

1995—No. 492

**INDEPENDENT COMMISSION AGAINST CORRUPTION ACT
1988—REGULATION**

(Independent Commission Against Corruption Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and on the recommendation of the Commissioner for the Independent Commission Against Corruption, and in pursuance of the Independent Commission Against Corruption Act 1988, has been pleased to make the Regulation set forth hereunder.

BOB CARR,
Premier.

PART 1—PRELIMINARY

Citation

1. This Regulation may be cited as the Independent Commission Against Corruption Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. (1) In this Regulation:

“**approved**” means approved for the time being by the Commissioner;

“**associated person**” is defined in clause 4;

“**dependent child**” of a person means anyone who is under the age of 18 years and is a child of the person or of the person’s spouse;

“spouse” includes:

- (a) in relation to a man—any woman who is living with the man, as the man’s wife, in a bona fide domestic relationship; and
- (b) in relation to a woman—any man who is living with the woman, as the woman’s husband, in a bona fide domestic relationship;

“financial interest”, in relation to an officer of the Commission or an applicant for a position as an officer of the Commission, means:

- (a) any pecuniary interest or other matter, referred to in section 110 (a) (i)–(xi) of the Act, that relates to the officer or applicant; or
- (b) any such interest or other matter that relates to a person who is associated with the officer or applicant;

“the Act” means the Independent Commission Against Corruption Act 1988.

(2) The pecuniary interests or other matters referred to in paragraph (b) of the definition of “financial interest” in subclause (1) are specified for the purposes of section 110 (a) (xii) of the Act.

Associated persons

4. (1) In this Regulation, a reference to a person who is associated with an officer of the Commission, or an applicant for a position as an officer of the Commission, is a reference to:

- (a) in the case of an officer or applicant who is an individual, any of the individual’s family or business associates; or
- (b) in the case of an officer or applicant that is a company engaged under section 104 (6) of the Act:
 - (i) any of the company’s key personnel; or
 - (ii) any of those key personnel’s family or business associates; or
 - (iii) any of the company’s related bodies corporate (within the meaning of the Corporations Law).

(2) For the purposes of this clause:

- (a) the following persons are an individual’s family associates:
 - (i) the individual’s spouse;
 - (ii) the individual’s dependent children;
 - (iii) such other members of the individual’s household or family as the Commissioner may specify in respect of a particular individual or class of individuals;

- (b) the following persons are an individual's business associates:
 - (i) the individual's employer;
 - (ii) any such employer's key personnel (in the case of an employer that is a company);
 - (iii) the individual's partners in any partnership of which the individual is a member;
 - (iv) such employees of any such partnership, and such other persons having contractual relationships with the partnership, as the Commissioner may specify in respect of a particular partnership or class of partnerships;
 - (v) the individual's employees;
 - (vi) such other persons having contractual relationships with the individual as the Commissioner may specify in respect of a particular individual or class of individuals;
- (c) the following persons are a company's key personnel:
 - (i) the directors of the company;
 - (ii) the secretary of the company;
 - (iii) such officers or employees of the company, such shareholders in the company and such other persons having contractual relationships with the company as the Commissioner may specify in respect of a particular company or class of companies.

PART 2—SECURITY

Disclosure of certain information

5. (1) The Commissioner may at any time require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commissioner a statement of personal particulars, in the approved form, in relation to:

- (a) the officer or applicant; or
- (b) any other person who is associated with the officer or applicant.

(2) The statement must be accompanied by an authority for the release of information, and a consent to conduct inquiries, each in the approved form and each duly executed by the person to whom the statement relates.

(3) An officer or applicant who is required to furnish to the Commissioner one or more statements under this clause must, when furnishing that statement or those statements, also furnish the

Commissioner with a statutory declaration, in the approved form, concerning the officer's or applicant's association (if any) with known or reputed criminals.

Production of certain documents

6. (1) The Commissioner may require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commissioner such of the documents referred to in subclause (2) or (3) relating to:

- (a) the officer or applicant; or
- (b) any other person who is associated with the officer or applicant,

as are in the possession of the officer or applicant or to which the officer or applicant has an immediate right of possession.

(2) The documents to be furnished in the case of an individual are as follows:

- (a) a birth certificate or a duly certified extract of a birth certificate;
- (b) a marriage certificate or a duly certified extract of a marriage certificate;
- (c) a current passport;
- (d) a current driver's licence;
- (e) a duly certified copy of any registered deed by which the individual has formally changed the individual's name;
- (f) a certificate of naturalisation;
- (g) a certificate of discharge from the Defence Force;
- (h) a certificate evidencing the person's educational, professional or trade qualifications;
- (i) the most recent income tax return lodged by, and the most recent income tax assessment issued in relation to, the individual.

(3) The documents to be furnished in the case of a company or partnership engaged under section 104 (6) of the Act are as follows:

- (a) a copy of the memorandum and articles of association of the company or of the agreement establishing the partnership;
- (b) the most recent annual report of the company or partnership;
- (c) the most recent audited financial statement in relation to the company or partnership;
- (d) the most recent income tax return lodged by, and the most recent income tax assessment issued in relation to, the company or the several partners in the partnership.

Fingerprints to be furnished

7. (1) The Commissioner may require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commissioner an imprint of the officer's or applicant's fingerprints.

(2) If the officer or applicant is a company or partnership engaged under section 104 (6) of the Act, the Commissioner may require the officer or applicant to furnish to the Commissioner an imprint of the fingerprints of:

- (a) any specified associate of the company; or
- (b) any specified associate of a partner in the partnership.

