

FIRST PRINT

**INDEPENDENT COMMISSION AGAINST CORRUPTION  
(AMENDMENT) BILL 1988**

NEW SOUTH WALES



**EXPLANATORY NOTE**

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to amend the Independent Commission Against Corruption Act 1988, so as—

- (a) to introduce legal professional privilege as a ground of refusal to comply with a requirement to give certain evidence before the Independent Commission Against Corruption; and
- (b) to introduce a form of privilege, based on religious confession, as a ground of refusal to comply with a requirement to give certain evidence before the Commission; and
- (c) to limit the nature of contempt of the Commission; and
- (d) to limit the Commission's exemption from being required to produce to a court information obtained by the Commission; and
- (e) to state that certain parliamentary rights and privileges are not affected by the Act; and
- (f) to extend the qualifications for appointment as Commissioner or Assistant Commissioner.

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on a day or days to be appointed by proclamation of the Governor-in-Council published in the Gazette.

**Clause 3** is a formal provision that gives effect to the Schedule of amendments.

**SCHEDULE 1—AMENDMENTS**

**Legal professional privilege**

Schedule 1 (1) inserts subsection (5) into section 37 of the Act.

*Independent Commission Against Corruption (Amendment) 1988*

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Subsection (5) authorises a witness appearing at a hearing before the Commission to refuse to divulge a privileged communication passing between a legal practitioner and a person for the purpose of providing or receiving legal professional services in connection with a person's appearance, or anticipated appearance, before the Commission. The communication must be "privileged" (the common law establishes the principles according to which a communication with a legal practitioner is privileged), but is protected by the proposed amendment only where the communication relates to a person's appearance or anticipated appearance before the Commission.

**Religious professional privilege**

Schedule 1 (1) also inserts subsection (6) into section 37 of the Act.

Subsection (6) authorises a member of the clergy to refuse to divulge to the Commission the contents of a confession made by a person, unless the person agrees or a criminal purpose was involved.

**Contempt of the Commission**

Schedule 1 (2) omits from section 98 of the Act the element of contempt of the Commission arising from the use of "words that are false or defamatory of the Commission, the Commissioner or an Assistant Commissioner".

**Production of information**

Schedule 1 (3) amends section 111 of the Act to provide that the exemption, in favour of the Commission, from being required to produce to a court information obtained by the Commission does not apply where production is for the purposes of a prosecution instituted as a result of an investigation conducted by the Commission.

**Parliamentary privilege**

Schedule 1 (4) inserts into the Act a new section 122, which provides that the Act is not to be taken to affect parliamentary rights and privileges in relation to the freedom of speech, and debates and proceedings, in Parliament.

**Qualifications for appointment**

Schedule 1 (5) amends Schedule 1 to the Act.

The amended provisions extend eligibility for appointment as Commissioner or Assistant Commissioner, so as to cover persons who are eligible for appointment to judicial office in the Supreme Court of another State or Territory, the Federal Court or the High Court.

The amendment also defines "judicial office" as meaning judicial office in Australia, to make it clear that the Commissioner or an Assistant Commissioner may not hold such a judicial office.

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**INDEPENDENT COMMISSION AGAINST CORRUPTION  
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NEW SOUTH WALES



**TABLE OF PROVISIONS**

1. Short title
  2. Commencement
  3. Amendment of Independent Commission Against Corruption Act 1988 No. 35
- SCHEDULE 1—AMENDMENTS
-

**INDEPENDENT COMMISSION AGAINST CORRUPTION  
(AMENDMENT) BILL 1988**

NEW SOUTH WALES



No. , 1988

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**A BILL FOR**

An Act to amend the Independent Commission Against Corruption Act 1988 in relation to legal and religious professional privilege, parliamentary privilege, the divulging of evidence in connection with certain criminal proceedings, eligibility for appointment as Commissioner or Assistant Commissioner and other matters.

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*Independent Commission Against Corruption (Amendment) 1988*

The Legislature of New South Wales enacts:

**Short title**

1. This Act may be cited as the Independent Commission Against Corruption (Amendment) Act 1988.

**5 Commencement**

2. This Act commences on a day or days to be appointed by proclamation.

**Amendment of Independent Commission Against Corruption Act 1988 No. 35**

3. The Independent Commission Against Corruption Act 1988 is  
10 amended as set out in Schedule 1.

**SCHEDULE 1—AMENDMENTS**

(Sec. 3)

(1) Section 37 (Privilege as regards answers, documents etc.)—

After section 37 (4), insert:

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(5) Where—

(a) a legal practitioner or other person is required to answer a question or produce a document or other thing at a hearing before the Commission; and

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(b) the answer to the question would disclose, or the document or other thing contains, a privileged communication passing between a legal practitioner (in his or her capacity as a legal practitioner) and a person for the purpose of providing or receiving legal professional services in relation to the appearance, or reasonably anticipated appearance, of a person at a hearing before the Commission,

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the legal practitioner or other person is entitled to refuse to comply with the requirement, unless the privilege is waived by a person having authority to do so.

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(6) A member of the clergy of any church or religious denomination, if required to answer a question or produce a document or other thing at a hearing before the Commission, is entitled to refuse to divulge any confession made to the member of the clergy in his or her professional capacity, unless—

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(a) the person who made the confession agrees to the requirement being complied with; or

(b) the communication involved in the confession was made for a criminal purpose.

*Independent Commission Against Corruption (Amendment) 1988*

SCHEDULE 1—AMENDMENTS—*continued*

(2) Section 98 (**Contempt**)—

(a) Omit section 98 (e).

(b) Reletter paragraphs (f)–(j) of section 98 as paragraphs (e)–(i).

(3) Section 111 (**Secrecy**)—

5 Omit section 111 (3), insert instead:

(3) A person to whom this section applies shall not be required—

10 (a) to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act; or

(b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's functions under this Act,

15 except for the purposes of a prosecution instituted as a result of an investigation conducted by the Commission in the exercise of its functions.

(4) Section 122—

After section 121, insert:

20 **Parliament**

122. Nothing in this Act shall be taken to affect the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.

25 (5) Schedule 1 (**Provisions Relating to Commissioner and Assistant Commissioners**)—

(a) Clause 1 (**Eligibility for appointment**)—

Omit clause 1 (1), insert instead:

30 (1) A person is not eligible to be appointed as Commissioner or Assistant Commissioner or to act in either of those offices unless the person is—

(a) qualified to be appointed as a Judge of the Supreme Court of the State or of any other State or Territory, a Judge of the Federal Court of Australia or a Justice of the High Court of Australia; or

35 (b) a former judge of any court of the State or elsewhere in Australia or a former Justice of the High Court.

*Independent Commission Against Corruption (Amendment) 1988*

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SCHEDULE 1—AMENDMENTS—*continued*

(b) Clause 9—

After clause 8, insert:

**Judicial office**

5       9. In this Schedule, “judicial office” means a judicial office of the State or elsewhere in Australia.