

**INDEPENDENT COMMISSION AGAINST CORRUPTION
(AMENDMENT) ACT 1990 No. 80**

NEW SOUTH WALES



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**INDEPENDENT COMMISSION AGAINST CORRUPTION
(AMENDMENT) ACT 1990 No 80**

NEW SOUTH WALES



Act No 80, 1990

An Act to amend the Independent Commission Against Corruption Act 1988 to make further provision in relation to the powers of the Independent Commission Against Corruption concerning investigations, hearings and reports; and for other purposes. [Assented to 4 December 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Independent Commission Against Corruption (Amendment) Act 1990.

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.

Explanatory notes

4. Matter appearing under the headings "Explanatory note" in Schedule 1 does not form part of this Acto

SCHEDULE 1 - AMENDMENTS

(Sec. 3)

Amendment - facilitation of complaints by prisoners

(1) Section 10 (**Complaints about possible corrupt conduct**):

After section 10 (3), insert

(4) If a prisoner informs the governor of the prison that the prisoner wishes to make a complaint under this section, the governor of the prison must:

- (a) take all steps necessary to facilitate the making of the complaint; and
- (b) send immediately to the Commission, unopened, any written matter addressed to the Commission.

(5) For the purposes of subsection (4), "**prisoner**" and "**governor of a prison**" have the same meanings as in the Prisons Act 1952.

SCHEDULE 1 - AMENDMENTS - *continued*

Explanatory note

Item (1) requires the governor of a prison to take all necessary steps to facilitate the making of a complaint to the Commission by a prisoner about corrupt conduct and to send to the Commission unopened any written material addressed to the Commission by a prisoner. A similar provision applies under the Ombudsman Act 1974 (section 12 (3)) in relation to complaints to the Ombudsman by prisoners.

Amendment * requirement for secrecy extended to task forces

(2) Section 16 (**Co-operation with other agencies**):

In section 16 (3), after "bodies", insert "(including any task force and any member of a task force)".

Explanatory note

Item (2) makes it clear that the members of a task force who are provided with information by the Commission on the understanding that it is confidential are subject to the same secrecy provisions (section 111 of the Act) as apply to officers of the Commission and certain other persons (including law enforcement agencies) to whom confidential information is disseminated.

Amendment * effect of pending court proceedings on Commission's powers

(3) Section 18 (**Court proceedings**):

Omit section 18 (2), insert instead

(2) If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commission must, to the extent to which the Commission thinks it necessary to do so to ensure that the accused's right to a fair trial is not prejudiced:

- (a) ensure that, as far as practicable, any hearing or other matters relating to the investigation are conducted in private during the currency of the proceedings; and
- (b) give directions under section 112, having effect during the currency of the proceedings; and
- (c) defer making a report to Parliament in relation to the investigation during the currency of the proceedings.

SCHEDULE 1 - AMENDMENTS - *continued*

- (2A) Subsection (2) does not apply
- (a) (in the case of committal proceedings) before the commencement of the committal hearing, that is, the commencement of the taking of the evidence for the prosecution in the committal proceedings; and
- (b) (in any other case) after the proceedings cease to be proceedings for the trial of a person before a jury.

Explanatory note

Item (3) changes the Commission's responsibilities in relation to the exercise of its investigation and reporting functions when pending legal proceedings may be affected.

Currently the Commission is required to conduct its hearings in private, give appropriate directions as to the publication of evidence and defer its report to Parliament during the currency of any proceedings.

As proposed to be amended, the restriction will apply

- only in relation to proceedings for indictable criminal offences conducted by or on behalf of the Crown; and
- only after any committal hearing commences and while the proceedings are before or will come before a jury, and
- only to the extent that in the Commission's opinion the accused's right to a fair trial would be prejudiced.

Amendments - persons to whom documents etc to be produced

- (4) Sections 21 (**Power to obtain information**), 22 (**Power to obtain documents etc**):

Omit "(being the Commissioner or an Assistant Commissioner)" wherever occurring, insert instead "(being the Commissioner, an Assistant Commissioner or any other officer of the Commission)!"

Explanatory note

Item (4) amends provisions under which a person can be required to produce documents etc. to the Commission. Currently, the documents etc. must be produced to the Commissioner or an Assistant Commissioner. The amendment will allow any other officer of the Commission to be specified as the person to whom they must be produced as an alternative to the Commissioner or an Assistant Commissioner.

