

NSW Legislative Assembly Hansard

INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT BILL

Page: 14133

Bill introduced and read a first time.

Second Reading

Mr FRANK SARTOR (Rockdale—Minister for Energy and Utilities, Minister for Science and Medical Research, Minister Assisting the Minister for Health (Cancer), and Minister Assisting the Premier on the Arts) [7.30 p.m.], on behalf of Mr Bob Carr: I move:

That this bill be now read a second time.

This bill implements the vast majority of the recommendations of the independent review of the Independent Commission Against Corruption Act conducted by Mr Bruce McClintock, SC. The reforms will improve the operation and accountability of the Independent Commission Against Corruption [the ICAC], without detracting from its independence. The bill will set out the role of the ICAC, reform contempt laws, and clarify the findings that the ICAC may make. One of the key changes proposed by the bill is to strengthen the accountability of the ICAC by establishing an independent Inspector of the ICAC, modelled on the Inspector of the Police Integrity Commission. The Inspector is needed to address a gap in the accountability of the ICAC. While the parliamentary joint committee on the ICAC is responsible for monitoring and reviewing the exercise of the ICAC's functions, it is prohibited from examining particular decisions made by the ICAC.

The limited scope of the parliamentary committee's jurisdiction is appropriate, given that committee members fall within the investigative jurisdiction of the ICAC. The result, however, is that there is no person or body with responsibility for investigating complaints that the ICAC or its officers have misused powers. The ICAC acknowledges the absence of adequate accountability mechanisms in the Act. The proposed inspector will address this gap.

The main changes introduced by the bill are as follows. The bill inserts a new section 2A into the Act to specify the objectives of the Act. These objectives confirm the role of the ICAC as an independent and accountable body established to investigate, expose, and prevent corruption involving or affecting public administration. The bill inserts a new section 12A into the Act to require the ICAC, so far as practicable, to direct its attention to serious and systemic corruption. Under part 5 of the Act, other matters may be referred by the ICAC to any person or body considered by the ICAC to be appropriate in the circumstances.

Consistent with the recommendation of Mr McClintock, the bill inserts section 13 (2A) into the Act to put beyond doubt that the ICAC may decline to make a finding of corrupt conduct, even though the factual findings would permit such a finding to be made. This will confirm the ICAC's existing practice. The bill inserts section 13 (3A) into the Act to require the ICAC to be satisfied that a person has engaged in, or is engaging in, conduct that constitutes or involves a criminal offence, disciplinary offence, reasonable grounds for dismissal or a substantial breach of an applicable code of conduct before making a finding of corrupt conduct in relation to conduct referred to in section 9 (1).

Proposed section 13 (3A) addresses Mr McClintock's concern that it is inappropriate to base a finding of corrupt conduct on the mere possibility that the relevant conduct has occurred. It is consistent with the ICAC's approach to making findings of corrupt conduct. Section 13 (3A) does not affect the ICAC's power to make a finding under section 9 (5). Section 20 of the Act will be amended to provide that where the ICAC decides not to investigate a matter, it will be required to give reasons to the person who complained or who reported the matter to the ICAC. The bill alters the nomenclature of the Act to better reflect the investigative role of the ICAC. Public hearings will be renamed public inquiries and private hearings will be renamed compulsory examinations.

Section 31 of the Act will also be amended so that the ICAC will be required to consider a number of factors when considering whether it is in the public interest to hold a public inquiry. The ICAC will consider the benefit of making the public aware of corrupt conduct; the seriousness of the allegation, any risk of undue prejudice to a person's reputation, and whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned. A person giving evidence at a compulsory examination or public inquiry will be entitled to be told the nature of the allegation or complaint that is under investigation by the ICAC.

The bill inserts new part 5A and schedule 1A into the Act to provide for the appointment of an Inspector of the ICAC. The Inspector will audit the operations of the ICAC, deal with complaints of abuse of power and other forms of misconduct or maladministration on the part of its employees, and report on matters affecting the ICAC, including its operational effectiveness. Under proposed section 57B of the Act, the Inspector will be given specific power to investigate complaints of delay in the conduct of the ICAC investigations and unreasonable invasions of privacy by the ICAC. The fulfilment of the inspector's functions will be monitored and reviewed by the parliamentary joint committee on the ICAC. Section 76 of the Act will be amended to require the ICAC to include in its annual report additional information about the time taken to

deal with complaints. This information may be used by the inspector and the parliamentary joint committee to examine issues of delay in the completion of ICAC investigations.

