



Western Australia

Corruption, Crime and Misconduct Amendment Act 2024

Corruption, Crime and Misconduct Amendment Act 2024

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Western Australia

Corruption, Crime and Misconduct Amendment Act 2024

No. 5 of 2024

**An Act to amend the *Corruption, Crime and Misconduct Act 2003* and
to make consequential amendments to various Acts.**

[Assented to 14 March 2024]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Corruption, Crime and Misconduct Amendment Act 2024*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

Part 2 — *Corruption, Crime and Misconduct Act 2003* amended

3. Act amended

This Part amends the *Corruption, Crime and Misconduct Act 2003*.

4. Section 3 amended

- (1) In section 3(1) insert in alphabetical order:

Deputy Commissioner means the person holding the office of Deputy Commissioner established under this Act;

- (2) In section 3(1) in the definition of ***Commissioner*** delete “14(1)(a) or (b);” and insert:

13A(1)(a) or 14(1)(a);

- (3) In section 3(1) in the definition of ***officer of the Commission*** after paragraph (a) insert:

(aa) the Deputy Commissioner; or

5. Section 9 amended

- (1) After section 9(1) insert:

(1A) There is to be a Deputy Commissioner who, in the name of the Commission, is to perform such functions of the Commission under this Act and any other written law as the Commissioner directs.

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- (2) In section 9(2):
 - (a) delete “subsection (1),” and insert:

subsection (1) or (1A),
 - (b) delete “done to, by reference to or in relation to the Commissioner.” and insert:

done by, to, by reference to or in relation to the Commissioner or Deputy Commissioner.
- (3) Delete section 9(3), (3a), (3b), (4), (4a) and (4B).
- (4) In section 9(5) delete “is to” and insert:

and Deputy Commissioner
- (5) Delete section 9(6) and insert:
- (6) The offices of Commissioner and Deputy Commissioner are not offices in the Public Service.

Note: The heading to amended section 9 is to read:

Commissioner and Deputy Commissioner of Corruption and Crime Commission

6. Sections 9A to 9C inserted

After section 9 insert:

9A. Appointment of Commissioner and Deputy Commissioner

- (1) The Commissioner and Deputy Commissioner must be appointed on the recommendation of the Premier by the Governor by commission under the Public Seal of the State.
- (2) The Premier can recommend the appointment of a person under subsection (1) only if the following requirements are satisfied —
 - (a) the person's name is on a list of 3 persons that is submitted to the Premier by the nominating committee under section 9B(1);
 - (b) if there is a Standing Committee —
 - (i) the Premier has given the Standing Committee notice of the proposed recommendation under section 9C(1); and
 - (ii) the Standing Committee has not vetoed the proposed recommendation under section 9C(2); and
 - (iii) the period determined under section 9C(3) has ended;
 - (c) if there is no Standing Committee — the Premier has consulted with the Leader of the Opposition and the leader of any other political party with at least 5 members in either House of Parliament.

9B. Nominating committee to provide list of persons

- (1) The nominating committee must, on the Premier's written request, submit to the Premier a list of 3 persons qualified and eligible under section 10 for appointment.
- (2) The Premier's request must specify for which of the following purposes the list is required —
 - (a) recommending the appointment of a person as Commissioner under section 9A(1);
 - (b) recommending the appointment of a person as Deputy Commissioner under section 9A(1);
 - (c) recommending the appointment of a person to act in the office of Commissioner under section 14.
- (3) Before submitting a list under subsection (1), the nominating committee must —
 - (a) advertise throughout Australia for expressions of interest; and
 - (b) if the Premier's request specifies that the list is for the purpose of recommending the appointment of a person as Deputy Commissioner under section 9A(1) and there is a Commissioner appointed under section 9A(1) — consult with the Commissioner.

9C. Standing Committee may veto proposed recommendation

- (1) If the Premier proposes to recommend the appointment of a person under section 9A(1) or 14(1), the Premier must give the Standing Committee written notice of the proposed recommendation.

