



Australian Police Integrity Commission Bill 2019

No. , 2019
(PM-ME-SPRINKLES MP)

A bill for an act to establish an Australian Police Integrity Commission, to make provision in relation to the actions of police and provide adequate safeguards against corruption, and for related purposes

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A bill for an act to establish an Australian Police Integrity Commission, to make provision in relation to the actions of police and provide adequate safeguards against corruption, and for related purposes

The Parliament of Australia enacts:

Part 1—Introduction

1 Short title

This Act may be cited as the *Australian Police Integrity Commission Act 2019*.

2 Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

3 Interpretations

(1) In this Act, unless the contrary intention appears:

act means an act done:

- (a) by or on behalf of the Commonwealth or an authority of the Commonwealth;
- (b) under an enactment;
- (c) wholly within a Territory;
- (d) partly within a Territory, to the extent to which the act was done within a Territory;
- (e) by or on behalf of a state or on authority of a state.
- (f) partly within a Territory, to the extent to which the act was done within a Territory.

affected person, in relation to a complaint, means a person on whose behalf the complaint was lodged.

alleged acts, omissions or practices, in relation to a complaint, means the acts, omissions or practices that are alleged in the complaint.

Note: See also paragraph 23(b) of the Acts Interpretation Act 1901.

Australia includes the external Territories.

authority means:

- (a) in relation to the Commonwealth:
 - (i) a body (whether incorporated or unincorporated) established for a purpose of the Commonwealth by or under a Commonwealth enactment;
 - (ii) an incorporated company over which the Commonwealth is in a position to exercise control;
 - (iii) a person holding or performing the duties of an office or appointment established or made under a Commonwealth enactment or by the Governor-General or President
 - (iv) or a Minister of the Commonwealth (not being an office or appointment referred to in subparagraph (c)(iii));
 - (v) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the Commonwealth for the purposes of this Act;
- (b) in relation to a State:
 - (i) a body (whether incorporated or unincorporated) established for a purpose of the State by or under a law of the State;
 - (ii) an incorporated company over which the State is in a position to exercise control;
 - (iii) a person holding or performing the duties of an office or appointment established or made under a law, or by the Governor or a Minister, of the State;
 - (iv) a local government body in the State; or
 - (v) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the State for the purposes of this Act; or

(c) in relation to a Territory:

- (i) a body (whether incorporated or unincorporated) established for a purpose of the Territory by or under a Commonwealth enactment or a law of the Territory;
- (ii) an incorporated company over which the Administration of the Territory is in a position to exercise control;
- (iii) a person holding or performing the duties of an office or appointment established or made under a law of the Territory or by the Administrator of a Territory; or
- (iv) a body, or a person holding or performing the duties of an office or appointment, that is declared by the regulations to be an authority of the Territory for the purposes of this Act.

children means people under the age of 18.

Commission means the Australian Police Integrity Commission established by this Act.

complainant, in relation to a complaint, means a person who lodged the complaint, whether on the person's own behalf or on behalf of another person or persons.

complaint, means a complaint that is lodged under section 17.

Federal Court means the Federal Court of Australia.

instrument includes a rule, regulation or by-law.

Judge means:

- (a) a Judge of a court created by the Parliament or of a court of a State; or
- (b) a person who has the same designation and status as a Judge of a court created by the Parliament.

law means a law of the Commonwealth, a law of a Territory or a law of a State.

law of a State means a State enactment or any other law in force in a State, other than a law of the Commonwealth.

law of a Territory means a Territory enactment or any other law in force in a Territory, other than a law of the Commonwealth.

law of the Commonwealth means a Commonwealth enactment or any other law in force throughout Australia.

member means a member of the Commission.

Minister means:

- (a) in relation to a State—a Minister of the Crown of that State; and
- (b) in relation to the Australian Capital Territory or the Northern Territory—a Minister of that Territory.

Commissioner means the Police Integrity Commissioner of the Commission.

representative complaint means a complaint lodged on behalf of at least one person who is not a complainant.

respondent, in relation to a complaint, means the person or persons against whom the complaint is made.

