



New South Wales

Independent Commission Against Corruption Amendment Act 2005 No 10

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Independent Commission Against Corruption Act 1988 No 35	2
4 Amendment of other Acts and regulation	2
Schedule 1 Amendment of Independent Commission Against Corruption Act 1988	3
Schedule 2 Amendment of other Acts and regulation	24



New South Wales

Independent Commission Against Corruption Amendment Act 2005 No 10

Act No 10, 2005

An Act to amend the *Independent Commission Against Corruption Act 1988* to make further provision with respect to the functions of the Commission; to amend the *Police Integrity Commission Act 1996* to extend the provisions of that Act relating to police officers to other members of NSW Police; and for other purposes. [Assented to 14 April 2005]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Independent Commission Against Corruption Amendment Act 2005*.

2 Commencement

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

3 Amendment of Independent Commission Against Corruption Act 1988 No 35

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

4 Amendment of other Acts and regulation

The Acts and regulation set out in Schedule 2 are amended as set out in that Schedule.

Schedule 1 Amendment of Independent Commission Against Corruption Act 1988

(Section 3)

[1] Section 2A

Insert after section 2:

2A Principal objects of Act

The principal objects of this Act are:

- (a) to promote the integrity and accountability of public administration by constituting an Independent Commission Against Corruption as an independent and accountable body:
 - (i) to investigate, expose and prevent corruption involving or affecting public authorities and public officials, and
 - (ii) to educate public authorities, public officials and members of the public about corruption and its detrimental effects on public administration and on the community, and
- (b) to confer on the Commission special powers to inquire into allegations of corruption.

[2] Section 3 Definitions

Insert in alphabetical order in section 3 (1):

compulsory examination means a compulsory examination under this Act.

Inspector means the Inspector of the Independent Commission Against Corruption, appointed under this Act.

officer of the Inspector means the Inspector or a member of staff of the Inspector.

public inquiry means a public inquiry under this Act.

[3] Section 3 (1), definition of “hearing”

Omit the definition.

[4] Section 3 (3)

Insert after section 3 (2):

- (3) Notes included in this Act do not form part of this Act.

[5] Section 4 Commission

Omit “hearing” wherever occurring from section 4 (4).

Insert instead “compulsory examination or public inquiry”.

[6] Section 9 Limitation on nature of corrupt conduct

Omit “could also constitute” from section 9 (5). Insert instead “constitutes”.

[7] Section 12A

Insert after section 12:

12A Serious and systemic corrupt conduct

In exercising its functions, the Commission is, as far as practicable, to direct its attention to serious and systemic corrupt conduct and is to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.

[8] Section 13 Principal functions

Insert after section 13 (2):

(2A) Subsection (2) (a) does not require the Commission to make a finding, on the basis of any investigation, that corrupt conduct, or other conduct, has occurred, is occurring or is about to occur.

[9] Section 13 (3A)

Insert after section 13 (3):

(3A) The Commission may make a finding that a person has engaged or is engaging in corrupt conduct of a kind described in paragraph (a), (b), (c) or (d) of section 9 (1) only if satisfied that a person has engaged in or is engaging in conduct that constitutes or involves an offence or thing of the kind described in that paragraph.

[10] Section 13 (4)

Omit “this section is the only restriction”.

Insert instead “section 9 (5) and this section are the only restrictions”.

[11] Section 13 (5) (b)

Omit the paragraph. Insert instead:

- (b) opinions as to:
 - (i) whether the advice of the Director of Public Prosecutions should be sought in relation to the commencement of proceedings against particular persons for criminal offences against laws of the State, or
 - (ii) whether consideration should or should not be given to the taking of other action against particular persons,

[12] Section 16 Co-operation with other agencies

Insert “, the Ombudsman” after “Auditor-General” in section 16 (2).

[13] Section 17 Evidence and procedure

Omit “hearings” and “hearing” from section 17 (2) and (3), respectively.

Insert instead “compulsory examinations and public inquiries” and “compulsory examination or public inquiry”, respectively.

[14] Section 18 Court proceedings

Omit “any hearing or other matters relating to the investigation are” from section 18 (2) (a).

Insert instead “the investigation is”.

[15] Section 20 Investigations generally

Insert after section 20 (4):

- (5) If the Commission decides to discontinue or not to commence an investigation of a complaint or report made to it, the Commission must inform the complainant or officer who made the report in writing of its decision and the reasons for it.

