance with this Act, he or she will not divulge any information received by him or her under this Act.

*[Section 6 amended by No. 14 of 1994 s.18; No. 32 of 1994 s.3 (2); No. 29 of 1996 ss.10 and 25.]*

**Use by Commission of government staff, etc.**

**7.** (1) Subject to subsections (2) and (3), the Commission may arrange to make use, either full-time or part-time, of —

- (a) the services of staff employed in the Public Service of the State or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
- (b) any facilities of a department of the Public Service of the State or of a State agency or instrumentality.

(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.

(3)<sup>1b</sup> 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.

(4)<sup>1b</sup> A seconded officer shall, before commencing duties as such, take an oath or affirmation, to be administered by the chairman of the Commission, that, except in accordance with this Act, he or she will not divulge any information received by him or her under this Act.

*[Section 7 inserted as section 6A<sup>1b</sup> by No. 14 of 1994 s.7; amended by No. 29 of 1996 ss.11 and 25.]*

### **Special investigators**

8. (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.

*[Section 8 inserted as section 6B<sup>1b</sup> by No. 29 of 1996 s.12.]*

### **Contract staff**

9. (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 11).

(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.

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(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 (9)) apply to and in relation to such a person accordingly.

*[Section 9 inserted as section 6C<sup>1b</sup> by No. 29 of 1996 s.12.]*

**Service providers**

**10.** 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.

*[Section 10 inserted as section 6D<sup>1b</sup> by No. 29 of 1996 s.12.]*

**Delegation**

**11.** (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.

*[Section 11 inserted as section 6E<sup>1b</sup> by No. 29 of 1996 s.12.]*



***Division 2 — Functions of the Commission***

*[Heading inserted by No. 29 of 1996 s.12.]*

**Functions**

- 12.** (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;

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

[Section 12 inserted as section 6F<sup>1b</sup> by No. 29 of 1996 s.12.]

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

[Heading inserted by No. 29 of 1996 s.13.]

**Receipt or initiation of allegations**

- 13.** (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*<sup>4</sup> 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

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- (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*.

[Section 13 inserted as section 7<sup>1b</sup> by No. 29 of 1996 s.13.]

[**Former sections 7A, 7B, 7C, 7D, 7E.** Repealed by No. 29 of 1996 s.14.]

**Duty of certain authorities to notify Commission of conduct or involvement to which this Act may apply**

14. (1) This section applies to a person who is —

- (a) the Parliamentary Commissioner;
- (b) the principal officer of a notifying authority; or
- (c) an officer who constitutes a notifying authority,

but does not apply to the Director of Public Prosecutions.

- (2) A person to whom this section applies shall report to the Commission any matter —

- (a) which that person suspects on reasonable grounds concerns or may concern corrupt conduct, criminal conduct, criminal involvement or serious improper conduct; and

- (b) which, in the case of a person referred to in subsection (1) (b) or (c), is of concern to that person in his or her official capacity.

(3)<sup>1b</sup> 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.

(4)<sup>1b</sup> The Commission may make guidelines indicating what matters are or are not required by subsection (2) to be reported to the Commission, and may amend or repeal any such guidelines.

(5)<sup>1b</sup> This section 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 9 of the *Acts Amendment (Official Corruption Commission) Act 1994*<sup>1</sup>, and a person who complies with this section does not commit any offence by reason of that compliance.

(6)<sup>1b</sup> Rules of Parliament made under section 56 may prescribe who is the principal officer of a notifying authority, but, in the absence of any such Rules of Parliament applying in relation to a particular notifying authority, the principal officer of that notifying authority is —

- (a) the person who is the head of that notifying authority, its most senior officer or the person normally entitled to preside at its meetings; or
- (b) in the case of a notifying authority which is a department or organization within the meaning of the *Public Sector Management Act 1994*, the chief executive officer or chief employee of that department or organization.

(7)<sup>1b</sup> If a person to whom this section applies does not comply with subsection (2), the Commission may, after considering any guidelines made under subsection (4) and

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affording that person a reasonable opportunity to be heard by the Commission, report that non-compliance to any person or body who or which has the power to take disciplinary action against the person to whom this section applies.