Another key area of change introduced by the bill is in relation to the law of contempt as it applies to the ICAC. The procedural problems identified by the ICAC Assistant Commissioner, the Hon. John Clarke, QC, in his recent decision will be rectified. The Assistant Commissioner criticised part 10 for its lack of clarity, particularly in relation to the process of certification of contempt of the ICAC to the Supreme Court. The Assistant Commissioner decided that the better view is that the Act require the certificate to set out the relevant facts that the Commissioner has found to have occurred. Consistent with the decision of the Assistant Commission, the bill amends section 99 of the Act to make it clear that the certificate is to set out the facts that the Commissioner is satisfied constitute the alleged contempt.

The bill also amends section 100 of the Act to insert a requirement to inform a person brought before the ICAC of the contempt that he or she is alleged to have committed. Such a requirement is found in the procedure for dealing with contempt in the Supreme Court, the District Court and the Local Court. The bill repeals section 98 (h) of the Act, which prohibits any conduct that would amount to contempt of a court of law, and other provisions governing acts of contempt committed outside the face or hearing of the ICAC. The primary purpose of section 98 (h) is to prohibit contempt of the ICAC by publication. Provisions such as section 98 (h) have been resoundingly criticised by the courts, law reform commissions, and senior lawyers on the basis that it is inappropriate and impractical to transpose to an administrative, investigative body a provision designed to prevent interference with the administration of justice by courts.

The ICAC has far greater capacity than courts to enter the public domain to rebut misrepresentations, inaccuracies and prejudicial comment. The ICAC has extensive powers to protect the integrity of the evidence of a witness by holding its investigation, or part of its investigation, in private or by making non-publication orders. By contrast, courts are generally required to conduct all of their business in public. In addition, parts 9 and 11 of the Act provide for numerous criminal offences that can be relied upon by the ICAC to protect its witnesses and the integrity of its investigations. The bill extends the protection given to witnesses by amending section 93 of the Act to make it a criminal offence to threaten to cause detriment to a person on account of the person's evidence or assistance to the ICAC.

These reforms were proposed by Mr McClintock and are supported by the ICAC. The Australian Law Reform Commission recommended similar reforms in its comprehensive examination of the laws on contempt. Contempt committed in the face or hearing of the ICAC will remain. This will ensure that the ICAC can properly control the conduct of its public inquiries. The bill inserts new section 116A into the Act to provide that the ICAC will be able to initiate only criminal prosecutions arising from its investigations where the Director of Public Prosecutions [DPP] has advised that it would be appropriate to do so. This is consistent with the current practice of the ICAC and the DPP as to prosecutions.

The bill amends the Police Integrity Commission Act to empower the Police Integrity Commission to investigate allegations of corruption involving all members of NSW Police. Currently the Police Integrity Commission has jurisdiction over designated or sworn police officers but not unsworn members of NSW Police. This amendment is made at the request of the ICAC Commissioner. The Commissioner of the Police Integrity Commission has previously expressed support for the proposal.

The ICAC will still be able to investigate allegations of corruption involving members of NSW Police if this is done in the context of matters that also involve public officials who are not members of NSW Police. No changes will be made to the ICAC's capacity to investigate members of Parliament or Ministers. Mr McClintock's recommendations to clarify the circumstances in which the ICAC may investigate members of Parliament or Ministers will not be implemented. Contrary to Mr McClintock's recommendations, a parliamentary investigator will not be established to investigate allegations of corruption involving members of Parliament or Ministers. The ICAC will continue to be able to investigate and expose corruption throughout the public sector, including allegations involving members of Parliament and Ministers. This is an important bill to improve the operation and accountability of the ICAC, and I commend it to the House.

Debate adjourned on motion by Mr Steven Pringle.

NSW Legislative Assembly Hansard, 23 February 2005, Pages 73 - (article 70)

« [Prior Article this day](#) | [Next Article this day](#) » | [Full Day Transcript](#)
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- [Subjects:](#)
[Independent Commission Against Corruption: ICAC; Police Integrity Commission](#)
- [Speakers:](#)
[Sartor Mr Frank](#)
- [Speech Type:](#)
1R; 2R; Bill; Debate; Motion
- [Printing Tips](#)
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