- (2) The Standing Committee vetoes the proposed recommendation if the Standing Committee gives the Premier, within the period determined under subsection (3), written notice that the majority of the Standing Committee does not support the proposed recommendation.
- (3) For the purposes of subsection (2) and section 9A(2)(b)(iii), the period is —
 - (a) if, within 14 days beginning on the day (***notification day***) on which the Premier gives notice under subsection (1), the Standing Committee gives the Premier written notice that it requires further time to consider the proposed recommendation — 44 days beginning on notification day; or
 - (b) otherwise — 14 days beginning on notification day.
- (4) This section does not apply if —
 - (a) there is no Standing Committee; or
 - (b) the Premier proposes to recommend the appointment of a person under section 14(1)(a) and section 14(2C) applies in relation to the proposed recommendation.

7. Section 10 amended

- (1) In section 10(1) after “Commissioner” insert:

or Deputy Commissioner

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- (2) In section 10(3) and (4) delete “Commissioner.” and insert:

Commissioner or Deputy Commissioner.

Note: The heading to amended section 10 is to read:

Qualifications and eligibility for appointment as Commissioner or Deputy Commissioner

8. Section 11A inserted

After section 11 insert:

11A. Terms and conditions of service of Deputy Commissioner

Schedule 2A has effect with respect to the tenure, remuneration and conditions of service of the Deputy Commissioner and the other matters provided for in that Schedule.

9. Section 12 amended

- (1) In section 12(1) after “Commissioner” insert:

or Deputy Commissioner

- (2) In section 12(2):

- (a) delete “If” and insert:

The Governor may suspend the Commissioner or Deputy Commissioner from office if

- (b) delete “Commissioner —” and insert:

Commissioner or Deputy Commissioner, as the case requires —
- (c) in paragraph (b) delete “ himself or herself” and insert:

themselves
- (d) in paragraph (c) delete “misconduct,” and insert:

misconduct.
- (e) delete “the Governor may suspend the Commissioner from office.”.
- (3) In section 12(3):
 - (a) after “Commissioner” (1st occurrence) insert:

or Deputy Commissioner
 - (b) after “Commissioner” (2nd occurrence) insert:

or Deputy Commissioner, as the case requires,
 - (c) in paragraph (b) after “Commissioner” insert:

or Deputy Commissioner, as the case may be,

Note: The heading to amended section 12 is to read:

Removal or suspension of Commissioner or Deputy Commissioner

s. 10

10. Section 13 amended

In section 13 delete “may declare himself or herself” and insert:

or Deputy Commissioner may declare themselves

11. Section 13A inserted

After section 13 insert:

13A. Deputy Commissioner to act as Commissioner

- (1) The Deputy Commissioner must act in the office of Commissioner —
 - (a) during any period when the office of Commissioner is vacant or the person holding the office of Commissioner is unable to perform the functions of that office; and
 - (b) in relation to any matter in respect of which the person holding the office of Commissioner has under section 13 declared themselves unable to act.
- (2) Subsection (1) does not apply —
 - (a) during any period when the Deputy Commissioner is unable to perform the functions of the office of Commissioner; or
 - (b) in relation to any matter —
 - (i) in respect of which the Deputy Commissioner has under section 13 declared themselves unable to act; or

- (ii) in relation to which a person is acting in the office of Commissioner under section 14 for the reason mentioned in section 14(1)(b).
- (3) The Deputy Commissioner, when acting in the office of Commissioner under this section for the reason mentioned in subsection (1)(b) in relation to a matter, may perform functions of that office in relation to the matter even though the Commissioner or a person acting under section 14 for the reason mentioned in section 14(1)(b) is at the same time performing other functions of that office.
- (4) If the Deputy Commissioner is acting in the office of Commissioner under this section for the reason mentioned in subsection (1)(b) in relation to a matter, a reference to the Commissioner in a provision of this Act that is relevant to the performance by the Deputy Commissioner of a function of that office in relation to the matter includes a reference to the Deputy Commissioner.
- (5) The validity of anything done by or in relation to the Deputy Commissioner while purporting to act under this section is not to be called into question on the ground that the occasion for the Deputy Commissioner to act had not arisen or had ceased.

12. Section 14 amended

- (1) In section 14(1):
 - (a) delete “may appoint a person who is” and insert:

may, on the recommendation of the Premier, appoint a person who is qualified and

s. 12

- (b) delete paragraphs (a) to (c) and insert:
- (a) during any period or during all periods when —
 - (i) the office of Commissioner is vacant or the person holding the office of Commissioner is unable to perform the functions of the office of Commissioner; and
 - (ii) the office of Deputy Commissioner is vacant or the person holding the office of Deputy Commissioner is unable to perform the functions of the office of Commissioner; and
 - (iii) if a person is appointed under this paragraph — the person is unable to perform the functions of the office of Commissioner;
 - or
 - (b) in relation to any matter in respect of which the person holding the office of Commissioner, the person holding the office of Deputy Commissioner or a person appointed under this subsection has under section 13 declared themselves unable to act.

