

**INDEPENDENT COMMISSION AGAINST CORRUPTION
(AMENDMENT) ACT 1988 No. 42**

NEW SOUTH WALES



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**INDEPENDENT COMMISSION AGAINST CORRUPTION
(AMENDMENT) ACT 1988 No. 42**

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Act No. 42, 1988

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. [Assented to 9 August 1988]

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.

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 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:

(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
- (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,

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.

(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—

- (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**)—

Omit section 111 (3), insert instead:

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

(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,

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:

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.

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

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

Omit clause 1 (1), insert instead:

(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

(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

SCHEDULE 1—AMENDMENTS—*continued*

(b) Clause 9—

After clause 8, insert:

Judicial office

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