



New South Wales

Independent Commission Against Corruption Amendment Bill 2011

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 *Act*) to strengthen, and clarify the ambit of, certain powers of the Independent Commission Against Corruption (the *Commission*) and the Inspector of the Commission (the *Inspector*).

The Bill:

- (a) makes it clear that the Commission has power to gather, assemble and furnish evidence to the Director of Public Prosecutions for use in prosecutions after the discontinuance or completion of its investigations (**Schedule 1 [1] and [2]**), and
- (b) broadens the powers of the Inspector by enabling the Inspector to report to Parliament at any time on any matter relating to the exercise of the Inspector's principal functions under section 57B of the Act if the Inspector considers a report to be in the public interest (**Schedule 1 [11]**), and
- (c) makes it clear that the Inspector may provide a report or recommendation (or any relevant part of a report or recommendation) concerning any matter relating to the Inspector's principal functions to the Commission, an officer of

- the Commission, a person who made a complaint or any other affected person if the Inspector considers that the matter can be effectively dealt with by such a recommendation or report (**Schedule 1 [9]**), and
- (d) provides that section 40 of the *Surveillance Devices Act 2007* does not prevent the use, publication or communication of protected information within the meaning of that Act for the purpose of the exercise of the Inspector's functions under section 57B of the Act (**Schedule 1 [10]**), and
 - (e) permits a person who has been summonsed to appear at a compulsory examination or public inquiry for the purpose of producing a document or thing to produce the document or thing without appearing if excused from appearance by the Commissioner for the Commission and for any document or other thing so produced in accordance with the Commissioner's directions to be privileged (**Schedule 1 [3]–[8]**), and
 - (f) makes it clear that the Industrial Relations Commission cannot deal with an application under Part 6 (Unfair dismissals) of Chapter 2 of the *Industrial Relations Act 1996* by an officer of the Independent Commission Against Corruption whose employment is terminated by the Commissioner (**Schedule 1 [12]**), and
 - (g) provides for the making of savings and transitional regulations and makes amendments of a savings and transitional or consequential nature (**Schedule 1 [13] and [14]**).

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 contains the amendments described in the Overview above.

First print



New South Wales

Independent Commission Against Corruption Amendment Bill 2011

Contents

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



New South Wales

Independent Commission Against Corruption Amendment Bill 2011

No. , 2011

A Bill for

An Act to amend the *Independent Commission Against Corruption Act 1988* to make further provision with respect to the powers of the Independent Commission Against Corruption, the Commissioner for the Commission and the Inspector of the Commission; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Independent Commission Against Corruption Amendment Act 2011</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Independent Commission Against Corruption Act 1988 No 35	1
		2
		3
[1] Section 14 Other functions of Commission		4
	Omit section 14 (1) (a). Insert instead:	5
	(a) to gather and assemble, during or after the discontinuance or completion of its investigations, evidence that may be admissible in the prosecution of a person for a criminal offence against a law of the State in connection with corrupt conduct and to furnish such evidence to the Director of Public Prosecutions,	6 7 8 9 10 11
[2] Section 14 (1) (b)		12
	Insert “, during or after the discontinuance or completion of its investigations,” after “furnish”.	13 14
[3] Section 35 Power to summon witnesses and take evidence		15
	Insert “(the <i>required appearance</i>)” after “named in the summons” in section 35 (1).	16 17
[4] Section 35 (4)		18
	Omit “attend” and “attendance” wherever occurring.	19
	Insert “appear” and “appearance”, respectively.	20
[5] Section 35 (4A)		21
	Insert after section 35 (4):	22
	(4A) The Commissioner may, by notice in writing, excuse a person who has been summoned to appear before the Commission and produce documents or other things from the required appearance on condition that the person (or a person acting on the person’s behalf) produces those documents or things in accordance with any directions given by the Commissioner before the time of the the required appearance.	23 24 25 26 27 28 29
[6] Section 35 (5)		30
	Omit “so excused or released”.	31
	Insert instead “excused or released under subsection (4) or (4A)”.	32

[7] Section 35 (5A)	1
Insert after section 35 (5):	2
(5A) A person who, after being excused under subsection (4A) from the required appearance, fails to produce the documents or things concerned in accordance with the Commissioner's directions is taken to have failed to appear before the Commission in obedience to the summons.	3 4 5 6 7
[8] Section 37 Privilege as regards answers, documents etc	8
Insert "or in accordance with a direction given by the Commissioner under section 35 (4A)" after "Commission" wherever occurring in section 37 (3) and (5) (a).	9 10 11
[9] Section 57B Principal functions of Inspector	12
Insert after section 57B (4):	13
(5) Without affecting the power of the Inspector to make a report under Part 8, the Inspector may, at any time:	14 15
(a) make a recommendation or report concerning any matter relating to the functions of the Inspector under this section that the Inspector considers may effectively be dealt with by recommendation or report under this section, and	16 17 18 19
(b) provide the report or recommendation (or any relevant part of it) to the Commission, an officer of the Commission, a person who made a complaint or any other affected person.	20 21 22
[10] Section 57F Incidental powers	23
Insert at the end of the section:	24
(2) Section 40 of the <i>Surveillance Devices Act 2007</i> does not apply to the use, publication or communication of protected information within the meaning of that Act in relation to the exercise of the Inspector's functions under section 57B.	25 26 27 28
[11] Section 77A Special reports	29
Insert at the end of the section:	30
, and	31
(c) any other matter relating to the exercise of a function to audit, deal with or assess any matter under section 57B that the Inspector considers warrants the making, in the public interest, of a special report.	32 33 34 35

[12] Section 104 Appointment of staff	1
Insert after section 104 (11):	2
(11A) Without limiting subsection (11), Part 6 of Chapter 2 of the <i>Industrial Relations Act 1996</i> does not apply to or in respect of the dismissal (within the meaning of that Part) of any person from any position as a member of the staff of the Commission.	3 4 5 6
[13] Schedule 4 Savings, transitional and other provisions	7
Insert at the end of clause 1 (1):	8
<i>Independent Commission Against Corruption Amendment Act 2011</i>	9 10
[14] Schedule 4, Part 11	11
Insert after Part 10:	12
Part 11 Provisions consequent on enactment of Independent Commission Against Corruption Amendment Act 2011	13 14 15
30 Definition	16
In this Part:	17
<i>amending Act</i> means the <i>Independent Commission Against Corruption Amendment Act 2011</i> .	18 19
31 Use etc of protected information under Surveillance Devices Act 2007 for audit of Commission operations by Inspector	20 21
The amendment made to section 57F by the amending Act extends to the use, publication or communication before the commencement of the amendment of protected information within the meaning of the <i>Surveillance Devices Act 2007</i> in relation to the exercise of the Inspector's functions under section 57B.	22 23 24 25 26 27

Independent Commission Against Corruption Amendment Bill 2011

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

32 Saving of pending application for unfair dismissal

Section 104 (11A) as inserted by the amending Act does not
apply to or in respect of an application made under Part 6 of
Chapter 2 of the *Industrial Relations Act 1996* before the
commencement of the amending Act.

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