[16] Section 29 Powers exercisable whether or not compulsory examination or public inquiry being held

Omit “hearing”. Insert instead “compulsory examination or public inquiry”.

[17] Part 4, Division 3, heading

Omit the heading. Insert instead:

Division 3 Compulsory examinations and public inquiries

[18] Sections 30–31A

Omit sections 30 and 31. Insert instead:

30 Compulsory examinations

- (1) For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a compulsory examination.
- (2) A compulsory examination is to be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner.
- (3) A person required to attend a compulsory examination is entitled to be informed, before or at the commencement of the compulsory examination, of the nature of the allegation or complaint being investigated.
- (4) A failure to comply with subsection (3) does not invalidate or otherwise affect the compulsory examination.
- (5) A compulsory examination is to be conducted in private.
Note. Section 17 (2) requires the Commission to conduct compulsory examinations with as little emphasis on an adversarial approach as possible.
- (6) The Commission may (but is not required to) advise a person required to attend a compulsory examination of any findings it has made or opinions it has formed as a result of the compulsory examination.

31 Public inquiries

- (1) For the purposes of an investigation, the Commission may, if it is satisfied that it is in the public interest to do so, conduct a public inquiry.
- (2) Without limiting the factors that it may take into account in determining whether or not it is in the public interest to conduct a public inquiry, the Commission is to consider the following:
 - (a) the benefit of exposing to the public, and making it aware, of corrupt conduct,

- (b) the seriousness of the allegation or complaint being investigated,
 - (c) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry),
 - (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.
- (3) An Assistant Commissioner may determine to conduct a public inquiry only with the concurrence of the Commissioner. However, concurrence is not required if the Commissioner would or might have a conflict of interest in relation to the inquiry.
- Note.** Powers of the Commission under this Division may be delegated to an Assistant Commissioner under section 107 (5) (e).
- (4) A public inquiry is to be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner.
- (5) At a public inquiry, the person presiding must announce the general scope and purpose of the inquiry.
- (6) A person required to attend a public inquiry is entitled to be informed of the general scope and purpose of the public inquiry and the nature of the allegation or complaint being investigated before or at the time the person is required to appear at the inquiry.
- (7) A failure to comply with subsection (6) does not invalidate or otherwise affect the public inquiry.
- (8) A public inquiry is to be held in public.
- (9) Despite subsection (8), the Commission may decide to hold part of the inquiry in private if it considers this to be in the public interest.
- (10) Without limiting subsection (9), the Commission may decide to hear closing submissions in private. This extends to a closing submission by a person appearing before the Commission or a legal practitioner representing such a person, as well as to a closing submission by a legal practitioner assisting the Commission as counsel.

Note. Section 17 (2) requires the Commission to conduct public inquiries with as little emphasis on an adversarial approach as possible.

31A Directions as to presence of persons at compulsory examinations and public inquiries

The Commissioner may give directions as to the persons who may be present at a compulsory examination or any part of a public inquiry that is held in private. A person must not be present in contravention of any such direction.

Note. It is an offence to contravene a direction under section 31A—see section 85.

[19] Section 32 Right of appearance of affected person

Omit “hearing” wherever occurring. Insert instead “public inquiry”.

[20] Sections 33–35, 36A and 37–39

Omit “hearing” wherever occurring.

Insert instead “compulsory examination or public inquiry”.

[21] Part 4, Division 4A

Insert after section 48:

Division 4A Disposal of property

48A Application to property

This Division applies to property:

- (a) that is lawfully in the custody of the Commission in connection with an investigation, and
- (b) is not required for the purposes of an investigation or a criminal prosecution or disciplinary or other proceeding.

48B Disposal of property on application to court

- (1) The Commission may apply to a court for an order under this Division in relation to property to which this Division applies if it appears to the Commission that no person is lawfully entitled to the property.
- (2) A court to which such an application is made may order that the property be dealt with as the court thinks fit.
- (3) Without limiting subsection (2), in determining an application a court may:
 - (a) order that the property be forfeited to the Crown, and
 - (b) make any necessary incidental or ancillary orders.