- (2) Delete section 14(2a) and insert:

- (2A) The Premier can recommend the appointment of a person under subsection (1) only if the requirements set out in section 9A(2)(a) to (c) are satisfied in relation to the person.

- (2B) For the purposes of subsection (2A), the requirements set out in section 9A(2)(a) to (c) may be satisfied —
- (a) prospectively even though the necessity for an appointment has not arisen; and
 - (b) with respect to a number of persons each of whom is eligible to be appointed should the necessity arise.
- (2C) Despite subsection (2A), the Premier can recommend the appointment of a person under subsection (1)(a) without the requirements set out in section 9A(2)(a) to (c) being satisfied in relation to the person if —
- (a) the appointment is for a period of no longer than 12 months; and
 - (b) the appointment will not result in the person being appointed more than twice consecutively to act in the office of Commissioner.
- (3) In section 14(4):
- (a) delete “subsection (1)(c)” and insert:

subsection (1)(b)
 - (b) before “Commissioner” (1st occurrence) insert:

office of
 - (c) delete “he or she is appointed even though the Commissioner” and insert:

the person is appointed even though the Commissioner, the Deputy Commissioner acting under section 13A for the reason mentioned in section 13A(1)(b) or another

s. 13

person acting under this section for the reason
mentioned in subsection (1)(b)

(4) In section 14(5):

(a) delete “subsection (1)(c),” and insert:

subsection (1)(b),

(b) before “Commissioner” (2nd occurrence) insert:

office of

13. Section 15 amended

In section 15(1):

(a) after “Commissioner” insert:

or Deputy Commissioner

(b) delete “he or she —” and insert:

the person —

14. Section 27 amended

In section 27(1) after “Commissioner” insert:

or Deputy Commissioner

Note: The heading to amended section 27 is to read:

**Allegation about Commissioner, Deputy Commissioner,
Parliamentary Inspector or judicial officer not to be received or
initiated**

15. Section 45G amended

Delete section 45G(a) and insert:

- (a) the holder of the office of Commissioner;
- (aa) a person acting in the office of Commissioner under section 13A or 14;
- (ab) the Deputy Commissioner;

16. Section 45H amended

In section 45H(4)(b)(ii) delete “whether the person is appointed under section 9 or 14, or by” and insert:

a person acting in the office of Commissioner under section 13A or 14, the Deputy Commissioner,

17. Section 45X amended

In section 45X(3)(a)(ii) before “Commissioner” insert:

Public Sector

18. Section 133 amended

In section 133(1) delete “Commissioner” and insert:

Commission

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19. Section 141 amended

In section 141(2) after “Commissioner” insert:

or Deputy Commissioner

20. Section 183 amended

In section 183(2) delete “Commissioner.” and insert:

Commissioner or Deputy Commissioner.

21. Section 184 amended

- (1) In section 184(1) in the definition of *authorised officer* after paragraph (a) insert:

(aa) the Deputy Commissioner; and

- (2) In section 184(3)(c) and (3b)(c) delete “Commissioner is” and insert:

Commissioner and Deputy Commissioner are each

Note: The heading to amended section 184 is to read:

Appointment and functions of authorised officers

22. Section 217 amended

In section 217(1) delete “Commissioner” (each occurrence) and insert:

Commissioner, the Deputy Commissioner

23. Section 225 amended

In section 225(4) delete “Commissioner,” and insert:

Commissioner or Deputy Commissioner,

24. Part 15 Division 1 heading inserted

At the beginning of Part 15 insert:

Division 1 — Transitional provision for *Corruption and Crime Commission Amendment (Misconduct) Act 2014*

25. Part 15 Division 2 inserted

At the end of Part 15 insert:

Division 2 — Transitional provisions for *Corruption, Crime and Misconduct Amendment Act 2024*

229. Terms used

In this Division —

amending Act means the *Corruption, Crime and Misconduct Amendment Act 2024*;

former Act means this Act as in force immediately before transition day;

transition day means the day on which Part 2 of the amending Act comes into operation.