(8)<sup>1b</sup> In this section —

**“notifying authority”** means —

- (a) department or organization within the meaning of the *Public Sector Management Act 1994*; or
- (b) statutory authority within the meaning of the *Financial Administration and Audit Act 1985*; or
- (c) government department or other authority to which the *Parliamentary Commissioner Act 1971* applies; or
- (d) person or body, or holder of an office —
  - (i) under whom or which a public officer holds office or by whom or which a public officer is employed; or
  - (ii) who or which is prescribed for the purposes of this subparagraph,

but does not include the President of the Legislative Council or the Speaker of the Legislative Assembly.

[Section 14 inserted as section 7F<sup>1b</sup> by No. 14 of 1994 s.9; amended by No. 29 of 1996 ss.15 and 25.]

**Director of Public Prosecutions to notify Commission of certain matters**

**15.** (1) The Director of Public Prosecutions shall —

- (a) report to the Commission any matter which the Director of Public Prosecutions suspects on reasonable grounds concerns or may concern corrupt conduct,



criminal conduct, criminal involvement or serious improper conduct on the part of the Deputy Director of Public Prosecutions or of a member of the staff of the Director of Public Prosecutions; and

- (b) provide the Commission with such statistics as are specified from time to time by the Commission by writing given to the Director of Public Prosecutions, being statistics relating to the number and types of allegations of corrupt conduct, criminal conduct, criminal involvement or serious improper conduct received by the Director of Public Prosecutions during each calendar year or during such other period as is specified by the Commission.

(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 15 inserted as section 7G<sup>1b</sup> by No. 14 of 1994 s.9; amended by No. 29 of 1996 s.16.]*

**Any person may notify Commission of conduct or involvement to which this Act may apply**

**16.** (1) A person (including a public officer) may report to the Commission any matter which that person suspects on reasonable grounds concerns or may concern corrupt conduct, criminal conduct, criminal involvement or serious improper conduct.

(2) This section 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 9 of the *Acts Amendment (Official Corruption Commission) Act 1994*<sup>1</sup>, and a person who exercises the power conferred by subsection (1) does not commit any offence by reason of that exercise.

*[Section 16 inserted as section 7H<sup>1b</sup> by No. 14 of 1994 s.9; amended by No. 29 of 1996 s.17.]*

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

*[Heading inserted by No. 29 of 1996 s.18.]*

**Decision as to whether further action needed**

**17.** (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 13 (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.

*[Section 17 inserted as section 7HA<sup>1b</sup> by No. 29 of 1996 s.18.]*

**Matters to be considered in deciding who should take further action**

**18.** 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.

*[Section 18 inserted as section 7HB<sup>1b</sup> by No. 29 of 1996 s.18.]*

**s. 19**

**Informant to be notified of decision**

**19.** The Commission shall, by written notice, inform a person who has made an allegation under section 13 (1) (a), (b) or (c) of any decision made by the Commission under section 17 that further action in relation to the allegation for the purposes of this Act is not warranted on reasonable grounds.

*[Section 19 inserted as section 7HC<sup>1b</sup> by No. 29 of 1996 s.18.]*

**Review of decisions that further action is not warranted**

**20.** (1) A person may, within 30 days after having been informed under section 19, 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.

*[Section 20 inserted as section 7HD<sup>1b</sup> by No. 29 of 1996 s.18.]*

***Division 5 — Dealing with allegations***

*[Heading inserted by No. 29 of 1996 s.18.]*

**Further action by the Commission**

**21.** (1) This section applies if the Commission decides under section 17 (3), 20 (3) or 22 (4) that it should itself carry out further action in relation to an allegation.

(2) If an investigation is carried out —

- (a) Part IV has effect if the investigation is carried out by a special investigator; and
- (b) sections 44 to 47 in Part IV 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.

*[Section 21 inserted as section 7HE<sup>1b</sup> by No. 29 of 1996 s.18.]*

**Further action by another agency or authority**

**22.** (1) If the Commission decides under section 17 (3), 20 (3) or 21 (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.

[Section 22 inserted as section 7HF<sup>1b</sup> by No. 29 of 1996  
s.18.]

## **References to the Parliamentary Commissioner or Auditor General**

**23.** (1) The Commission shall not decide under section 17 (3), 20 (3) or 21 (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 22 (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 22 (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 22 (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).

[Section 23 inserted as section 7HG<sup>1b</sup> by No. 29 of 1996  
s.18.]

**Appropriate authority to report to the Commission**

24. (1) When an allegation is referred to an appropriate authority under section 22 (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 22; 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).

*[Section 24 inserted as section 7HH<sup>1b</sup> by No. 29 of 1996 s.18.]*

**Informant can be advised of the outcome of further action**

25. 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.