- (4) Property ordered to be forfeited to the Crown:
 - (a) if money, is to be paid to the Treasurer for payment into the Consolidated Fund, or
 - (b) in any other case, may be sold by or on behalf of the Commissioner at public auction and the proceeds of sale paid to the Treasurer for payment into the Consolidated Fund.
- (5) If the property is not money or is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commissioner.

48C Application to Treasurer for recovery of money or proceeds of sale

A person who is lawfully entitled to any property that has been dealt with in accordance with this Division may recover from the Treasurer the money or proceeds of sale held by the Treasurer. This Act authorises the Treasurer to pay the amount out of the Consolidated Fund (which is appropriated to the necessary extent).

48D Courts having jurisdiction under this Division

The court to which an application under this Division may be made is:

- (a) a Local Court for the district in which the property is held, if the estimated value of the property (or the amount of the money) does not exceed \$40,000, or
- (b) the District Court, if the estimated value of the property (or the amount of the money) exceeds \$40,000 but does not exceed \$250,000, or
- (c) the Supreme Court, if the estimated value of the property (or the amount of the money) exceeds \$250,000.

[22] Section 49 Indemnities and undertakings

Omit “hearing before” from section 49 (4).

Insert instead “compulsory examination or public inquiry conducted by”.

[23] Part 5A

Insert after Part 5:

Part 5A Inspector of the Independent Commission Against Corruption

57A Inspector of the Independent Commission Against Corruption

(1) Appointment

The Governor may appoint an Inspector of the Independent Commission Against Corruption.

(2) Schedule of provisions relating to Inspector

Schedule 1A has effect.

57B Principal functions of Inspector

(1) The principal functions of the Inspector are:

- (a)** to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and
- (b)** to deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or officers of the Commission, and
- (c)** to deal with (by reports and recommendations) conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by the Commission or officers of the Commission, and
- (d)** to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.

(2) The functions of the Inspector may be exercised on the Inspector's own initiative, at the request of the Minister, in response to a complaint made to the Inspector or in response to a reference by the Joint Committee or any public authority or public official.

(3) The Inspector is not subject to the Commission in any respect.

(4) For the purposes of this section, conduct is of a kind that amounts to maladministration if it involves action or inaction of a serious nature that is:

- (a)** contrary to law, or

- (b) unreasonable, unjust, oppressive or improperly discriminatory, or
- (c) based wholly or partly on improper motives.

57C Powers of Inspector

The Inspector:

- (a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and
- (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and
- (c) may require officers of the Commission to supply information or produce documents or other things about any matter, or any class or kind of matters, relating to the Commission's operations or any conduct of officers of the Commission, and
- (d) may require officers of the Commission to attend before the Inspector to answer questions or produce documents or other things relating to the Commission's operations or any conduct of officers of the Commission, and
- (e) may investigate and assess complaints about the Commission or officers of the Commission, and
- (f) may refer matters relating to the Commission or officers of the Commission to other public authorities or public officials for consideration or action, and
- (g) may recommend disciplinary action or criminal prosecution against officers of the Commission.

57D Inquiries

- (1) For the purposes of the Inspector's functions, the Inspector may make or hold inquiries.
- (2) For the purposes of any inquiry under this section, the Inspector has the powers, authorities, protections and immunities conferred on a commissioner by Division 1 of Part 2 of the *Royal Commissions Act 1923* and that Act (section 13 excepted) applies to any witness summoned by or appearing before the Inspector in the same way as it applies to a witness summoned by or appearing before a commissioner.

- (3) A witness summoned by or appearing before the Inspector is to be paid such amount as the Inspector determines, but not exceeding the amount that would be payable to such a witness if he or she were a Crown witness subpoenaed by the Crown to give evidence.

57E Staff of Inspector

- (1) Such staff as may be necessary to assist the Inspector may be employed under Chapter 2 of the *Public Sector Employment and Management Act 2002*.
- (2) The Inspector may also employ staff. Chapter 2 of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of any such staff.
- (3) The Inspector may engage persons as consultants to the Inspector or to perform services for the Inspector.
- (4) The Inspector may arrange for the use of the services of:
 - (a) any staff or facilities of the Commission, a government department or a local or public authority, or
 - (b) any staff who are employed by or for or assigned to the person who is Inspector, in his or her capacity as the holder of some other position (for example, as a Judge).
- (5) Such provisions of this Act as are prescribed by the regulations apply to persons referred to in subsections (1)–(4) in the same way as they apply to staff of the Commission, with any necessary adaptations and with such modifications as are prescribed.

