



New South Wales

ICAC and LECC Legislation Amendment Bill 2022

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Independent Commission Against Corruption Act 1988*, the *Independent Commission Against Corruption (Commissioner) Act 1994* and the *Law Enforcement Conduct Commission Act 2016* to—

- (a) enable a Judge of the Supreme Court or the District Court, who has resigned immediately prior to their appointment to the Independent Commission Against Corruption (**ICAC**) as a Commissioner, Inspector or Assistant Inspector or to the Law Enforcement Conduct Commission (**LECC**), as a member of the Commission, Assistant Commissioner or Inspector, to return to their position as a Judge of the same Court, immediately after they cease to hold office for the ICAC or LECC, and
- (b) provide that, for the purposes of the *Judges' Pensions Act 1953*, time served by the person as a Commissioner, an Inspector or an Assistant Inspector of ICAC or as a member of the Commission, Assistant Commissioner or Inspector of the LECC, is time served as a Judge of the status equivalent to the judicial office held by the person immediately before their appointment.

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 Amendment of Independent Commission Against Corruption Act 1988 No 35

Schedule 1[1] inserts proposed clause 6A into Schedule 1A, which provides that a person who was a Judge of the Supreme Court or the District Court before being appointed as Inspector, and who resigned immediately before the appointment as Inspector, may return to their position as a Judge of the same Court at the end of the person's tenure as Inspector. The person's entitlements in relation to a judicial pension also continue while the person is Inspector, and service as Inspector is taken to be service as a Judge.

Schedule 1[2] inserts a provision to ensure the amendments made by the proposed *ICAC and LECC Legislation Amendment Act 2022* apply on and from 30 June 2022, even if the proposed Act commences after that date.

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

Schedule 2[1]–[4] extend existing provisions relating to a Judge of the Supreme Court to a Judge of the District Court. **Schedule 2[5]** makes a consequential amendment.

Schedule 2[6] inserts a regulation-making power for regulations of a savings or transitional nature and inserts a provision to ensure the amendments made by the proposed *ICAC and LECC Legislation Amendment Act 2022* apply on and from 30 June 2022, even if the proposed Act commences after that date.

Schedule 3 Amendment of Law Enforcement Conduct Commission Act 2016 No 61

Schedule 3[1]–[4] and **[6]–[8]** extend existing provisions relating to a Judge of the Supreme Court to a Judge of the District Court. **Schedule 3[5]** and **[9]** make consequential amendments.

Schedule 3[10] inserts a provision to ensure the amendments made by the proposed *ICAC and LECC Legislation Amendment Act 2022* apply on and from 30 June 2022, even if the proposed Act commences after that date.



New South Wales

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ICAC and LECC Legislation Amendment Bill 2022

No. _____, 2022

A Bill for

An Act to amend the *Independent Commission Against Corruption Act 1988*, the *Independent Commission Against Corruption (Commissioner) Act 1994* and the *Law Enforcement Conduct Commission Act 2016* in relation to the appointment of a Judge of the District Court to the Independent Commission Against Corruption or the Law Enforcement Conduct Commission; and for other purposes.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *ICAC and LECC Legislation Amendment Act 2022*.

3

2 Commencement

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

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Schedule 1 Amendment of Independent Commission Against Corruption Act 1988 No 35 1
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[1] Schedule 1A Provisions relating to Inspector and Assistant Inspector 3

Insert after clause 6— 4

6A Appointment of Supreme Court or District Court Judge as Inspector 5

(1) This clause applies to a person— 6

(a) who was a Judge of the Supreme Court or the District Court before being appointed as Inspector, whether on a regular or an acting basis, and 7
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(b) whose resignation as a Judge took effect immediately before the appointment as Inspector took effect, and 10
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(c) whose instrument of appointment as Inspector declared that the person's commission as a Judge is to revive by force of this clause, and 12
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(d) who consented by letter to the Minister to the application of this clause. 14

(2) The person's commission as a Judge revives by force of this clause when the person ceases to hold office as Inspector. 15
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(3) The person becomes, from the time the person ceases to hold office as Inspector— 17
18

(a) if the person was a Judge of the Supreme Court before being appointed as Inspector—a Judge of the Supreme Court again, or 19
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(b) if the person was a Judge of the District Court before being appointed as Inspector—a Judge of the District Court again. 21
22

(4) Subclauses (2) and (3) do not apply in relation to any other judicial office held by the person. 23
24

(5) For the purposes of the *Judges' Pensions Act 1953*— 25

(a) service by the person as Inspector is taken to be service as a Judge, and 26

(b) references to a Judge or judicial office include references to the person in the person's capacity as Inspector and the office of Inspector, and 27
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(c) references to notional judicial salary are, in relation to the person while Inspector, references to the salary payable to the holder of a judicial office having a status equivalent to that of the judicial office held by the person immediately before being appointed as Inspector. 29
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(6) Subclauses (2) and (3) do not apply to the person if— 33

(a) the person makes a request by letter to the Minister, or 34

(b) the person is removed from office as Inspector by the Governor on the address of both Houses of Parliament under clause 7(2). 35
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(7) For the purposes of this clause, a reappointment of the person as Inspector without a break is taken to be a continuation of the previous appointment as Inspector. 37
38
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[2] Schedule 4 Savings, transitional and other provisions 40

Insert at the end of the Schedule, with appropriate Part and clause numbering— 41