*[Section 25 inserted as section 7HI<sup>1b</sup> by No. 29 of 1996 s.18.]*



**Person investigated can be advised of the outcome of the investigation**

**26.** 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.

*[Section 26 inserted as section 7HJ<sup>1b</sup> by No. 29 of 1996 s.18.]*

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

*[Heading inserted by No. 29 of 1996 s.18.]*

**Report on further action by the Commission**

**27.** 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.

*[Section 27 inserted as section 7HK<sup>1b</sup> by No. 29 of 1996 s.18.]*

**Report on further action by an appropriate authority**

**28.** (1) After considering any report forwarded to it by an appropriate authority under section 24 (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 22 (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.

[Section 28 inserted as section 7HL<sup>1b</sup> by No. 29 of 1996  
s.18.]

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

**29.** (1) A report of the kind mentioned in section 27 or 28 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 27 or 28 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.

*[Section 29 inserted as section 7HM<sup>1b</sup> by No. 29 of 1996 s.18.]*

### **Contents of reports**

**30.** (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.

*[Section 30 inserted as section 7HN<sup>1b</sup> by No. 29 of 1996 s.18.]*

### **Public disclosure of findings**

**31.** 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 54, publicly disclose those facts, whether by publication in any newspaper or other written publication or by radio or television or otherwise.

*[Section 31 inserted as section 7HO<sup>1b</sup> by No. 29 of 1996 s.18.]*

### ***Division 7 — General reports***

*[Heading inserted by No. 29 of 1996 s.18.]*

### **Statistical and general information**

**32.** 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 13; or
- (b) as to which it has received information from independent agencies or appropriate authorities.

*[Section 32 inserted as section 7HP<sup>1b</sup> by No. 29 of 1996 s.18.]*

### **Special reports**

**33.** 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.

*[Section 33 inserted as section 7HQ<sup>1b</sup> by No. 29 of 1996 s.18.]*

### **Periodical reports to Parliament**

**34.** (1) Rules of Parliament under section 56 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 34 inserted as section 7HR<sup>1b</sup> by No. 29 of 1996 s.18.]*

### ***Division 8 — Financial provisions***

*[Heading inserted by No. 29 of 1996 s.8.]*

### **Funds of Commission**

**35.** (1) The funds available for the purpose of enabling the Commission to perform its functions consist of —

- (a) moneys from time to time appropriated by Parliament and paid to the Commission;
- (b) interest paid to the credit of the Fund under subsection (4); and
- (c) any moneys, other than moneys referred to in paragraphs (a) and (b), lawfully received by, made available to or payable to the Commission.

(2) The funds referred to in subsection (1) shall be placed to the credit of an account at the Treasury to be called the “Anti-Corruption Commission Fund”, which account shall form part of the Trust Fund referred to in section 9 of the *Financial Administration and Audit Act 1985*.

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(3) The funds recorded as standing to the credit of the Fund shall be applied to —

- (a) the remuneration and allowances payable to members and officers of the Commission;
- (b) moneys payable under an arrangement referred to in section 7 or an agreement referred to in section 8, 9 or 10;
- (c) expenditure incurred by the Commission in the performance of its functions; and
- (d) all expenditure, other than expenditure referred to in paragraphs (a), (b) and (c), lawfully incurred by the Commission for the purposes of, or in meeting the costs and expenses of the administration of, this Act.

(4) All funds recorded as standing to the credit of the Fund may, until required by the Commission for the purposes of this Act, be temporarily invested as the Treasurer directs in any securities in which funds standing to the credit of the Public Bank Account within the meaning of the *Financial Administration and Audit Act 1985* may lawfully be invested and the Treasurer shall cause all interest derived from that investment to be paid to the credit of the Fund.

[Section 35 inserted as section 71<sup>1b</sup> by No. 14 of 1994 s.9; amended by No. 29 of 1996 ss.19 (1)<sup>5</sup> and 25.]

**Application of *Financial Administration and Audit Act 1985* and annual report**

**36.** Subject to section 35, the provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

[Section 36, formerly section 8<sup>1b</sup> amended by No. 14 of 1994 s.10.]

**PART III<sup>1b</sup> — PRELIMINARY INQUIRIES**

*[Heading inserted by No. 14 of 1994 s.11.]*

**Requests for information**

**37.** (1) In making a preliminary inquiry, the Commission may request, orally or in writing, any person or body to supply to the Commission such information as is specified in that request in such manner, and within such period, as is so specified.