57F Incidental powers

The Inspector has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Inspector's functions. Any specific powers conferred on the Inspector by this Act are not taken to limit by implication the generality of this section.

[24] Section 64 Functions

Omit section 64 (1) (a). Insert instead:

- (a) to monitor and to review the exercise by the Commission and the Inspector of the Commission's and Inspector's functions,

[25] Section 64 (1) (b)

Insert "or the Inspector" after "Commission".

[26] Section 64 (1) (c) and (d)

Insert “and of the Inspector” and “and the Inspector”, respectively, after “Commission” wherever occurring.

[27] Section 64A Power to veto proposed appointment of Commissioner or Inspector

Insert “or Inspector” after “Commissioner” in section 64A (1).

[28] Part 8, Division 1, heading

Insert after the heading to Part 8:

**Division 1 References to Commission by, and reports
by Commission to, Parliament**

[29] Section 74 Reports on referred matters etc

Omit “public hearing” from section 74 (3). Insert instead “public inquiry”.

[30] Section 74A Contents of reports to Parliament

Omit “the prosecution” from section 74A (2) (a).

Insert instead “obtaining the advice of the Director of Public Prosecutions with respect to the prosecution”.

[31] Section 74C Reports relating to local government authorities

Insert after section 74C (2):

- (2A) The Commission is authorised to include in a report under section 74 a recommendation that consideration be given to the suspension of a councillor from civic office under Division 3 (Misbehaviour) of Part 1 of Chapter 14 of the *Local Government Act 1993*.

[32] Section 76 Annual reports of Commission

Insert after section 76 (2) (b):

- (ba) the following details with respect to matters investigated by the Commission:
- (i) the time interval between the lodging of each complaint and the Commission deciding to investigate the complaint,
 - (ii) the number of complaints commenced to be investigated but not finally dealt with during the year,

- (iii) the average time taken to deal with complaints and the actual time taken to investigate any matter in respect of which a report is made,
- (iv) the total number of compulsory examinations and public inquiries conducted during the year,
- (v) the number of days spent during the year in conducting public inquiries,
- (vi) the time interval between the completion of each public inquiry conducted during the year and the furnishing of a report on the matter,

[33] Part 8, Division 2

Insert after section 77:

Division 2 Reports by Inspector

77A Special reports

The Inspector may, at any time, make a special report to the Presiding Officer of each House of Parliament on:

- (a) any matters affecting the Commission, including, for example, its operational effectiveness or needs, and
- (b) any administrative or general policy matter relating to the functions of the Inspector.

77B Annual reports of Inspector

The Inspector is required to prepare, within the period of 4 months after each 30 June, a report of the Inspector's operations during the year ended on that 30 June and furnish the report to the Presiding Officer of each House of Parliament.

[34] Part 8, Division 3, heading

Insert before section 78:

Division 3 General

[35] Section 78 Provisions relating to reports

Insert after section 78 (1):

- (1A) The Inspector may include in a report a recommendation that the report be made public forthwith.

[36] Section 78 (3)

Insert “or the Inspector” after “Commission”.

[37] Section 80 Obstruction of Commission, Inspector and others

Omit section 80 (a). Insert instead:

- (a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten:
 - (i) the Commission or an officer of the Commission in the exercise of functions under this Act, or
 - (ii) the Inspector or an officer of the Inspector in the exercise of functions under this Act, or
 - (iii) a legal practitioner appointed by the Commission to assist the Commission as counsel in the exercise of functions as such counsel, or
 - (iv) a legal practitioner or other person authorised to appear before the Commission in relation to that appearance, or

[38] Section 80 (b) and (c)

Insert “, or the Inspector or an officer of the Inspector,” after “officer of the Commission” wherever occurring.

[39] Section 80 (d)

Omit “hearing”. Insert instead “compulsory examination or public inquiry”.

[40] Section 85 Compulsory examinations and public inquiries

Omit “hearing in contravention of section 31”.

Insert instead “compulsory examination or public inquiry in contravention of section 31A”.

[41] Section 86 Failure to attend etc

Omit “hearing” wherever occurring.