230. Advertising by nominating committee before transition day

- (1) This section applies if —
 - (a) before transition day the nominating committee —
 - (i) began advertising (the ***relevant advertising***) throughout Australia under section 9(3b) of the former Act for expressions of interest in relation to an appointment by the Governor under section 9(3) or 14(1) of the former Act; and
 - (ii) did not, pursuant to the relevant advertising, submit to the Premier under section 9(3a)(a) of the former Act (including as applied by section 14(2a) of the former Act) a list of 3 persons eligible for appointment;
 - and
 - (b) it is not more than 12 months since the day on which the nominating committee began the relevant advertising.
- (2) Despite section 9B, the nominating committee may, once the relevant advertising is completed, submit to the Premier a list of 3 persons qualified and eligible under section 10 for appointment.
- (3) A list submitted to the Premier by the nominating committee under subsection (2) is taken to be a list of 3 persons that is submitted to the Premier by the nominating committee under section 9B(1).

231. Person on list submitted by nominating committee before transition day

- (1) This section applies if —
- (a) before transition day —
 - (i) a person's (the *relevant person*) name is on a list of 3 persons eligible for appointment submitted to the Premier by the nominating committee under section 9(3a)(a) of the former Act (including as applied by section 14(2a) of the former Act); and
 - (ii) the Governor did not appoint the relevant person under section 9(3) or 14(1) of the former Act;
 - and
 - (b) it is not more than 12 months since the day on which the nominating committee submitted the list to the Premier.
- (2) Sections 9(3), (3a) and (4) and 14(2a) of the former Act (as the case may require) continue to apply in relation to the appointment of the relevant person as if the amendments made by sections 5(3), 6 and 12(2) of the amending Act had not been made.

232. References to Commissioner appointed under s. 9A(1)

On and from transition day, a reference in this Act to a Commissioner appointed under section 9A(1) includes a reference to a Commissioner appointed under section 9 of the former Act.

233. Person taken to be acting for reason mentioned in s. 14(1)(b)

On and from transition day, a person appointed under section 14(1) of the former Act for the reason mentioned in section 14(1)(c) of the former Act is, when acting under section 14 for that reason, taken to be acting under section 14 for the reason mentioned in section 14(1)(b).

26. Schedule 2A inserted

After Schedule 2 insert:

Schedule 2A — Terms and conditions of service of Deputy Commissioner

[s. 11A]

1. Tenure of office

Subject to this Act, the Deputy Commissioner holds office for a period of 5 years and is eligible for reappointment once.

2. Terms of appointment

- (1) The Deputy Commissioner is to be appointed on a full-time basis.
- (2) The Deputy Commissioner must not, except in so far as authorised to do so by the Governor, hold any office of profit or trust (other than office as Deputy Commissioner) or engage in any occupation for reward outside the duties of the office of Deputy Commissioner.
- (3) Section 52 of the *Interpretation Act 1984* does not apply to the office of Deputy Commissioner.

3. Remuneration, leave and entitlements

- (1) The Deputy Commissioner is entitled to be paid remuneration and to receive allowances or reimbursements at the same rate as —
 - (a) if the Deputy Commissioner is a person who has served as a judge of the Supreme Court of Western Australia or another State or Territory or the High Court of Australia or the Federal Court of Australia — a puisne judge of the Supreme Court; or
 - (b) otherwise — the senior District Court judge.
- (2) Despite subclause (1), during any period when the Deputy Commissioner is acting in the office of Commissioner under section 13A(1)(a) the Deputy Commissioner is entitled to be paid remuneration and receive allowances or reimbursements at the same rate as a puisne judge of the Supreme Court.
- (3) The Deputy Commissioner is entitled to the same conditions in respect of leave of absence as a judge of the Supreme Court.
- (4) The provisions of the *Judges' Salaries and Pensions Act 1950* that relate to pensions apply, with such modifications as circumstances require —
 - (a) to and in relation to the Deputy Commissioner as they apply to and in relation to a judge of the Supreme Court appointed after the commencement of that Act; and
 - (b) after the Deputy Commissioner's death, to and in relation to the Deputy Commissioner's spouse or de facto partner and children as they apply to and in relation to the spouse or de facto partner and children of a judge of the Supreme Court after that judge's death.
- (5) For the purposes of subclause (4), judge in the *Judges' Salaries and Pensions Act 1950* includes a reference to the Deputy Commissioner.