(2) A person who fails, without reasonable excuse, to comply with a request in writing made under subsection (1) commits an offence.

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

(3)<sup>1b</sup> 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).

(4)<sup>1b</sup> This section 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 11 of the *Acts Amendment (Official Corruption Commission) Act 1994*<sup>1</sup>, and a person who complies with a request made under subsection (1) does not commit any offence by reason of that compliance.

*[Section 37 inserted as section 8A<sup>1b</sup> by No. 14 of 1994 s.11; amended by No. 29 of 1996 ss.20 and 25.]*

**Requests for documents, etc.**

**38.** (1) In making a preliminary inquiry, the Commission may request, orally or in writing, any person or body to produce to the Commission such document or other thing as is specified in that request in such manner, and within such period, as is so specified.

*Anti-Corruption Commission Act 1988*

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(2) A person who fails, without reasonable excuse, to comply with a request in writing made under subsection (1) commits an offence .

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

(3) This section 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 11 of the *Acts Amendment (Official Corruption Commission) Act 1994*<sup>1</sup>, and a person who complies with a request made under subsection (1) does not commit any offence by reason of that compliance.

[Section 38 inserted as section 8B<sup>1b</sup> by No. 14 of 1994 s.11; amended by No. 29 of 1996 s.25.]



**PART IV<sup>1b</sup> — INVESTIGATIONS**

*[Heading inserted by No. 29 of 1996 s.21.]*

**Definition**

**39.** In this Part —

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

*[Section 39 inserted as section 8C<sup>1b</sup> by No. 29 of 1996 s.21.]*

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

**40.** (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.

*[Section 40 inserted as section 8D<sup>1b</sup> by No. 29 of 1996 s.21.]*

**Interpretation of terms in the applied provisions**

**41.** 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;

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- (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*.

[Section 41 inserted as section 8E<sup>1b</sup> by No. 29 of 1996 s.21.]

**Hearings and representation**

**42.** (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 ”.

[Section 42 inserted as section 8F<sup>1b</sup> by No. 29 of 1996  
s.21.]

**Witness entitled to know the nature of the investigation**

43. 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.

[Section 43 inserted as section 8G<sup>1b</sup> by No. 29 of 1996  
s.21.]

### Power to request statements of information or documents

44. (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.

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(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 38 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.

*[Section 44 inserted as section 8H<sup>1b</sup> by No. 29 of 1996 s.21.]*

**Power to enter premises**

**45.** (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.

*[Section 45 inserted as section 8I<sup>1b</sup> by No. 29 of 1996 s.21.]*

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

**46.** Any requirement under the applied provisions or section 44 or 45 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*<sup>1</sup>, and a person who complies with such a requirement does not commit any offence by reason of that compliance.

*[Section 46 inserted as section 8J<sup>1b</sup> by No. 29 of 1996 s.21.]*

### **Legal professional privilege**

**47.** (1) Subject to subsection (2), nothing in this Act prevents a person who is required under the applied provisions or section 44 or 45 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.

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

[Section 47 inserted as section 8K<sup>1b</sup> by No. 29 of 1996  
s.21.]

**Fees to witnesses and interpreters**

48. 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.

[Section 48 inserted as section 8L<sup>1b</sup> by No. 29 of 1996  
s.21.]

## **PART V<sup>1b</sup> — MISCELLANEOUS**

### **Protection from civil actions**

**49.** (1) The Commission, a member of the Commission, an officer of the Commission, a seconded officer, a special investigator, a service provider or a member or employee of a service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in the performance or purported performance of any function under this Act.

(2) Where an allegation has been made to the Commission or any information has been furnished to the Commission the person who made the allegation or furnished the information is not liable to an action, suit or other proceeding by reason only that the allegation was made or the information was furnished.

*[Section 49, formerly section 9<sup>1b</sup>, amended by No. 14 of 1994 s.12; No. 29 of 1996 s.25.]*

### **Disclosure of interests**

**50.** (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

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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.

*[Section 50 inserted as section 10<sup>1b</sup> by No. 29 of 1996 s.22.]*

**Voting by interested members**

**51.** (1) Without limiting section 50 (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 51 inserted as section 10A<sup>1b</sup> by No. 29 of 1996 s.22.]*

### **Non-disclosure of information**

**52.** (1) A person who is, or has at any time been, a member, an officer of the Commission, a seconded officer, a special investigator, a service provider or a member or employee of a service provider shall not, either directly or indirectly, except in or in connection with the performance of a function under this Act —

- (a) make a record of, or divulge or communicate to any person, any information received in his or her capacity as member, officer of the Commission, seconded officer, special investigator, service provider or member or employee of a service provider;
- (b) make use of any such information as is mentioned in paragraph (a); or
- (c) produce to any person a document furnished for the purposes of this Act.

