



New South Wales

# Independent Commission Against Corruption Amendment (Protections for Disclosure of Information) Bill 2019

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to—

- (a) provide certain protections to persons who voluntarily give any statement of information or produce any document or thing to the Independent Commission Against Corruption (the *Commission*) in connection with a complaint made to, or an investigation conducted by, the Commission about a matter that concerns or may concern corrupt conduct (a *voluntary disclosure*), being—
  - (i) protection from criminal or civil liability, and from disciplinary proceedings, in relation to making a voluntary disclosure, and
  - (ii) protection against self-incrimination, by providing that the statement, document or thing disclosed may not be used in any proceedings against a person (subject to certain exceptions) if the Director of Public Prosecutions, on the recommendation of the Commission, certifies that the protection is to apply to the person, and
- (b) require the Commission to publish guidelines on its website relating to the making of voluntary disclosures, including the protections that may be available to persons who make a voluntary disclosure, and
- (c) set out the limited circumstances in which information may be disclosed to a person or body that might identify or tend to identify a person who has made a voluntary disclosure.

## 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 the date of assent to the proposed Act.

**Schedule 1** amends the *Independent Commission Against Corruption Act 1988* in the manner described in the above overview.



New South Wales

# Independent Commission Against Corruption Amendment (Protections for Disclosure of Information) Bill 2019

## Contents

---

		Page
	1 Name of Act	2
	2 Commencement	2
<b>Schedule 1</b>	<b>Amendment of Independent Commission Against Corruption Act 1988 No 35</b>	<b>3</b>



New South Wales

# Independent Commission Against Corruption Amendment (Protections for Disclosure of Information) Bill 2019

No. , 2019

---

## **A Bill for**

An Act to amend the *Independent Commission Against Corruption Act 1988* to protect individuals who voluntarily disclose information to the Commission from criminal or civil liability in connection with that disclosure.

---

**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Independent Commission Against Corruption Amendment (Protections for Disclosure of Information) Act 2019*.

3

4

**2 Commencement**

5

This Act commences on the date of assent to this Act.

6

<b>Schedule 1</b>	<b>Amendment of Independent Commission Against Corruption Act 1988 No 35</b>	1
		2
<b>[1] Section 3 Definitions</b>		3
	Insert in alphabetical order in section 3(1)—	4
	<i>voluntary disclosure</i> —see section 109(6).	5
<b>[2] Section 26 Self-incrimination</b>		6
	Omit the section.	7
<b>[3] Section 109 Protection from liability</b>		8
	Omit section 109(5) and (6). Insert instead—	9
	(5) Subject to this Act, a person is not subject to any criminal or civil liability for compliance, or purported compliance, with a requirement of this Act and no action, claim, demand or disciplinary action may be taken against or made of the person in relation to that compliance or purported compliance.	10 11 12 13
	(6) Subject to this Act, a person who voluntarily gives any statement of information or produces any document or thing to the Commission in connection with a complaint made to, or an investigation conducted by, the Commission about a matter that concerns or may concern corrupt conduct (a <i>voluntary disclosure</i> ) is not subject to any criminal or civil liability for making the voluntary disclosure and no action, claim, demand or disciplinary action may be taken against or made of the person in relation to making the voluntary disclosure.	14 15 16 17 18 19 20 21
	(7) This section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure (whether or not imposed by an Act) applicable to the relevant person.	22 23 24
<b>[4] Sections 109A and 109B</b>		25
	Insert after section 109—	26
<b>109A Self-incrimination</b>		27
	(1) If a natural person—	28
	(a) is required to produce any statement of information or any document or other thing to the Commission under section 21 or 22, and	29 30
	(b) the statement, document or thing tends to incriminate the person, and	31
	(c) the person objects to the production at the time,	32
	neither the fact of the requirement nor the statement, document or thing itself (if produced) may be used in any proceedings against the person other than proceedings for an offence against this Act or as provided by section 114A(5).	33 34 35
	(2) The statement, document or thing may however be used for the purposes of the complaint or investigation concerned, despite any such objection.	36 37
	(3) Subject to subsection (5), if a natural person makes a voluntary disclosure that tends to incriminate the person, the statement, document or thing disclosed may not be used in any proceedings against the person other than proceedings for an offence against this Act or as provided by section 114A(5).	38 39 40 41
	(4) The statement, document or thing may however be used for the purposes of the complaint or investigation concerned.	42 43

(5)	Subsection (3) only applies in relation to a person who makes a voluntary disclosure if the Director of Public Prosecutions, on the recommendation of the Commission, certifies that the subsection is to apply to the person.	1 2 3
<b>109B</b>	<b>Voluntary disclosure guidelines</b>	4
	The Commission is to publish guidelines on its website relating to the making of voluntary disclosures, including the protections that may be available to persons who make a voluntary disclosure.	5 6 7
<b>[5]</b>	<b>Section 111AA</b>	8
	Insert before section 111A—	9
<b>111AA</b>	<b>Identity of person making voluntary disclosure</b>	10
	Without limiting section 111, a person or body to whom that section applies may disclose information to any other person or body that might identify or tend to identify a person who has made a voluntary disclosure if—	11 12 13
	(a) the person who made the voluntary disclosure consents in writing to the disclosure of that information, or the identity of the person who made the voluntary disclosure is generally known as a result of the person having chosen to identify themselves (otherwise than by making the voluntary disclosure) as the person who made the voluntary disclosure, or	14 15 16 17 18 19
	(b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person or body whom the information provided by the voluntary disclosure may concern, or	20 21 22
	(c) the Commission certifies that disclosure of the identifying information is necessary to investigate the matters raised by the voluntary disclosure effectively or it is otherwise in the public interest to do so.	23 24 25
<b>[6]</b>	<b>Section 114A Disciplinary proceedings—taking action based on finding of corrupt conduct</b>	26 27
	Omit “sections 26 and 37” from section 114A(5). Insert instead “sections 37 and 109A”.	28