State includes the states and territories of Australia.

(2) In this Act:

- (a) a reference to, or to the doing of, an act includes a reference to a refusal or failure to do an act; and
- (b) a reference, in relation to the doing of an act or the engaging in of a practice, to the person who did the act or engaged in the practice shall, in the case of an act done or practice engaged in by an unincorporated body of persons, be read as a reference to that body.

4 Object

The objectives of this Act are as follows:

- (a) To establish an Australian Police Integrity Commission that will follow the duties set in section 12.
- (b) To prevent any future misconduct by policing agencies.

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- (c) To investigate and expose any misconduct by policing agencies.

5 Operation of State and Territory laws

- (1) This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.
- (2) A person may be prosecuted and convicted either under that law of the State or Territory or under this Act if:
- (a) a law of a State or Territory deals with a matter dealt with by this Act; and
- (b) an act or omission by a person that constitutes an offence against that law also constitutes an offence against this Act; but nothing in this subsection renders a person liable to be punished more than once in respect of the same act or omission.

6 Extension to external Territories

This Act extends to every external Territory.

7 Extent to which Act binds the Crown

- (1) This Act binds the Crown in right of the Commonwealth but, except as otherwise expressly provided by this Act, does not bind the Crown in right of a State.
- (2) This Act binds the Crown in right of the States.
- (3) Nothing in this Act renders the Crown in right of the Commonwealth or of a State liable to be prosecuted for an offence.

Note: Subsection (2) draws from the section 106A constitutional power to legislate on behalf of the states.

8 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 2—The Commission

9 Australian Police Integrity Commission

- (1) There is established by this Act a Commission by the name of the Australian Police Integrity Commission.
- (2) The Commission:
 - (a) is a body corporate, with perpetual succession;
 - (b) shall have a common seal;
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Commission appearing on a document and shall presume that the document was duly sealed.

10 Constitution of Commission

- (1) The Commission shall consist of a Police Integrity Commissioner and a representative of the Australian Human Rights Commission.
- (2) The members must co-operate with each other to achieve common objectives, where practicable.
- (3) Appointment of the representative of the Australian Human Rights Commission shall be conducted by the Australian Human Rights Commission as defined by the *Australian Human Rights Commission Act 1986*.
- (4) The powers of the Commission under this Act shall be exercised by the Commissioner with the approval of the Australian Human Rights Commission representative.
- (5) The Commission shall be independent from any Executive or Parliamentary oversight.

11 The Commissioner

- (1) The Commissioner is to be appointed by the Governor-General or President as a full-time member or a part-time member.
- (2) The Commissioner is the senior member of the Commission.
- (3) The Commissioner is responsible for managing the administrative affairs of the Commission.
- (4) For the purposes of the *Public Governance, Performance and Accountability Act 2013*, the Commissioner is the accountable authority of the Commission.
- (4) A person is eligible to be the Commissioner if they have, have been or, are qualified for appointment as, a judge of—
 - (a) the High Court of Australia; or
 - (b) the Federal Court; or
 - (c) the Supreme Court of a State or Territory.
- (5) For the purposes of subsection (4), a person who holds a judicial office immediately after being appointed to be the Commissioner must cease to hold that judicial office upon being appointed to be the Commissioner.
- (6) A person shall not be eligible to be Commissioner if they are a member of a State or Commonwealth Parliament.

12 Duties of the Commission

The duties of the commission are to provide for the identification, investigation and exposure of corrupt conduct and police personnel misconduct, assist in the prevention of corrupt conduct and police personnel misconduct and, assist in the education of the public sector and community about the effects of corrupt conduct and police personnel misconduct on public administration and ways in which it can be prevented.

13 Powers of the Commission

The Commission has the power to do all things that are necessary or convenient to be done for or in connection with, or as incidental to,

the achievement of the objects of this Act and the performance of its duties and functions.

14 Obligation to avoid actual or perceived conflicts of interest

A Commission member must ensure that any actual or perceived conflicts of interest are avoided in the performance of their duties and functions and in the exercise of their powers as a Commission member.

