



New South Wales

# Independent Commission Against Corruption Amendment Bill 2016

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to change the structure, management and procedures of the Independent Commission Against Corruption (the *ICAC*) to give effect to recommendations made by the Joint Parliamentary Committee on the Independent Commission Against Corruption in its report entitled “Review of the Independent Commission Against Corruption: Consideration of the Inspector’s Reports” (the *Report*) tabled in the Legislative Assembly on 27 October 2016.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## Schedule 1      Amendment of Independent Commission Against Corruption Act 1988 No 35

### Amendments about the structure, governance and management of the ICAC

**Schedule 1 [4]** replaces provisions about the structure of the ICAC to provide that:

- (a) the restructured ICAC consists of a Chief Commissioner appointed by the Governor and 2 other Commissioners appointed by the Governor after consultation with the Chief Commissioner (giving effect to Recommendations 1 and 3 of the Report), and

- (b) generally, the functions of the ICAC are exercisable by any Commissioner, but the exercise of the ICAC's power to conduct a public inquiry must be authorised by the Chief Commissioner and at least 1 other Commissioner (giving effect in part to Recommendation 2 of the Report), and
- (c) the Governor continues to have the power to appoint Assistant Commissioners to assist the Commissioners in their work (giving effect to Recommendation 8 of the Report), and
- (d) a Chief Executive Officer will have responsibility for the day to day management of the ICAC (giving effect to Recommendation 11 of the Report).

**Schedule 1 [19]** inserts provisions about Commissioners and Assistant Commissioners, including that:

- (a) a person will be qualified for appointment as Chief Commissioner, another Commissioner or Assistant Commissioner, or to act in that office, only if the person is qualified to be appointed as, or has formerly been, a judge of a superior court (giving effect to Recommendation 10 of the Report), and
- (b) the Chief Commissioner will be appointed on a full-time basis for a term of up to 5 years, the other Commissioners will be appointed on a part-time basis for a term of up to 5 years and Assistant Commissioners will be appointed either on a full-time or part-time basis for a term of up to 5 years instead of 9 years (giving effect in part to Recommendations 4–6 of the Report), and
- (c) the remuneration of the Chief Commissioner and other Commissioners will be determined by the Governor and any advice obtained from the Statutory and Other Offices Remuneration Tribunal (giving effect to Recommendation 7 of the Report), and
- (d) the existing power of the Joint Parliamentary Committee to veto proposed appointments of the Commissioner will apply to proposed appointments of the Chief Commissioner and other Commissioners (giving effect to Recommendation 9 of the Report).

**Schedule 1 [1]** updates definitions to reflect the other changes made in the proposed Act and inserts definitions of new terms used in other proposed amendments.

**Schedule 1 [2] and [13]** provide for certain functions previously conferred on the single Commissioner to be functions of the Chief Commissioner (eg the employment of staff).

**Schedule 1 [3], [9], [14] and [16]** provide for most other functions previously conferred on the single Commissioner to be functions of any of the Commissioners.

**Schedule 1 [5]** removes the power of Assistant Commissioners to determine that a public inquiry be conducted.

**Schedule 1 [7]** provides for certain functions previously conferred on the Commissioner to instead be functions of the ICAC (and exercisable by any Commissioner).

**Schedule 1 [11]** omits a redundant provision.

**Schedule 1 [12] and [15]** provide for the appointment of the Chief Executive Officer by the Chief Commissioner (after consulting with the other Commissioners) for a maximum of 7 years. Other staff of the Commission are also to be appointed by the Chief Commissioner.

**Schedule 1 [17]** gives the Chief Commissioner the power to delegate any function of the ICAC to an Assistant Commissioner or an officer of the ICAC and gives any Commissioner the power to delegate any of his or her functions to an Assistant Commissioner or an officer of the ICAC. The function of authorising public inquiries and of issuing guidelines on procedural fairness cannot be delegated.

**Schedule 1 [20]** inserts savings and transitional provisions into the Act.

### **Amendments relating to procedural fairness during public inquiries and before the publication of adverse findings**

**Schedule 1 [6]** requires the ICAC to issue guidelines to ICAC staff, and counsel assisting the ICAC, to ensure procedural fairness during public inquiries. Those guidelines:

- (a) are required to be tabled in both Houses of Parliament and published on ICAC's website, and
- (b) are to deal with the investigation of evidence that might exculpate affected persons, the disclosure of exculpatory or other 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 time to prepare before giving evidence and any other matter the ICAC considers necessary to ensure procedural fairness (giving effect to Recommendations 15–19 of the Report).

**Schedule 1 [10]** inserts a provision that:

- (a) requires the ICAC and the ICAC Inspector to give a person an opportunity to respond before including an adverse finding or adverse opinion about the person in a report and to include in the report a summary of the substance of any response that the person requests to be included (giving effect to Recommendations 14 and 20 of the Report), and
- (b) prevents any summary of such a response that is published in a report from including information that would identify a person who is not the subject of any adverse finding or adverse opinion, except in limited circumstances (giving effect to Recommendation 21 of the Report).

#### **Amendment permitting ICAC to exercise investigative powers after referring matter to DPP or Electoral Commission**

**Schedule 1 [8]** provides the ICAC with power to gather and assemble evidence after the completion of an investigation that may be admissible in a criminal prosecution for possible offences the ICAC has referred to the Director of Public Prosecutions or the Electoral Commission (giving effect to Recommendation 24 of the Report). The ICAC may exercise those powers only if requested to do so by the Director of Public Prosecutions or the Electoral Commission. The powers will not extend to allowing the conduct of compulsory examinations.

#### **Amendment allowing disclosure of evidence despite non-publication order**

**Schedule 1 [18]** provides that a non-publication order made by the ICAC will not prevent:

- (a) the making of a complaint to the ICAC Inspector, or the disclosure of information, documents or other things to the Inspector (giving effect to Recommendation 35 of the Report), or
- (b) the disclosure of information, documents or other things by a member of staff of the ICAC to the Director of Public Prosecutions (giving effect to Recommendation 23 of the Report).

### **Schedule 2      Amendment of Independent Commission Against Corruption (Commissioner) Act 1994 No 61**

**Schedule 2 [1]** extends the operation of the Act (which provides for the automatic re-appointment of a Supreme Court Judge appointed as the Commissioner when their term of office as Commissioner ends) so that it applies to any of the 3 Commissioners of the restructured ICAC, including the Commissioner holding office before the restructure.

**Schedule 2 [2]–[4]** omit redundant references to earlier appointments.

**Schedule 2 [5]** updates a cross-reference.

**Schedule 2 [6]** provides that the Act applies to the Commissioner holding office before the restructure who ceases to be the Commissioner on the restructure unless subsequently re-appointed as a Commissioner.

## **Schedule 3      Consequential amendment of other Acts and instruments**

**Schedule 3** makes consequential amendments to other legislation:

- (a) to reflect that there will be more than one Commissioner in the re-constituted ICAC, one of whom is the Chief Commissioner, and
- (b) in the case of the amendment to the *Public Finance and Audit Act 1983*, to confer on the Chief Executive Officer of the ICAC the responsibility for verifying the accounts of the ICAC and other financial audit and reporting responsibilities.