



New South Wales

# Independent Commission Against Corruption Amendment Bill 2005

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Independent Commission Against Corruption Act 1988* (the **Principal Act**) to give effect to certain recommendations contained in the Final Report of the independent review of that Act presented by Bruce McClintock SC to the Governor on 31 January 2005 and to make certain other changes. The Bill:

- (a) sets out the principal objects of the Principal Act,
- (b) provides for the establishment of an independent Inspector of the Independent Commission Against Corruption (the **Inspector**) to deal with complaints about the Independent Commission Against Corruption (**ICAC**) and its officers and to oversee the exercise of ICAC's powers,
- (c) alters the nomenclature of the Act relating to hearings so as to better reflect the fact that ICAC exercises administrative investigative, not judicial, functions and to distinguish investigations in private from public inquiries,
- (d) requires ICAC to be satisfied before holding a public inquiry that, after taking specified factors into account, it is in the public interest to hold the inquiry,

- (e) requires ICAC to direct its attention, so far as practicable, to corrupt conduct that is serious or systemic and to have regard to the role of other public authorities and public officials in preventing corrupt conduct,
- (f) requires ICAC to include additional information about its investigations and the time taken to complete them in its annual report,
- (g) expressly requires ICAC to provide reasons to complainants and reporting officials for not investigating allegations of corruption,
- (h) restricts the power of ICAC to refer to the Supreme Court contempts of ICAC to contempts in the face or hearing of ICAC and clarifies the procedures for punishing such contempts,
- (i) creates offences of threatening counsel assisting ICAC or legal practitioners or witnesses appearing before ICAC,
- (j) clarifies the powers of ICAC to make findings of corrupt conduct,
- (k) clarifies the power of ICAC to make recommendations concerning the suspension of councillors under the *Local Government Act 1993*,
- (l) prevents ICAC from commencing criminal prosecutions arising from its investigations unless the Director of Public Prosecutions has advised it that it is appropriate to do so,
- (m) requires ICAC to consult with the Ombudsman in exercising its corruption prevention and education functions,
- (n) enables ICAC to apply to courts for orders relating to the disposal of seized property,
- (o) extends the offence under section 87 of the Principal Act of giving false and misleading evidence to ICAC so that it applies where a person gives evidence not believing it to be true,
- (p) applies the provisions of sections 331 and 332 of the *Crimes Act 1900* to prosecutions for giving false or misleading evidence, so that it is not necessary to show which of two contradictory statements is true to convict the person who made the statements and to deny a person a right of acquittal merely because a false or misleading statement is contained in a document that contains a technical defect,
- (q) extends from 6 months to 2 years the limitation period within which a prosecution may be brought under section 112 (Restriction on publication of evidence) of the Principal Act.

The Bill also amends the *Police Integrity Commission Act 1996* to extend the provisions of that Act relating to police officers to other members of NSW Police and to omit a provision making a person ineligible for appointment as the inspector of the Police Integrity Commission unless the person has special legal qualifications within the meaning of that Act.

The Bill also makes various other amendments to Acts and a regulation that are consequential or related to the amendments made to the *Independent Commission Against Corruption Act 1988*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision that gives effect to the amendments to the *Independent Commission Against Corruption Act 1988* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Protected Disclosures Act 1994* and other Acts and a regulation set out in Schedule 2.

## **Schedule 1      Amendment of Independent Commission Against Corruption Act 1988**

### **Clarification of the role of the ICAC**

#### **Objectives of Act**

**Schedule 1 [1]** inserts a new section 2A into the Principal Act to specify the objectives of the Act and so to confirm the role of ICAC as an independent and accountable body with special powers to inquire into allegations of corruption.

#### **Focus of ICAC's attention**

**Schedule 1 [7]** inserts a new section 12A into the Principal Act. Section 12A requires ICAC, in exercising its functions, to as far as practicable direct its attention to serious and systemic corrupt conduct.

#### **Hearings**

**Schedule 1 [18]** repeals and re-enacts (as sections 30–31A) sections 30 and 31 of the Act to alter the nomenclature of the Act relating to hearings so as to better reflect the fact that ICAC exercises administrative investigative, not judicial, functions and to distinguish investigations in private from public inquiries. The distinction is drawn between compulsory examinations, which must be conducted in private and public inquiries (part of which may be conducted in private but which are generally conducted in public). Under proposed sections 30 (3) and 31 (6), a person required to attend a compulsory examination or public inquiry, respectively, must be informed of the nature of the allegation or complaint being investigated.

Proposed section 31 provides that ICAC may conduct a public inquiry only if satisfied that it is in the public interest to do so and specifies certain factors it must take into account in deciding whether or not the conduct of a public inquiry is in the public interest. These are:

- (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.

A number of amendments to the Principal Act are made as a consequence (**Schedule 1 [2], [3], [5], [13], [14], [16], [17], [19], [20], [22], [28], [29], [34], [39], [40], [41], [43], [56] and [62]**).