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

(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 12 (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 12 (1) (f) applies.

(3)<sup>1b</sup> 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.

(4)<sup>1b</sup> The Commission shall not divulge information or make a statement under subsection (3) 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.

(5)<sup>1b</sup> The Commission shall not, in disclosing information or making a statement under subsection (3) 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 (6); 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.

(6)<sup>1b</sup> Where the Commission proposes to disclose information or make a statement setting out opinions referred to in subsection (5) (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.

(7)<sup>1b</sup> A person who is a member may for the purposes of this Act —

- (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
- (b) produce to a standing committee or a person referred to in paragraph (a) a document furnished for the purposes of this Act.

(8)<sup>1b</sup> 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

**s. 53**

subject to the provisions of this section in relation to the evidence, information or document.

*[Section 52, formerly section 11<sup>1b</sup>, amended by No. 14 of 1994 s.14; No. 29 of 1996 ss.23 and 25.]*

**Victimization of persons assisting Commission, etc.**

**53.** (1) A person shall not —

- (a) prejudice, or threaten to prejudice, the safety or career of; or
- (b) intimidate or harass, or threaten to intimidate or harass; or
- (c) do any act that is, or is likely to be, to the detriment of,

another person because the other person —

- (d) has assisted, is assisting or will or may in the future assist the Commission in the performance of its functions; or
- (e) has furnished, is furnishing or will or may in the future furnish information to the Commission; or
- (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 22 (1); or
- (g) has exercised a power, or performed a duty, conferred or imposed by this Act on the other person or is exercising or performing, or will or may in the future exercise or perform, any such power or duty.

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

(2) A person who —

- (a) attempts; or
- (b) intending that the offence created by subsection (1) be committed, incites another person; or
- (c) conspires with another person,

to commit the offence created by subsection (1) commits an offence and is liable to the penalty set out in subsection (1).

*[Section 53 inserted as section 11A<sup>1b</sup> by No. 14 of 1994 s.15; amended by No. 29 of 1996 s.25.]*

**Restriction on publication of certain information or allegations**

**54.** (1) Subject to subsection (2), a person shall not publish or cause to be published in any newspaper or other written publication or by radio or television —

- (a) the fact that the Commission has received or initiated;  
or
- (b) any details of,

any information or allegation referred to in section 13 (1), unless that fact or those details —

- (c) is or are so published; or
- (d) has or have already been publicly disclosed,

under, or in connection with the execution of, this Act.

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

**s. 55**

(2) Nothing in this section prevents the compilation and publication by —

- (a) the Commission of statistics relating to the number and types of allegations dealt with under this Act during any period, or of any other information of a general nature that could not be expected to lead to the identification of any person (other than the Commission, a member, an officer of the Commission, a seconded officer, a service provider or a member or employee of a service provider) to whom it relates; or
- (b) a standing committee of any report.

*[Section 54 inserted as section 11B<sup>1b</sup> by No. 14 of 1994 s.15; amended by No. 29 of 1996 s.25.]*

**General offences**

**55.** (1) A person shall not —

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Commission, a member, an officer of the Commission or a seconded officer in the performance of its, his or her functions under this Act; or
- (b) wilfully make any false statement to, or mislead, or attempt to mislead, the Commission, a member, an officer of the Commission or a seconded officer in the performance of its, his or her functions under this Act; or
- (c) disrupt any proceeding of the Commission.

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

(2) A person shall not, knowing that any document or other thing is or may be required in connection with a preliminary

inquiry or with an investigation under Part II, Division 5, wilfully destroy it or render it incapable of identification or, in the case of a document, render it illegible, indecipherable or unusable, with intent to prevent it from being used in connection with the preliminary inquiry or investigation.

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

(3) A person shall not directly or indirectly represent that he or she is a member, an officer of the Commission or a seconded officer unless the person is a member, an officer of the Commission or a seconded officer, as the case requires.

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

(4) For the purposes of subsection (3), a person represents that a state of affairs exists if the person does or says anything, or causes, permits or suffers anything to be done or said, by which it is represented, or by which a belief may be induced, that the state of affairs exists.