Insert instead “compulsory examination or public inquiry”.

[42] Section 87

Omit the section. Insert instead:

87 False and misleading evidence

- (1) A person who, at a compulsory examination or public inquiry conducted by the Commission, gives evidence that is false or misleading in a material particular knowing it to be false or misleading, or not believing it to be true, is guilty of an indictable offence.

Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.

- (2) Sections 331 and 332 of the *Crimes Act 1900* apply to proceedings for an offence against this section in the same way as they apply to proceedings for an offence under section 330 of that Act.

[43] Section 89 Procuring false testimony by witness

Omit “hearing” from section 89 (a).

Insert instead “compulsory examination or public inquiry”.

[44] Section 93 Injury to witness or person assisting Commission

Insert “, or threatens to use, cause, inflict or procure,” after “procures” in section 93 (1).

[45] Section 98 Contempt in the face or hearing of the Commission

Omit “Commission, or” from section 98 (d) (iv). Insert instead:

Commission,
in proceedings before the Commission, or

[46] Section 98 (f)

Omit the paragraph. Insert instead:

- (f) interrupts or obstructs any proceedings before the Commission,

[47] Section 98 (g), (h) and (i)

Omit the paragraphs.

[48] Section 99 Punishment of contempt

Omit section 99 (2). Insert instead:

- (2) The Commissioner may present to the Supreme Court a certificate (in this Part called a *contempt of the Commission certificate*) in which the Commissioner sets out the facts that constitute the alleged contempt.

[49] Section 99 (3)

Omit “certifies the contempt of a person”.

Insert instead “presents a contempt of the Commission certificate”.

[50] Section 100 General provisions regarding contempt

Insert after section 100 (1):

- (1A) The summons is to set out the details of the alleged contempt.

[51] Section 100 (3)

Omit “If a contempt of the Commission is committed in the face or hearing of the Commission, no summons need be issued against the offender”.

Insert instead “No summons need be issued against an offender committing a contempt in the face or hearing of the Commission”.

[52] Section 100 (3)

Insert “, after being advised of the details of the alleged contempt,” after “offender may”.

[53] Section 100 (6)

Omit the subsection. Insert instead:

- (6) The warrant is to be accompanied by the contempt of the Commission certificate in which the Commissioner sets out the facts that constitute the alleged contempt.

[54] Section 101B Commission investigator who is seconded police officer to have all powers of NSW police officer

Insert “, but may be made to the Inspector” after “1990” in section 101B (5).

[55] Section 107 Delegation

Insert after section 107 (4) (d):

- (e) the power of the Commissioner to certify as referred to in section 111 (4) (c).

[56] Section 107 (5) (e)

Omit “hearing”. Insert instead “compulsory examination or public inquiry”.

[57] Section 109 Protection from liability

Omit “or any person acting under the direction of the Commission or Commissioner” from section 109 (1).

Insert instead “, the Inspector or any person acting under the direction of the Commission, the Commissioner or the Inspector”.

[58] Section 109 (1)

Insert “, the Inspector” after “subject the Commissioner”.

[59] Section 111 Secrecy

Insert at the end of section 111 (1) (d):

, and

(e) a person who is or was an officer of the Inspector.

[60] Section 111 (4) (c)

Insert “or Inspector” after “Commissioner” wherever occurring.

[61] Sections 111C and 111D

Insert after section 111B:

111C Relationship with Ombudsman regarding conduct of Commission and Inspector

Conduct of the Commissioner or an officer of the Commission cannot be made the subject of a complaint, inquiry, investigation or other action under the *Ombudsman Act 1974*, except in relation to matters referred to the Ombudsman by the Inspector.

111D Complaints by public officials

(1) A public official within the meaning of the *Protected Disclosures Act 1994* may complain to the Inspector (orally or in writing) about the conduct of the Commission, an officer of the Commission or an officer of the Inspector.

(2) In this section:

conduct includes conduct by way of action or inaction or alleged action or inaction.

[62] Section 112 Restriction on publication of evidence

Omit “hearing” from section 112 (1) (d).

Insert instead “compulsory examination or public inquiry”.

[63] Section 116 Proceedings for offences

Insert after section 116 (4):

- (5) Proceedings for an alleged offence under section 112 may be commenced within 2 years after the commission of the alleged offence.

