

# INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT BILL 2016

*First Reading*

**Bill introduced on motion by Mr Mike Baird, read a first time and printed.**

*Second Reading*

**Mr MIKE BAIRD ( Manly—Premier, and Minister for Western Sydney) (16:38):** I move:

That this bill be now read a second time.

This Government is resolute in its commitment to integrity in public administration. We will not tolerate corruption in this State. Ensuring that the Independent Commission Against Corruption [ICAC] is properly equipped to fight corruption is a priority for this Government. In May 2015, following the High Court's decision in the *ICAC v Cunneen* case, the Government commissioned an independent panel of distinguished legal minds, a former Chief Justice of the High Court, the Hon. Murray Gleeson, AC, and Mr Bruce McClintock, SC, to review the ICAC's jurisdiction and powers. I commend them for that work.

The panel's terms of reference required the panel to take into account any report of the Inspector of the ICAC in relation to these issues. In June 2015 the Inspector of the ICAC published an initial report which helped inform the recommendations made by the panel in July 2015, all of which the Government accepted and implemented. In December 2015 the Inspector of the ICAC published a report about Operation Hale, an investigation into Ms Margaret Cunneen and others. In May 2016 the Inspector of the ICAC published a further report entitled "Report to the Premier: The Inspector's Review of the ICAC".

The ICAC committee conducted an inquiry examining these two reports from the inspector. The committee also considered the work of the independent panel. The committee's report was tabled in the Parliament on 27 October 2016. I should note that the committee produced a unanimous bipartisan, in fact all parties, report containing 35 recommendations, which are designed to improve the structure and governance, decision-making and oversight of the ICAC. The recommendations are consistent with the independent panel's 2015 report and represent a balanced set of reforms that will deliver a stronger and fairer ICAC. The Government supports in principle all of the Committee's recommendations. This bill includes legislative change required to implement these recommendations. The Opposition has provided feedback on this bill and the bill reflects an almost completely bipartisan position, consistent with the bipartisan committee report.

Sadly, despite the Government's flexibility on a range of key provisions, we have been unable to achieve a completely bipartisan outcome as a result of the Opposition's insisting that a specific commissioner be appointed. It is our belief that this should not be about individuals but the process, which is Cabinet making a nomination, and a bipartisan committee approving that nomination. Obviously this is ongoing. In addition, the Opposition insists that the appointment of commissioners be approved by the Chief Commissioner. The Government believes that consultation is more appropriate.

We believe that it would weaken the ICAC and the process for the Government to concede on these two matters. Consistent with the committee's recommendations, the bill focuses on three areas of reform: The structure and governance of the ICAC; the ICAC's powers and procedures; and oversight arrangements for the ICAC. The first of the committee's recommendations regarding the ICAC's structure and governance was that a panel of three commissioners should be established. The bill implements this recommendation in schedule 1 by amending section 5 of the Independent Commission Against Corruption Act 1988 to provide for a Chief Commissioner and two other

commissioners appointed by the Governor. Together, the three commissioners will comprise the commission.

The panel of commissioners will bring a more diverse set of skills and experiences to bear on the ICAC's deliberations and will strengthen its decision-making. A panel of commissioners may also assist in alleviating or avoiding tensions that can arise between a single commissioner and the Inspector of the ICAC. The bill makes minor consequential amendments to ensure that provisions in the Act referring to the current commissioner are amended to refer to a commissioner or the Chief Commissioner of the new three-member commission, as appropriate. The bill also amends section 6 of the Act to provide that a decision of the ICAC to conduct a public inquiry must be authorised by the Chief Commissioner and at least one other commissioner.

