



New South Wales

Independent Commission Against Corruption Amendment Act 2011 No 36

Contents

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



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Independent Commission Against Corruption Amendment Act 2011 No 36

Act No 36, 2011

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. [Assented to 13 September 2011]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Independent Commission Against Corruption Amendment Act 2011*.

2 Commencement

This Act commences on the date of assent to this Act.

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

[1] Section 14 Other functions of Commission

Omit section 14 (1) (a). Insert instead:

- (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,

[2] Section 14 (1) (b)

Insert “, during or after the discontinuance or completion of its investigations,” after “furnish”.

[3] Section 35 Power to summon witnesses and take evidence

Insert “(the *required appearance*)” after “named in the summons” in section 35 (1).

[4] Section 35 (4)

Omit “attend” and “attendance” wherever occurring.

Insert “appear” and “appearance”, respectively.

[5] Section 35 (4A)

Insert after section 35 (4):

- (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.

[6] Section 35 (5)

Omit “so excused or released”.

Insert instead “excused or released under subsection (4) or (4A)”.

[7] Section 35 (5A)

Insert after section 35 (5):

- (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.

[8] Section 37 Privilege as regards answers, documents etc

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] Section 57B Principal functions of Inspector

Insert after section 57B (4):

- (5) Without affecting the power of the Inspector to make a report under Part 8, the Inspector may, at any time:
- (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
 - (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.

[10] Section 57F Incidental powers

Insert at the end of the section:

- (2) Section 40 of the *Surveillance Devices Act 2007* 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.

[11] Section 77A Special reports

Insert at the end of the section:

- , and
- (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.

[12] Section 104 Appointment of staff

Insert after section 104 (11):

- (11A) Without limiting subsection (11), Part 6 of Chapter 2 of the *Industrial Relations Act 1996* 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.

[13] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Independent Commission Against Corruption Amendment Act 2011

[14] Schedule 4, Part 11

Insert after Part 10:

**Part 11 Provisions consequent on enactment of
Independent Commission Against
Corruption Amendment Act 2011**

30 Definition

In this Part:

amending Act means the *Independent Commission Against Corruption Amendment Act 2011*.

31 Use etc of protected information under Surveillance Devices Act 2007 for audit of Commission operations by Inspector

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 *Surveillance Devices Act 2007* in relation to the exercise of the Inspector's functions under section 57B.

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.

[Agreement in principle speech made in Legislative Assembly on 21 June 2011
Second reading speech made in Legislative Council on 7 September 2011]

BY AUTHORITY