[64] Schedule 1A

Insert after Schedule 1:

Schedule 1A Provisions relating to Inspector

(Section 57A (2))

1 Eligibility for appointment

A person is not eligible to be appointed as Inspector or to act in that office if the person is a member of the Legislative Council or of the Legislative Assembly or is a member of a House of Parliament or legislature of another State or Territory or of the Commonwealth.

2 Acting Inspector

- (1) The Governor may, from time to time, appoint a person to act in the office of Inspector during the illness or absence of the Inspector. The person, while so acting, has all the functions of the Inspector and is taken to be the Inspector.
- (2) The Governor may, at any time, remove a person from the office to which the person was appointed under this clause.
- (3) A person while acting under this clause is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Governor may from time to time determine.
- (4) For the purposes of this clause, a vacancy in the office of Inspector is taken to be an absence from office of Inspector.

3 Basis of office

- (1) The office of Inspector may be a full-time or part-time office, according to the terms of appointment.

- (2) The holder of a full-time office referred to in subclause (1) is required to hold it on that basis, except to the extent permitted by the Governor.

4 Terms of office

- (1) Subject to this Schedule, the Inspector holds office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.
- (2) A person may not hold the office of Inspector for terms totalling more than 5 years.

5 Remuneration

- (1) The Inspector is entitled to be paid such remuneration (including travelling and subsistence allowances) as may be specified in the instrument of appointment or as may be afterwards determined by the Governor from time to time.
- (2) A determination does not operate so as to reduce the rate at which remuneration is payable during the person's current term of office.
- (3) The Inspector is not, if a Judge of a New South Wales court and while receiving remuneration as such a Judge, entitled to remuneration under this Act.

6 Provisions where Judge is holding office as Inspector

- (1) The appointment of a person who is the holder of a judicial office as Inspector or service by a person who is the holder of a judicial office as Inspector does not affect:
- (a) the person's tenure of that judicial office, or
 - (b) the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.
- (2) The person's service as Inspector is, for all purposes, taken to be service as the holder of that judicial office.
- (3) In this clause:
judicial office means an office of Judge of a court of New South Wales.

7 Vacancy in office

(1) Vacancies

The office of Inspector becomes vacant if the holder:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) holds office for longer than the relevant term mentioned in clause 4, or
- (d) resigns the office by instrument in writing addressed to the Governor, or
- (e) is nominated for election as a member of the Legislative Council or of the Legislative Assembly or as a member of a House of Parliament or a legislature of another State or Territory or of the Commonwealth, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
- (i) is removed from office under subclause (2).

(2) Removal from office

The Inspector may be removed from office by the Governor on the address of both Houses of Parliament.

8 Filling of vacancy

If the office of Inspector becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

9 Effect of certain other Acts

- (1) The *Public Sector Employment and Management Act 2002* does not apply to the appointment of the Inspector, and the holder of that office is not, as holder, subject to that Act.

- (2) If by or under any other Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,
- the provision does not operate to disqualify the person from holding that office and also the office of Inspector or from accepting and retaining any remuneration payable to the person under this Act as Inspector.

10 Veto of proposed appointment of Inspector

- (1) A person is not to be appointed as Inspector until:
- (a) a proposal that the person be so appointed has been referred to the Joint Committee under section 64A, and
 - (b) the period that the Committee has under that section to veto the proposed appointment has ended without the Committee having vetoed the proposed appointment or the Committee notifies the Minister that it has decided not to veto the proposed appointment.
- (2) A person may be proposed for appointment on more than one occasion.
- (3) In this clause, *appointment* includes re-appointment.

[65] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Independent Commission Against Corruption Amendment Act 2005

[66] Schedule 4, Part 5

Insert after clause 10:

Part 5 Provisions consequent on enactment of Independent Commission Against Corruption Amendment Act 2005

11 Definition

In this Part, *amending Act* means the *Independent Commission Against Corruption Amendment Act 2005*.

12 Pending investigations

- (1) The amendments made by the amending Act apply to and in respect of a complaint or report made to, or investigation commenced by, the Commission before the commencement of this clause.
- (2) Despite subclause (1), the amendments made by the amending Act (other than those made to Part 10 (Contempt of Commission)) do not affect or apply to or in respect of any investigation in which a public hearing has commenced before the commencement of this clause.
- (3) In particular, the amendments made by the amending Act do not affect any step taken in respect of the public hearing or in connection with a hearing.