15 Oath or affirmation of office

- (1) Before a person appointed to the Commission assumes the office, they must have taken an oath or made an affirmation that they—
 - (a) will faithfully and impartially perform the duties and functions and exercise the powers of the office; and
 - (b) will not disclose, except as authorised or required by law, any information received in the performance of the duties and functions or the exercise of the powers of the office.
- (2) The oath or affirmation is to be administered by the Governor-General or President.

16 Staff

- (1) The staff necessary to assist the Commission shall be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the President and the APS employees assisting the President together constitute a Statutory Agency; and
 - (b) the President is the Head of that Statutory Agency.

Part 3—Investigations

17 Complaints to the Commission about corrupt conduct

A person may make a complaint to the Commission about conduct the person believes may be corrupt conduct.

18 Complaint to be in writing

A complaint to the Commission must be made in writing unless the Commission determines that there are exceptional circumstances for a complaint to be made otherwise than in writing.

19 Complaint from detained person

- (1) This section applies if a detained person wishes to provide information or make a complaint to the Commission under this Act.
- (2) The detained person may inform the person in charge that they wish to communicate with the Commission.
- (3) The detained person is not required to inform the person in charge of the content or purpose of that communication.
- (4) On being informed by the detained person of his or her wish to communicate with the Commission, the person in charge must—
 - (a) take all reasonable steps to facilitate that communication; and
 - (b) subject to subsection (6), immediately forward, unopened, to the Commission any letter addressed to the Commission by the detained person.
- (5) Subject to subsection (6), if a letter from the Commission is addressed to the detained person, the person in charge must ensure that it is immediately forwarded, unopened, to the detained person.
- (6) If a letter referred to in subsection (4)(b) or (5) is suspected by the person in charge to contain drugs, weapons or other contraband, the letter may be opened by the person in charge, or his or her delegate, in the presence of—
 - (a) in the case of a letter addressed to the Commission, the person who wrote the letter and a Commission Officer; or

(b) in the case of a letter from the Commission to the detained person, the person to whom the letter is addressed and a Commission Officer.

- (7) Subject to subsection (6), a person, including a person in charge, must not prevent or hinder the forwarding, unopened, of a letter—
- (a) addressed to the Commission from a detained person; or
 - (b) to a detained person from the Commission.

Penalty: 120 penalty units or imprisonment for 12 months or both.

20 Offences

- (1) This section applies during the investigation of any case by the Commission.

- (2) A Commission Officer shall not be under the influence of alcohol or drugs while undertaking their duties.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (3) A Commission Officer shall not be under the influence of alcohol or drugs while undertaking their duties.

Penalty: 30 penalty units.

- (4) A person must not disclose to any person the identity of a person to whom or in respect of whom a direction is given under this Division other than as required or authorised by this Act.

Penalty: 60 penalty units.

- (5) A person who is not a Commission Officer must not, in any way, hold themselves out to be a Commission Officer.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (6) A person must not, without reasonable excuse, hinder or obstruct a Commission Officer who is performing a function or exercising a power under this Act.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (7) A person must not, without reasonable excuse, refuse or fail to comply with a direction or requirement made of the person in the exercise of a power by a Commission Officer under this Act or the regulations.

Penalty: 120 penalty units or imprisonment for 12 months or both.

- (8) A person must not wilfully make a statement that the person knows to be false or misleading in a material particular or mislead or attempt to mislead the Commission or a Commission Officer in the exercise of its, his or her powers under this Act or the regulations.
- Penalty: 120 penalty units or imprisonment for 12 months or both.

21 Power to bring proceedings

- (1) Proceedings for an offence under this Act or the regulations may be brought by—
- (a) the Commission;
 - (b) a sworn Commission Officer who is authorised by the Commissioner; or
 - (c) a police officer who is authorised by the Commissioner.
- (2) The Commissioner may authorise a sworn Commission officer or a police officer to bring proceedings for an offence under this Act or the regulations.