**Mr Jamie Parker:** Proposed by ICAC.

**Mr MIKE BAIRD:** That is not true. This is consistent with the committee's recommendation that the use of the ICAC's extraordinary powers should be authorised by majority agreement of the three commissioners. Whilst the committee also made reference to the decision to conduct a compulsory examination, compulsory examinations do not involve the same potential for reputational damage as public inquiries. It is therefore appropriate that the power to commence a public inquiry is subject to additional oversight. Requiring the Chief Commissioner and at least one other commissioner to authorise a decision to conduct a public inquiry will balance concerns expressed by the inspector about the potential for public inquiries to cause reputational damage to affected individuals with the benefits of public inquiries in exposing and preventing corruption.

The committee has made a number of recommendations to support the proposed three-member commission structure, including recommending that: the Chief Commissioner be appointed full time for a term of up to five years and the other commissioners be appointed part time for a term of up to three years with the option of extension for up to two years. The bill addresses these recommendations in clauses 4 and 5 of a new schedule 1 to the Act. The Chief Commissioner will be appointed full time for a term of up to five years and the two other Commissioners will be appointed part time for a term of up to five years.

A nominations panel will be convened to select candidates suitable for appointment as a commissioner. The Chief Commissioner will be consulted on the persons to be appointed as the other commissioners. Appointments would be made by the Governor and would be subject to veto by the committee. The current commissioner, whose current term of appointment expires on 27 January 2019, will be invited by the nominations panel to express interest in being appointed as a commissioner of the new three-member commission. In accordance with the Independent Commission Against Corruption (Commissioner) Act 1994, if the current commissioner declines this invitation, or is unsuccessful in being reappointed, her commission as a Supreme Court judge will revive. We recognise that this is where the Opposition differs from the Government. The Government believes that this newly reconstituted commission should be selected on an entirely merit-based criteria to which the current commissioner has been invited to apply.

Other recommendations to support the proposed three-member commission structure include that: the Act should continue to provide for the ability to appoint assistant commissioners to assist the commissioners in their work, as required; the remuneration of the commissioners should reflect their respective workloads; the committee should have a power of veto over proposed appointments of people to the three-member commission; and to be appointed as a commissioner, or to act in that role, a person must be qualified to be appointed as, or have formerly been, a judge or justice of a superior court.

The bill also establishes the role of a chief executive officer to manage the day-to-day affairs of the ICAC. The bill amends section 104 (1) of the Act to give the Chief Commissioner power to appoint a chief executive officer and such other staff of the ICAC as may be necessary to enable the

ICAC to exercise its functions. The Chief Commissioner will be required to consult the other commissioners about the proposed appointment of a chief executive officer.

A new section 6B of the Act will give responsibility to the chief executive officer for the day-to-day management of the affairs of the ICAC and for the implementation of the decisions of the commissioners and assistant commissioners. Amendments to section 104 (5) of the Act will allow the chief executive officer to be appointed for a term of up to seven years. The introduction of a chief executive officer will allow the commissioners to focus on matters other than the day-to-day management of the ICAC. The bill also includes a number of reforms focused on procedural fairness in the exercise of the ICAC's powers and procedures.

The bill inserts a new section 31B in the Act requiring the commissioners to issue procedural guidelines relating to the conduct of public inquiries of the ICAC to members of staff of the ICAC and counsel appointed to assist the ICAC. The guidelines are to provide guidance on: the investigation of evidence that might exculpate affected persons; the disclosure of relevant evidence to affected persons; the opportunity to cross-examine witnesses as to their credibility; providing affected persons and other witnesses with access to relevant documents and a reasonable time to prepare before giving evidence; and any other matter the ICAC considers necessary to ensure procedural fairness. The ICAC will be required to arrange for the guidelines to be tabled in both Houses of Parliament and to be published on the ICAC's website. This proposal is consistent with the recommendations of the committee and is intended to make existing procedural fairness obligations clearer and more accessible for ICAC staff and counsel assisting the ICAC.