*[Section 55 inserted as section 11C<sup>1b</sup> by No. 14 of 1994 s.15; amended by No. 29 of 1996 s.25.]*

## **Rules of Parliament**

**56.** (1) Rules of Parliament may be made for prescribing procedures to be adopted by the Commission in the performance of its functions under this Act and for prescribing any other matter necessary or convenient for the due administration of this Act.

(2) The Rules of Parliament referred to in this section are rules that have been agreed upon by each House of Parliament in accordance with the Rules and Orders thereof.

(3) Rules of Parliament made under this Act shall be published in the *Gazette*.

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(4) Section 42 of the *Interpretation Act 1984* does not apply to Rules of Parliament made under this Act.

*[Section 56, formerly section 12<sup>1b</sup>, amended by No. 14 of 1994 s.18.]*

**Consequential amendments**

**[Former section 13** omitted under the *Reprints Act 1984* s.7 (4) (e).]

**[Former section 14.** *Repealed by No. 14 of 1994 s.16.*]



**SCHEDULE 1 — OFFENCES UNDER *THE CRIMINAL CODE***

*[Heading inserted by No. 29 of 1996 s.24.]*

[Section 3]

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

*[Schedule 1 inserted by No. 29 of 1996 s.24.]*

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## *Anti-Corruption Commission Act 1988*

### NOTES

<sup>1.</sup> This reprint is a compilation as at 1 November 1996 of the *Anti-Corruption Commission Act 1988* and includes the amendments effected by the other Acts referred to in the following Table<sup>1a</sup>.

**Table of Acts**

Act	Number and Year	Assent	Commencement	Miscellaneous
<i>Official Corruption Commission Act 1988</i>	52 of 1988	8 December 1988	11 August 1989 (see <i>Gazette</i> 11 August 1989 p.2693)	Short title subsequently amended. (See note under section 1)
<i>Official Corruption Commission Amendment Act 1991</i>	35 of 1991	4 December 1991	4 December 1991	
<i>Acts Amendment (Official Corruption Commission) Act 1994</i>	14 of 1994	22 April 1994	24 May 1994 (see <i>Gazette</i> 24 May 1994 p.2193)	
<i>Acts Amendment (Public Sector Management) Act 1994, section 3(2)</i>	32 of 1994	29 June 1994	1 October 1994 (see <i>Gazette</i> 30 September 1994 p.4948)	
<i>Official Corruption Commission Amendment Act 1996</i>	29 of 1996	28 August 1996	Sections 1 to 5, 9 and 19 and the items in section 25 amending the definitions of "Commission" and "the Fund" and the Part II heading: 30 August 1996 (see <i>Gazette</i> 30 August 1996 p.4365); balance: 1 November 1996 (see <i>Gazette</i> 24 October 1996 p.5625)	Section 9 (10) and (11) saving <sup>2</sup> ; section 19 (2) saving <sup>5</sup> ; section 27 note <sup>1a, 1b</sup>

## *Anti-Corruption Commission Act 1988*

- <sup>1a</sup> This reprint has been effected in accordance with section 27 (1) of the *Official Corruption Commission Amendment Act 1996* (Act No. 29 of 1996). Section 27 (1) reads as follows —

“ (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. ”.

- <sup>1b</sup> In this reprint the numbering of sections, subsections, paragraphs and Parts has been changed under section 27 (2) of the *Official Corruption Commission Amendment Act 1996* (Act No. 29 of 1996). Section 27 (2) reads as follows —

“ (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. ”.

- <sup>2</sup> Section 9 (10) and (11) of the *Official Corruption Commission Amendment Act 1996* (Act No. 29 of 1996) read as follows —

“ (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. ”.

- <sup>3</sup> Printed and designated incorrectly in the *Official Corruption Commission Amendment Act 1996* (Act No. 29 of 1996) as subsection (2) of section 12 of that Act. Included as subsection (2) of section 12 (formerly section 6F) of this Act under section 7 (5) (b) (v) and section 7 (5) (c) (ii) of the *Reprints Act 1984*.

- <sup>4</sup> As at the date of this reprint the *Statutory Corporations (Liability of Directors) Act 1996* was not in operation.

## *Anti-Corruption Commission Act 1988*

<sup>5</sup> Section 19 (2) of the *Official Corruption Commission Amendment Act 1996* (Act No. 29 of 1996) reads as follows —

“ (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 71 (2) of the principal Act. ”.