SCHEDULE 1 - AMENDMENTS - *continued*

Amendment - extra-territorial service of summons

(5) Section 35 (**Power to summon witnesses and take evidence**):

After section 35 (5), insert:

(6) A Judge or Magistrate may, on the application of the Commissioner, issue any summons that the Commissioner is authorised to issue under this section.

(7) The purpose of subsection (6) is to enable the summons to be given the character of a summons issued by a judicial officer, for the purposes of the Service and Execution of Process Act 1901 of the Commonwealth and any other relevant law.

Explanatory note

Item (5) is intended to enable a summons that the Commissioner is authorised to issue to a person to give evidence or produce documents etc. to be issued outside the State by providing for its issue by a Judge or Magistrate. There is provision in the Service and Execution of Process Act 1901 of the Commonwealth for the issue of a summons outside the State if it has been issued by (inter alia) a Judge or Magistrate in relation to a civil or criminal trial or proceeding.

Amendments - investigations, findings, opinions and recommendations by the Commission

(6) Section 8 (**General nature of corrupt conduct**):

From section 8 (2), omit "which involves", insert instead "which could involve".

(7) Section 13 (**Principal functions**):

(a) Omit section 13 (1) (a) and (b), insert instead:

(a) to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that:

(i) corrupt conduct; or

(ii) conduct liable to allow, encourage or cause the occurrence of corrupt conduct; or

SCHEDULE 1 - AMENDMENTS - *continued*

- (iii) conduct connected with corrupt conduct, may have occurred, may be occurring or may be about to occur;
 - (b) to investigate any matter referred to the Commission by both Houses of Parliament;
- (b) After section 13 (1) (j), insert:
 - (k) to develop, arrange, supervise, participate in or conduct such educational or advisory programs as may be described in a reference made to the Commission by both Houses of Parliament.
- (c) Omit section 13 (2), insert instead:
 - (2) The Commission is to conduct its investigations with a view to determining:
 - (a) whether any corrupt conduct, or any other conduct referred to in subsection (1) (a), has occurred, is occurring or is about to occur; and
 - (b) whether any laws governing any public authority or public official need to be changed for the purpose of reducing the likelihood of the occurrence of corrupt conduct; and
 - (c) whether any methods of work, practices or procedures of any public authority or public official did or could allow, encourage or cause the occurrence of corrupt conduct.
 - (3) The principal functions of the Commission also include:
 - (a) the power to make findings and form opinions, or the basis of the results of its investigations, in respect of any conduct, circumstances or events with which its investigations are concerned, whether or not the findings or opinions relate to corrupt conduct; and
 - (b) the power to formulate recommendations for the taking of action that the Commission considers should be taken in relation to its findings or opinions or the results of its investigations.

SCHEDULE 1 - AMENDMENTS - *continued*

(4) The Commission is not to make a finding, form an opinion or formulate a recommendation which section 74B (Report not to include findings etc. of guilt or recommending prosecution) prevents the Commission from including in a report, but this section is the only restriction imposed by this Act on the Commission's powers under subsection (3).

(5) The following are examples of the findings and opinions permissible under subsection (3) but do not limit the Commission's power to make findings and form opinions:

- (a) findings that particular persons have engaged, are engaged or are about to engage in corrupt conduct;
- (b) opinions as to whether consideration should or should not be given to the prosecution or the taking of other action against particular persons;
- (c) findings of fact.

(8) Section 73 (**References by Parliament**):

- (a) From section 73 (1), omit "of the kind mentioned in section 13 (2)", insert instead "as referred to in section 13".
- (b) From section 73 (2), omit "referred to in section 13 (2) (a)", insert instead "so referred to it for investigation".
- (c) From section 73 (3), omit "section 13 (2) (b)", insert instead "section 13 (1) (k)".

Explanatory note

Item (6) changes the definition of "corrupt conduct" to make it clear that a finding by the Commission of corrupt conduct does not carry with it the implication of a finding that a person is guilty of an offence.

Item (7) clarifies the principal investigative functions of the Commission and clearly empowers the Commission to make findings, form opinions and formulate recommendations consequent on or incidental to its investigations, other than findings and opinions prevented by proposed section 74B (item (10)).

Item (8) makes consequential amendments.