The bill also introduces a new section 79A in the Act, which provides that the ICAC is not authorised to make an adverse finding against a person in a report under section 74 unless the ICAC has first given the person a reasonable opportunity to respond. Where the person requests to have it included within the time specified by the ICAC, a summary of the person's response must be included in the report. Section 79A also requires that the ICAC must not include in the report any information in the person's response that would identify any person who is not the subject of an adverse finding, except in limited circumstances. These measures were recommended by the committee and will help to ensure that persons against whom an adverse finding is made have the opportunity to respond to claims made against them. Section 79A applies to the inspector in essentially the same way as it applies to the commission.

The bill also inserts a new section 112 (1B) into the Act to provide that a restriction on publication of evidence direction given by the ICAC does not apply to the disclosure of information, documents or other things by a law enforcement officer to the Director of Public Prosecutions [DPP] under section 15A of the Director of Public Prosecutions Act 1986.

Amendments have recently been made by the Law Enforcement Conduct Commission Act 2016 to section 15A of the Director of Public Prosecutions Act 1988 to provide that the duty of disclosure in section 15A applies to summary offences as well as indictable offences. Amendments have also been made to schedule 6.17 of the Director of Public Prosecutions Regulation 2015, which provide that a disclosure certificate completed by an ICAC staff member will need to certify that the staff member has disclosed to the DPP all relevant material obtained during a particular investigation that might reasonably be expected to assist the case for the prosecution or the case for the accused person.

Together with section 112 (1B) of the Independent Commission Against Corruption Act, these amendments address the committee's recommendation that ICAC officers investigating alleged summary offences should have a duty to provide all disclosable evidence to the DPP and that non-publication orders made by an ICAC commissioner should not prevent the ICAC from providing all disclosable evidence to the DPP. The bill also gives the ICAC express power to gather and assemble evidence that may be admissible in a criminal prosecution after the ICAC's investigations have been completed. The bill introduces a new section 52A to the Independent Commission Against Corruption Act which will allow the ICAC to exercise evidence-gathering powers under sections 21, 22, 23 and 40 of the Independent Commission Against Corruption Act after the ICAC has completed its

investigations into a matter if the Director of Public Prosecutions or the Electoral Commission requests the ICAC to do so.

These powers may only be exercised under section 14 of the Independent Commission Against Corruption Act for the function of gathering and assembling evidence that may be admissible in the prosecution of a person for a criminal offence and of furnishing that evidence to the Director of Public Prosecutions or to the Electoral Commission. This amendment will allow the ICAC to obtain evidence in response to requests from the Director of Public Prosecutions and the Electoral Commission for additional evidence, such as bank documents or telephone records.

The third area of reform concerns the oversight arrangements for the ICAC. The bill makes amendments to provide that a person may complain to the inspector of the ICAC regardless of any restriction on publication of evidence through a direction issued by the ICAC under section 112 of the Independent Commission Against Corruption Act. Section 112 of the Independent Commission Against Corruption Act gives power to the ICAC to direct that certain information not be published or only be published in a specific manner. The bill inserts a new section 112 (1B) (a) to provide that a direction under section 112 does not apply to the making of a complaint to the inspector or the disclosure of information, documents or other things to the inspector.

This will provide for more effective oversight of the ICAC as it removes limitations on information that may be provided to the inspector. Schedule 2 of the bill makes consequential amendments to the Independent Commission Against Corruption (Commissioner) Act 1994. Schedule 3 of the bill makes a number of consequential amendments to other Acts and instruments. Once again, ensuring that the Independent Commission Against Corruption is properly equipped to fight corruption is a priority for this Government. That is why it is undertaking the most significant reform to the ICAC since its inception in 1988. This Government is resolute in its commitment to integrity in public administration. It will not tolerate corruption in this State. I thank the committee for their work in relation to the recommendations that were made. This legislation enacts those bipartisan recommendations. This bill ensures that the ICAC will be better equipped to fight and prevent corruption with the full support of this Government. I commend the bill to the House.

**Debate adjourned.**

**The DEPUTY SPEAKER:** I set down resumption of the debate as an order of the day for a later hour.