13 Annual reports

The amendments made to section 76 by the amending Act extend to the annual report for the year ended, except as provided by the regulations.

14 References to hearings

In any statutory instrument other than this Act, a reference to a hearing held under this Act is to be read as a reference to a compulsory examination or public inquiry as the case requires.

15 Inspector

Part 5A, as inserted by the amending Act, extends to complaints made, and conduct of the Commission or officers of the Commission that occurred, before the commencement of this clause, and it does not matter that any person or persons involved are no longer public officials.

Schedule 2 Amendment of other Acts and regulation

(Section 4)

2.1 Criminal Records Regulation 2004

Clause 7 Exclusion of applicants for employment with ICAC or ICAC Inspector from consequences of conviction being spent

Insert at the end of the clause:

- (2) Section 12 of the Act does not apply in relation to an application by a person for appointment or employment as an officer of the Inspector within the meaning of the *Independent Commission Against Corruption Act 1988*.

2.2 Defamation Act 1974 No 18

[1] Section 17K

Omit the section. Insert instead:

17K Matters arising under the Independent Commission Against Corruption Act 1988

- (1) There is a defence of absolute privilege for a publication:
 - (a) to or by the Independent Commission Against Corruption, or
 - (b) to or by the Commissioner for the Commission as Commissioner, or
 - (c) to or by the Inspector of the Independent Commission Against Corruption as Inspector, or
 - (d) to any officer of the Commission or officer of the Inspector (within the meaning of the *Independent Commission Against Corruption Act 1988*) as such an officer.
- (2) This section applies in relation to any compulsory examination or public inquiry before the Independent Commission Against Corruption or inquiry before the Inspector of the Independent Commission Against Corruption or any other matter relating to the powers, authorities, duties or functions of the Commission or Inspector.
- (3) This section extends to publications made before the commencement of this section.

[2] Schedule 2 Proceedings of public concern and official and public documents and records

Omit clause 2 (18). Insert instead:

- (18) proceedings at a public inquiry held before the Independent Commission Against Corruption or at an inquiry held in public before the Inspector of the Independent Commission Against Corruption,

2.3 Freedom of Information Act 1989 No 5

Schedule 2 Exempt bodies and offices

Insert after the matter relating to the Independent Commission Against Corruption:

The office of Inspector of the Independent Commission Against Corruption—operational auditing, complaint handling, investigative and report functions.

2.4 Greyhound and Harness Racing Administration Act 2004 No 36

Section 42 Secrecy

Insert after section 42 (5) (a):

- (a1) the Inspector of the Independent Commission Against Corruption,

2.5 Health Records and Information Privacy Act 2002 No 71

[1] Section 4 Definitions

Insert after paragraph (b) of the definition of *investigative agency* in section 4 (1):

- (b1) the Inspector of the Independent Commission Against Corruption,

[2] Section 4

Insert in alphabetical order:

staff of the Inspector of the Independent Commission Against Corruption means:

- (a) any staff employed under section 57E (1) or (2) of the *Independent Commission Against Corruption Act 1988*, and
- (b) any consultants engaged under section 57E (3) of that Act.

[3] Section 17 Specific exemptions (ICAC, ICAC Inspector and Inspector's staff, Police Service, PIC, Inspector of PIC and Inspector's staff and NSW Crime Commission)

Insert “, the Inspector of the Independent Commission Against Corruption, the staff of the Inspector of the Independent Commission Against Corruption” after “Against Corruption”.

[4] Section 60 Inquiries and investigations

Insert “, the Inspector of the Independent Commission Against Corruption, the staff of the Inspector of the Independent Commission Against Corruption” after “Against Corruption” in section 60 (2).

[5] Section 63 Information about compliance arrangements

Insert “, the Inspector of the Independent Commission Against Corruption, the staff of the Inspector of the Independent Commission Against Corruption” after “Against Corruption” in section 63 (3).

2.6 Local Government Act 1993 No 30

Section 440H How is the process for suspension of a councillor for misbehaviour initiated?

Omit section 440H (1) (c). Insert instead:

- (c) a report made by the Ombudsman in which the Ombudsman states that the Ombudsman is satisfied that grounds exist that warrant the councillor's suspension, or
- (d) a report made by the Independent Commission Against Corruption in which the Commission recommends that consideration be given to suspending the councillor under this Division.