(3) Fingerprint imprints obtained by the Commission from an applicant, or an associate of an applicant, are to be destroyed within 6 months after the application is determined unless, within that time, the applicant becomes an officer of the Commission.

(4) Fingerprint imprints obtained by the Commission from an officer, or an associate of an officer, are to be destroyed within 6 months after the officer ceases to be an officer.

(5) In the case of an officer:

- (a) who is under investigation by the Commission when the officer ceases to be an officer; or
- (b) who becomes subject to such an investigation within 6 months after ceasing to be an officer,

the Commission may retain the fingerprint imprints of the officer, or of any associate of the officer, for such further period as is necessary to complete the investigation and any legal proceedings arising from the investigation.

Changes in personal particulars to be notified

8. An officer of the Commission who becomes aware of any significant change in the personal particulars in relation to:

- (a) the officer; or
- (b) any person who is associated with the officer and in respect of whom the officer has previously furnished a statement of personal particulars under this Part,

must forthwith furnish a statement of that change, in the approved form, to the Commissioner.

Conflict of interests to be notified

9. If an officer of the Commission becomes aware of any conflict of interest that has arisen, or that could be seen as having arisen, between the officer's duties as an officer and the officer's private interests, the officer must forthwith notify the Commissioner of that fact.

PART 3—DISCLOSURE OF FINANCIAL INTERESTS**Disclosure of certain financial information**

10. (1) On becoming an officer of the Commission, the officer must furnish to the Commissioner a statement of financial interests, in the approved form, in relation to the officer.

(2) Without limiting subclause (1), the Commissioner may at any time require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commissioner a statement of financial interests, in the approved form, in relation to:

- (a) the officer or applicant; or
- (b) any other person who is associated with the officer or applicant.

Changes in financial interests to be notified

11. An officer of the Commission who becomes aware of any significant change in the financial interests in relation to:

- (a) the officer; or
- (b) any person who is associated with the officer and in respect of whom the officer has previously furnished a statement of financial interests under this Part,

must forthwith furnish a statement of that change, in the approved form, to the Commissioner.

Exemptions from Part 3

12. The Commissioner:

- (a) may at any time exempt any particular officer or class of officers from the requirements of this Part; and
- (b) may at any time impose conditions on any such exemption; and
- (c) may at any time revoke any such exemption or any condition to which any such exemption is subject.

PART 4—GENERAL

Further information

13. The Commissioner may require an officer of the Commission, or an applicant for a position as an officer of the Commission, to furnish to the Commissioner such further information as the Commissioner may specify in respect of any matter disclosed to the Commissioner by the officer or applicant for the purposes of this Regulation.

Statutory declarations

14. A statutory declaration that, by or under this Regulation, is required to be made by a company or partnership engaged under section 104 (6) of the Act must be made on behalf of the company or partnership by such of the directors or employees of the company, or by such of the partners in or employees of the partnership, as the Commissioner may direct.

Compliance with Regulation a condition of employment

15. (1) It is a condition of an officer's employment or engagement with the Commission that the officer will comply with the requirements of this Regulation.

(2) Failure to comply with any such requirement is sufficient ground for terminating the officer's employment or engagement.

(3) This clause has effect despite any other condition of the officer's conditions of employment or engagement.

(4) A person does not fail to comply with the requirements of this Regulation merely because the person fails to disclose matters of which the person is not aware.

Seal of the Commission

16. The seal of the Commission must be kept in the custody of the Commissioner and affixed to a document of the Commission in the presence of the Commissioner, or of an Assistant Commissioner, and of one other member of staff of the Commission.

Identity cards

17. The Commissioner may issue identity cards, in the approved form, to officers of the Commission.

Definition of “public authority”

18. For the purposes of the definition of “public authority” in section 3 (1) of the Act, the following bodies are declared to be bodies within that definition:

- (a) an incorporated hospital within the meaning of the Public Hospitals Act 1929;
- (b) a separate institution within the meaning of the Public Hospitals Act 1929.

Principal officers of public authorities

19. For the purposes of section 11 (5) of the Act:

- (a) the general manager of the council of a local government area is prescribed as the principal officer of the council; and
- (b) the chief executive officer of an area health board is prescribed as the principal officer of the area health service for which the board is constituted; and
- (c) the Chief Executive Officer of the Ambulance Service Board is prescribed as the principal officer of the Ambulance Service; and
- (d) the chief executive officer (however designated) of an incorporated hospital within the meaning of the Public Hospitals Act 1929 is prescribed as the principal officer of the hospital; and
- (e) the chief executive officer (however designated) of a separate institution within the meaning of the Public Hospitals Act 1929 is prescribed as the principal officer of the institution.

Repeals

20. (1) The following Regulations are repealed:

- (a) the Independent Commission Against Corruption (General) Regulation 1989;
- (b) the Independent Commission Against Corruption (Disclosure of Financial Interests) Regulation 1989.

(2) Any act, matter or thing that, immediately before the repeal of a Regulation referred to in subclause (1), had effect under that Regulation continues to have effect under this Regulation.

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EXPLANATORY NOTE

The objects of this Regulation are to repeal and remake, with minor changes, the provisions of the Independent Commission Against Corruption (General) Regulation 1989 and the Independent Commission Against Corruption (Disclosure of Financial Interests) Regulation 1989. The new Regulation deals with the following matters:

- (a) the security checks to be made in relation to the staff of ICAC and associated persons (Part 2);
- (b) the disclosure by the staff of ICAC and associated persons of their financial interests (Part 3);
- (c) other matters of a minor, consequential or ancillary nature (Parts 1 and 4).

This Regulation is made under the independent Commission Against Corruption Act 1988, including section 117 (the general regulation making power) and sections 3, 11 and 110.

This Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