- (6) Subclauses (1) and (2) have effect subject to clause 4.
- (7) The remuneration payable to the holder of the office of Deputy Commissioner is to be charged to the Consolidated Account which, to the necessary extent, is by this clause appropriated accordingly.

4. Provisions where Deputy Commissioner was judge

- (1) If a person was a judge of the Supreme Court or the Chief Judge of the District Court immediately before appointment to the office of Deputy Commissioner, that person must be paid the same remuneration and have the same other rights or privileges as if the person had continued to be the holder of that judicial office.
- (2) For the purposes of the *Judges' Salaries and Pensions Act 1950*, the service as Deputy Commissioner of a former judge is taken to be service as the holder of the same judicial office as the office that person held before appointment as Deputy Commissioner.
- (3) The person's service as Deputy Commissioner is, for all purposes, taken to be service as the holder of that judicial office.
- (4) In this clause —
former judge means a person who, immediately before appointment to the office of Deputy Commissioner, was a judge of the Supreme Court or the District Court.

5. Provisions where Deputy Commissioner was public service officer

- (1) If a public service officer is appointed as Deputy Commissioner, that person is entitled to retain all their accruing and existing rights, including any rights under the *Superannuation and Family Benefits Act 1938*, as if service as Deputy Commissioner were a continuation of service as a public service officer.

- (2) If a person ceases to be Deputy Commissioner and becomes a public service officer, the service as Deputy Commissioner is to be regarded as service in the Public Service for the purposes of determining that person's rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938*.
- (3) Subclause (4) applies to a person if —
 - (a) immediately before the person's appointment as Deputy Commissioner the person occupied an office under the *Public Sector Management Act 1994* Part 3; and
 - (b) the person's term of office expires by effluxion of time and the person is not reappointed as Deputy Commissioner.
- (4) A person to whom this subclause applies is entitled to be appointed to an office under the *Public Sector Management Act 1994* Part 3 of at least the equivalent level of classification as the office that person occupied immediately prior to appointment as Deputy Commissioner.

6. Resignation

The Deputy Commissioner may, at any time, by instrument in writing addressed to the Governor, resign the office of Deputy Commissioner, and on receipt of the resignation by the Governor, the Deputy Commissioner is to vacate the office of Deputy Commissioner.

7. Vacancy

The office of Deputy Commissioner becomes vacant if the Deputy Commissioner —

- (a) dies; or
- (b) resigns the office under clause 6; or
- (c) becomes a police officer; or

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- (d) becomes, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
- (e) is removed from office under section 12; or
- (f) is appointed Commissioner under section 9A(1).

Part 3 — Other Acts amended

Division 1 — *Constitution Acts Amendment Act 1899* amended

27. Act amended

This Division amends the *Constitution Acts Amendment Act 1899*.

28. Schedule V amended

In Schedule V Part 1 Division 2 delete “Commissioner appointed under the *Corruption, Crime and Misconduct Act 2003*.” and insert:

Commissioner and Deputy Commissioner appointed under the *Corruption, Crime and Misconduct Act 2003*.

Division 2 — *Criminal Organisations Control Act 2012* amended

29. Act amended

This Division amends the *Criminal Organisations Control Act 2012*.

30. Section 3 amended

In section 3(1) in the definition of *CC Commissioner* delete “section 14(1)(a) or (b)” and insert:

section 13A(1)(a) or 14(1)(a)

Division 3 — *Spent Convictions Act 1988* amended

31. Act amended

This Division amends the *Spent Convictions Act 1988*.

32. Schedule 3 clause 1 amended

In Schedule 3 clause 1(1) in the Table item 10B(a) after
“Commissioner” insert:

or Deputy Commissioner

**Division 4 — *Telecommunications (Interception and Access)*
Western Australia Act 1996 amended**

33. Act amended

This Division amends the *Telecommunications (Interception and Access) Western Australia Act 1996*.

34. Section 3 amended

In section 3(1) in the definition of *certifying officer*
paragraph (aa) delete “as” and insert:

or Deputy Commissioner as those terms are

**Division 5 — *Terrorism (Preventative Detention) Act 2006*
amended**

35. Act amended

This Division amends the *Terrorism (Preventative Detention) Act 2006*.

36. Section 55 amended

In section 55(1)(b) after “the Commissioner” insert:

or Deputy Commissioner

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