Part	Provision consequent on enactment of ICAC and LECC Legislation Amendment Act 2022	1 2
	Commencement of amendments by ICAC and LECC Legislation Amendment Act 2022	3 4
(1)	The amendments made by the amending Act apply on and from 30 June 2022, including if the amending Act commences after that date.	5 6
(2)	In this clause— <i>amending Act</i> means the <i>ICAC and LECC Legislation Amendment Act 2022</i> .	7 8

Schedule 2	Amendment of Independent Commission Against Corruption (Commissioner) Act 1994 No 61	1
		2
[1] Long title and section 4(1)(a)		3
	Insert “or the District Court” after “Court”, wherever occurring.	4
[2] Section 4, heading		5
	Insert “or District Court” after “Court”.	6
[3] Section 4(2)–(2B)		7
	Omit subsection (2). Insert instead—	8
	(2) The person’s commission as a Judge revives by force of this Act when the person ceases to hold office as a Commissioner.	9 10
	(2A) The person becomes, from the time the person ceases to hold office as a Commissioner—	11 12
	(a) if the person was a Judge of the Supreme Court before being appointed as a Commissioner—a Judge of the Supreme Court again, or	13 14
	(b) if the person was a Judge of the District Court before being appointed as a Commissioner—a Judge of the District Court again.	15 16
	(2B) Subsections (2) and (2A) do not apply in relation to any other judicial office held by the person.	17 18
[4] Section 4(3)(a)		19
	Omit “of the Supreme Court”.	20
[5] Section 4(4)		21
	Omit “Subsection (2) ceases to”. Insert instead “Subsections (2) and (2A) do not”.	22
[6] Sections 6 and 7		23
	Insert after section 5—	24
	6 Regulations	25
	(1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—	26 27
	(a) a provision of this Act, or	28
	(b) a provision amending this Act.	29
	(2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.	30 31
	(3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.	32 33
	(4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—	34 35
	(a) for a provision of this Act—the date of assent to this Act, or	36
	(b) for a provision amending this Act—the date of assent to the amending Act.	37 38
	(5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—	39 40

	(a) affect the rights of a person existing before the publication in a way prejudicial to the person, or	1 2
	(b) impose liabilities on a person for anything done or omitted to be done before the publication.	3 4
	(6) In this section—	5
	<i>person</i> does not include the State or an authority of the State.	6
7	Commencement of amendments by ICAC and LECC Legislation Amendment Act 2022	7 8
	(1) The amendments made by the amending Act apply on and from 30 June 2022, including if the amending Act commences after that date.	9 10
	(2) In this section—	11
	<i>amending Act</i> means the <i>ICAC and LECC Legislation Amendment Act 2022</i> .	12

Schedule 3	Amendment of Law Enforcement Conduct Commission Act 2016 No 61	1
		2
[1] Schedule 1 Provisions relating to members of the Commission, Assistant Commissioners and alternate Commissioners		3
		4
	Insert “or District Court” after “Court” in clause 6, heading.	5
[2] Schedule 1, clause 6(1)(a)		6
	Insert “or the District Court” after “Court”.	7
[3] Schedule 1, clause 6(2)–(2B)		8
	Omit clause 6(2). Insert instead—	9
	(2) The person’s commission as a Judge revives by force of this clause when the person ceases to hold office as a member of the Commission or Assistant Commissioner.	10 11 12
	(2A) The person becomes, from the time the person ceases to hold office as a member of the Commission or Assistant Commissioner—	13 14
	(a) if the person was a Judge of the Supreme Court before being appointed as a member of the Commission or Assistant Commissioner—a Judge of the Supreme Court again, or	15 16 17
	(b) if the person was a Judge of the District Court before being appointed as a member of the Commission or Assistant Commissioner—a Judge of the District Court again.	18 19 20
	(2B) Subclauses (2) and (2A) do not apply in relation to any other judicial office held by the person.	21 22
[4] Schedule 1, clause 6(3)(a)		23
	Omit “of the Supreme Court”.	24
[5] Schedule 1, clause 6(4)		25
	Omit “Subclause (2) ceases to”. Insert instead “Subclauses (2) and (2A) do not”.	26
[6] Schedule 2 Provisions relating to Inspector and Assistant Inspectors		27
	Insert “or District Court” after “Court” in clause 8, heading.	28
[7] Schedule 2, clause 8(1)(a)		29
	Insert “or the District Court” after “Court”.	30
[8] Schedule 2, clause 8(2)–(2B)		31
	Omit subclause (2). Insert instead—	32
	(2) The person’s commission as a Judge revives by force of this clause when the person ceases to hold office as Inspector.	33 34
	(2A) The person becomes, from the time the person ceases to hold office as Inspector—	35 36
	(a) if the person was a Judge of the Supreme Court before being appointed as Inspector—a Judge of the Supreme Court again, or	37 38
	(b) if the person was a Judge of the District Court before being appointed as Inspector—a Judge of the District Court again.	39 40

(2B)	Subclauses (2) and (2A) do not apply in relation to any other judicial office held by the person.	1 2
[9]	Schedule 2, clause 8(4)	3
	Omit “Subclause (2) ceases to”. Insert instead “Subclauses (2) and (2A) do not”.	4
[10]	Schedule 3 Savings, transitional and other provisions	5
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	6
Part	Provision consequent on enactment of ICAC and LECC Legislation Amendment Act 2022	7 8
	Commencement of amendments by ICAC and LECC Legislation Amendment Act 2022	9 10
(1)	The amendments made by the amending Act apply on and from 30 June 2022, including if the amending Act commences after that date.	11 12
(2)	In this clause— <i>amending Act</i> means the <i>ICAC and LECC Legislation Amendment Act 2022</i> .	13 14