SCHEDULE 1 - AMENDMENTS - *continued*

Amendments - reports to Parliament

(9) Section 74 (Reports on referred matters etc):

Omit section 74 (5), (6) and (9).

(10) Sections 74A, 74B:

After section 74, insert:

Content of reports to Parliament

74A. (1) The Commission is authorised to include in a report under section 74:

- (a) statements as to any of its findings, opinions and recommendations; and
- (b) statements as to the Commission's reasons for any of its findings, opinions and recommendations.

(2) The report must include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commission is of the opinion that consideration should be given to the following:

- (a) the prosecution of the person for a specified criminal offence;
- (b) the taking of action against the person for a specified disciplinary offence;
- (c) the taking of action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official,

(3) An "affected" person is a person described as such in the reference made by both Houses of Parliament or against whom, in the Commission's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.

(4) Subsection (2) does not limit the kinds of statement that a report can contain concerning any such "affected" person and does not prevent a report from containing a

SCHEDULE 1 - AMENDMENTS - *continued*

statement described in that subsection in respect of any other person.

Report not to include findings etc. of guilt or recommending prosecution

74B. (1) The Commission is not authorised to include in a report under section 74 a statement as to:

- (a) a finding or opinion that a specified person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence); or
- (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence (whether or not a specified criminal offence or disciplinary offence).

(2) A finding or opinion that a person has engaged, is engaging or is about to engage:

- (a) in corrupt conduct (whether or not specified corrupt conduct); or
- (b) in specified conduct (being conduct that constitutes or involves or could constitute or involve corrupt conduct),

is not a finding or opinion that the person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.

(3) In this section and section 74A, "**criminal offence**" and "**disciplinary offence**" have the same meanings as in section 9.

Explanatory note

Items (9) and (10) alter provisions that deal with the contents of reports to Parliament by the Commission. Currently the report must include a statement as to whether there is or was any or sufficient evidence to warrant consideration of the prosecution of a person who was substantially and directly interested in the investigation.

SCHEDULE 1 - AMENDMENTS - *continued*

Under the proposed amendments, the Commission will be authorised to include any of its findings, opinions and recommendations in its report to Parliament. The Commission will be able to report a finding or opinion that a person has engaged in corrupt conduct but such a finding does not amount to a finding that the person is guilty of a criminal offence. The Commission will not be able to:

- report a finding or opinion that a person is guilty of or has committed an offence; or
- make a recommendation that a person be prosecuted for an offence.

(11) Section 117A:

After section 117, insert:

Savings, transitional and other provisions

117A. Schedule 4 has effect.

(12) Schedule 4:

After Schedule 3, insert:

**SCHEDULE 4 - SAVINGS, TRANSITIONAL
AND OTHER PROVISIONS**

(Sec. 117A)

*Independent Commission Against Corruption
(Amendment) Act 1990*

Definition of "amending Act"

1. In this Schedule:

"**amending Act**" means the Independent Commission Against Corruption (Amendment) Act 1990.

Secrecy - task force and members

2. Section 16 applies as amended by the amending Act to information disseminated before or after the commencement of the amendment to a task force or member of a task force.

Effect of pending proceedings on Commission's powers

3. Section 18 applies as amended by the amending Act to and in respect of proceedings whether the proceedings

SCHEDULE 1 - AMENDMENTS - *continued*

were commenced before or after the commencement of the amendment.

Commission's powers to make and report findings etc.

4. (1) In this clause:

"**the relevant amendments**" means the amendments made to this Act by Schedule 1 (6)–(10) to the amending Act.

(2) Anything done or purporting to have been done by the Commission before the commencement of the relevant amendments which would have been validly done if those amendments had then been in force is to be considered to have been, and always to have been, validly done.

(3) This Act applies as amended by the relevant amendments to and in respect of a report under section 74:

- (a) even if the report relates to a reference made or an investigation or hearing commenced or completed before the commencement of those amendments; and
- (b) even if the report was prepared before, or its preparation was begun before, the commencement of those amendments.

Explanatory note

Items (11) and (12) insert savings and transitional provisions into the Principal Act consequent on the enactment of this Act. Proposed clause 4 of those provisions backdates the amendments to the Commission's powers to make and report findings etc.

*[Minister's second reading speech made in -
Legislative Assembly on 21 November 1990
Legislative Council on 29 November 1990 a.m.]*