2.7 Police Act 1990 No 47

Section 167A Offence of making false complaint about conduct of police officer or giving false information

Insert after section 167A (2) (e):

- (e1) the Inspector of the Independent Commission Against Corruption,

2.8 Police Integrity Commission Act 1996 No 28

Section 4 Definitions

Insert after section 4 (3):

- (3A) **References to police officers extend to all members of NSW Police**

A reference in this Act to a police officer includes a reference to any member (whether or not a police officer) of NSW Police.

2.9 Privacy and Personal Information Protection Act 1998 No 133

[1] Section 3 Definitions

Insert after paragraph (b) of the definition of *investigative agency* in section 3 (1):

- (b1) the Inspector of the Independent Commission Against Corruption,

[2] Section 3 (1)

Insert in alphabetical order:

staff of the Inspector of the Independent Commission Against Corruption means:

- (a) any staff employed under section 57E (1) or (2) of the *Independent Commission Against Corruption Act 1988*, and
(b) any consultants engaged under section 57E (3) of that Act.

[3] Section 27 Specific exemptions (ICAC, ICAC Inspector and Inspector's staff, Police Service, PIC, Inspector of PIC and Inspector's staff and NSW Crime Commission)

Insert “, the Inspector of the Independent Commission Against Corruption, the staff of the Inspector of the Independent Commission Against Corruption” after “Against Corruption” wherever occurring.

[4] Section 38 Inquiries and investigations

Insert “, the Inspector of the Independent Commission Against Corruption, the staff of the Inspector of the Independent Commission Against Corruption” after “Against Corruption” in section 38 (2).

[5] Section 40 Personal information digest

Insert “, the Inspector of the Independent Commission Against Corruption, the staff of the Inspector of the Independent Commission Against Corruption” after “Against Corruption” in section 40 (4).

[6] Section 42 Information about compliance arrangements

Insert “, the Inspector of the Independent Commission Against Corruption, the staff of the Inspector of the Independent Commission Against Corruption” after “Against Corruption” in section 42 (3).

2.10 Protected Disclosures Act 1994 No 92

[1] Section 4 Definitions

Insert in alphabetical order:

ICAC Inspector means the Inspector of the Independent Commission Against Corruption appointed under the *Independent Commission Against Corruption Act 1988*.

officer of the ICAC Inspector means an officer of the Inspector, as defined in the *Independent Commission Against Corruption Act 1988*.

[2] Section 4

Insert at the end of the definition of *investigating authority*:

, or

(g) the ICAC Inspector.

[3] Section 12C

Insert after section 12B:

12C Disclosure concerning Commission, ICAC Inspector and officers of Commission and ICAC Inspector

- (1) To be protected by this Act, a disclosure by a public official to the ICAC Inspector must:
 - (a) be made in accordance with the *Independent Commission Against Corruption Act 1988*, and
 - (b) be a disclosure that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the Commission, an officer of the Commission or an officer of the ICAC Inspector.

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- (2) To be protected by this Act, a disclosure by a public official to an investigating authority (being the Auditor-General or the Ombudsman) concerning the Commission or an officer of the Commission must relate to a matter referred by the ICAC Inspector to the investigating authority under section 57C (f) of the *Independent Commission Against Corruption Act 1988*.
 - (3) Despite section 11, a disclosure by a public official to the Ombudsman that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the ICAC Inspector, the ICAC Inspector has engaged or proposes to engage in conduct of a kind that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act.
 - (4) The Ombudsman may investigate, and report, in accordance with the *Ombudsman Act 1974* on any matter raised by a disclosure made to it that is of a kind referred to in subsection (3).

[4] Section 13 Disclosures about investigating authorities

Omit section 13 (3) (a) and (b).

[5] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Independent Commission Against Corruption Amendment Act 2005 (but only in so far as Schedule 2 to that Act amends this Act)

2.11 Totalizator Act 1997 No 45

Section 105 Secrecy

Insert after section 105 (5) (a):

- (a1) the Inspector of the Independent Commission Against Corruption,

[Second reading speech made in—

Legislative Assembly on 23 February 2005

Legislative Council on 2 March 2005]

BY AUTHORITY