



Tabled by Minister Tudehope
21 June 2022
Straffell

ICAC AND LECC LEGISLATION AMENDMENT BILL 2022

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Government is currently conducting a publicly-advertised recruitment process to identify eligible candidates for appointment to the following statutory offices:

- Chief Commissioner, and two Commissioners, of the Independent Commission Against Corruption (**ICAC**)

The appointments of the existing appointees are due to expire, and the existing appointees are not eligible for re-appointment to their current roles.

A recruitment process in respect of Inspectors of the ICAC and Law Enforcement Conduct Commission (**LECC**) has recently concluded. On 16 June 2022, the Governor appointed Gail Furness SC as Inspector of the ICAC and Bruce McClintock SC as Inspector of the LECC, on and from 1 July 2022. The Joint Parliamentary Committee on the ICAC and the Joint Parliamentary Committee on the Ombudsman, the LECC and the Crime Commission considered and determined not to veto the Inspector appointments.

A Nominations Panel, comprised of the immediate past Chief Justice of New South Wales, the Hon Thomas Bathurst AC QC, retired Federal Court of Australia Judge, the Hon Dr Annabelle Bennett AC SC, the immediate past President of the Law Society of NSW, Ms Juliana Warner, the Secretary of the Department of Premier and Cabinet, Mr Michael Coutts-Trotter and the Secretary of the Department of Communities and Justice, Mr Michael Tidball, has been appointed to consider applications and make recommendations to the Government on candidates suitable for appointment to these statutory offices.

Currently, provisions of the *Independent Commission Against Corruption (Commissioner) Act 1994* (**ICAC Commissioner Act**) and the *Law Enforcement Conduct Commission Act 2016* (**LECC Act**) enable, if certain conditions are complied with, the commission of a Judge of the Supreme Court, who has resigned immediately prior to their appointment as a Commissioner of the ICAC or LECC, or Inspector of the LECC, to have their commission as a judge revive by force of those provisions when the person ceases to hold office as a Commissioner of the ICAC or LECC, or Inspector of the LECC, causing the person to become a Judge of the Supreme Court again from that time.

Where these provisions apply, for the purposes of the *Judges' Pensions Act 1953*, the person's service as Commissioner of the ICAC or LECC, or Inspector of the LECC, is taken to be service as a Judge of the Supreme Court, and references to notional judicial salary are 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 a Commissioner of the ICAC or LECC, or Inspector of the LECC.

The *Independent Commission Against Corruption Act 1988* (**ICAC Act**) does not make provision for a Judge of the Supreme Court, who has resigned immediately prior to their appointment as Inspector of the ICAC, to have their commission as a Judge revive when the person ceases to hold office as Inspector of the ICAC.

Meritorious potential applicants may be discouraged from accepting an appointment without legislative amendment to extend the existing provisions in the ICAC Commissioner Act relating to a Judge of the Supreme Court to a Judge of the District Court.

Consequently, Schedule 2 to the Bill proposes to amend the ICAC Commissioner Act to extend the existing provisions relating to a Judge of the Supreme Court to a Judge of the District Court.

In addition, to ensure a consistent approach is applied to provisions applicable to Commissioners and Inspectors of the ICAC and LECC:

- Schedule 3 to the Bill proposes to amend the LECC Act to extend provisions relating to the appointment of a Judge of the Supreme Court who has resigned immediately prior to their appointment as a Commissioner of the LECC, or Inspector of the LECC, to a Judge of the District Court
- Schedule 1 to the Bill proposes to amend the ICAC Act to insert a new provision enabling the commission of a Judge of the Supreme Court or a Judge of the District Court, who has resigned immediately prior to their appointment as Inspector of the ICAC, to have their commission as a Judge revive by force of the provision when the person ceases to hold office as Inspector of the ICAC, causing the person to become a Judge of the relevant court again from that time.

Objectives: What is the policy's objective couched in terms of the public interest?

It is in the public interest to ensure:

- that suitably qualified and experienced Judges of the District Court are not discouraged from accepting an appointment as a Commissioner of the ICAC or LECC, or Inspector of the ICAC or LECC
- that judges appointed as a Commissioner of the ICAC or LECC, or Inspector of the ICAC or LECC, have security of tenure, and are able to return to their relevant court at the conclusion of their statutory appointment without being re-appointed by the Government of the day
- consistency in provisions relating to the revival of judicial commissions after a person who is a Judge of the Supreme Court or a Judge of the District Court ceases to hold office as a Commissioner of the ICAC or LECC, or Inspector of the ICAC or LECC

Options: What alternative policies and mechanisms were considered in advance of the bill?

There is no compelling reason to exclude a Judge of the District Court from the benefit of the existing provisions, or to not extend the benefit of the provisions to persons appointed as Inspector of the ICAC, noting:

- the qualification requirements for appointment as a Judge of the Supreme Court and a Judge of the District Court are broadly the same, namely, an Australian lawyer of at least 7 years' standing, or a person who holds or has held a judicial office
- senior members of the Bar and highly experienced legal practitioners are frequently appointed to the District Court
- Judges of the District Court have varied expertise and experience that would be of benefit to the ICAC and LECC in performing the statutory functions of the two integrity agencies, or performing the Inspectors' oversight function

- a comparable Western Australian commission-reviving provision for former judicial officers appointed to statutory offices extends to Judges of the Supreme Court and the District Court.

No alternative mechanisms were considered, as legislative amendment of the existing provisions is required.

Analysis: What were the pros/cons and benefits/costs of each option considered?

An advantage of introducing the Bill is to ensure that suitably qualified and experienced Judges of the District Court are not discouraged from accepting an appointment as a Commissioner of the ICAC or LECC, or Inspector of the ICAC or LECC.

Conversely, a disadvantage of not introducing the Bill is that meritorious potential applicants who are a Judge of the District Court may be discouraged from accepting an appointment as a Commissioner of the ICAC or LECC, or Inspector of the ICAC or LECC.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The appointment of the Hon Peter Hall QC as the Chief Commissioner of the ICAC, and the appointments of Mr Stephen Rushton SC and Ms Patricia McDonald SC as Commissioners of the ICAC, will expire on 6 August 2022.

The appointments of Mr Bruce McClintock SC as Inspector of the ICAC and Professor Terry Buddin SC as Inspector of the LECC will expire on 30 June 2022. On 16 June 2022, the Governor appointed Gail Furness SC as Inspector of the ICAC and Bruce McClintock SC as Inspector of the LECC, on and from 1 July 2022. The amendments proposed in the Bill are not relevant to those appointments

The Bill commences on the date of assent. The Bill contains saving and transitional provisions to provide that the proposed amendments apply on and from 30 June 2022, to ensure that the proposed amendments apply to any relevant persons appointed to fill the upcoming vacancies.

The proposed appointment of a person as a Commissioner of the ICAC or LECC, or as Inspector of the ICAC or LECC, is subject to consideration by the Joint Parliamentary Committee on the ICAC in respect of the appointments to the ICAC, and the Joint Parliamentary Committee on the Ombudsman, the LECC and the Crime Commission in respect of the appointment of the Inspector of the LECC, so that they may consider exercising their power of veto.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

No, although as the provisions are beneficial to potential applicants to the statutory offices, it is anticipated that the proposal would be supported by relevant stakeholders.