## **Accountability of ICAC**

### **Inspector of the Independent Commission Against Corruption**

**Schedule 1 [23] and [65]** insert new Part 5A (proposed sections 57A–57F) and Schedule 1A into the Principal Act to provide for the appointment of an Inspector of the Independent Commission Against Corruption. The provisions are similar to those in the *Police Integrity Commission Act 1996* relating to the Inspector of the Police Integrity Commission.

Proposed section 57B provides that the principal functions of the Inspector are:

- (a) to audit the operations of ICAC 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 ICAC or officers of ICAC, and
- (c) to deal with (by reports and recommendations) complaints of conduct amounting to maladministration (including, without limitation, delay in the conduct of investigations and unreasonable invasions of privacy) by ICAC or officers of ICAC, and
- (d) to assess the effectiveness and appropriateness of the procedures of ICAC relating to the legality or propriety of its activities.

**Schedule 1 [24]–[27]** amend sections 64 and 64A of the Principal Act to provide for the Joint Committee on the Independent Commission Against Corruption constituted under the Act to (among other things) monitor and review the exercise by the Inspector of the Inspector's functions and to enable it to veto the appointment of a person as the Inspector.

**Schedule 1 [33]** inserts a new Division 2 (new sections 77A and 77B) into Part 8 of the Principal Act. Section 77A provides that the Inspector may make a special report to Parliament at any time about matters affecting ICAC. Section 77B requires the Inspector to prepare an annual report for submission to Parliament. **Schedule 1 [35] and [36]** amend section 78 of the Principal Act to enable the Inspector to include a recommendation in a report that the report be made public forthwith and to enable the Presiding Officer of a House of Parliament to make it public whether or not the House is in session.

**Schedule 1 [61]** inserts new sections 111C and 111D into the Principal Act. Under section 111C, conduct of the Commissioner of ICAC or an officer of ICAC will not be able to be made the subject of a complaint, inquiry, investigation or other action by the Ombudsman unless the matter is referred to the Ombudsman by the Inspector. Section 111D provides for public officials to make complaints to the Inspector about the conduct of ICAC, an officer of ICAC or an officer of the Inspector. Section 111D is linked to the amendments to the *Protected Disclosures Act 1994* to insert proposed section 12C into that Act (**Schedule 2.10 [3]**). These ensure that disclosures to the Inspector are protected by that Act and also provide for disclosures concerning corrupt conduct, maladministration and other matters engaged in by the Inspector to the Ombudsman.

**Schedule 1 [2],[38],[54], [57], [58], [59] and [60]** make consequential amendments to extend various sections of the Principal Act relating to the exercise by ICAC and its officers of their functions to the exercise of functions by the Inspector and the Inspector's officers (for example, to make it an offence under section 80 to obstruct the Inspector, to protect the Inspector from liability under section 109 for matters or things done in good faith for the purposes of the Principal Act and to require the Inspector to keep secret certain information acquired in the exercise of functions under the Act).

**Schedule 2** contains a number of amendments to Acts and a regulation relating to functions exercised by the Inspector. These amendments are more fully explained below.

### **Annual reports by ICAC**

**Schedule 1 [32]** amends section 76 of the Principal Act to require ICAC to provide greater details of certain matters relating to its investigations (such as the average time taken to deal with complaints and the actual time taken to investigate any matter the subject of a report).

### **Advice to complainants of decision not to investigate or to discontinue investigation**

**Schedule 1 [15]** amends section 20 of the Principal Act to require ICAC to inform a complainant or an officer who has made a report if it decides not to investigate the matter or to discontinue such an investigation and of the reasons for its decision.

### **Reform of contempt laws**

**Schedule 1 [45]–[47]** amend section 98 of the Principal Act so as to restrict ICAC’s power to refer contempts of ICAC to contempts in the face or hearing of ICAC (so removing its power to refer contempts by publication to the Supreme Court). ICAC will retain its powers to make orders restricting publication of various matters under section 112 of the Principal Act and it will continue to be an offence to contravene such a direction.

**Schedule 1 [48]–[53]** amend sections 99 and 100 of the Principal Act to clarify the procedure for certifying and referring an alleged contempt to the Supreme Court. Provision is also made to ensure that a person who is alleged to have committed a contempt is advised of the details of the alleged contempt.

### **Clarification of findings that ICAC may make**

The definition of corrupt conduct in sections 8 and 9 of the Principal Act is crucial to the effectiveness of ICAC as it defines the scope of its power to investigate corrupt conduct that has occurred, is occurring or is about to occur. **Schedule 1 [9]** inserts proposed section 13 (3A) into the Principal Act to make it clear that ICAC may make a finding that conduct is 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.

**Schedule 1 [6]** makes a consequential amendment to section 9 (5).

**Schedule [10]** makes an amendment to section 13 (4) to further clarify the relationship between sections 9 and 13.

**Schedule 1 [8]** amends section 13 of the Principal Act to confirm the power of ICAC to make no finding.

**Schedule 1 [31]** amends section 74C of the Principal Act to clarify ICAC’s power to recommend that consideration be given to a councillor’s suspension under Division 3 (Misbehaviour) of Part 1 of Chapter 14 of the *Local Government Act 1993*.

**Schedule 2.6** makes a consequential amendment to the *Local Government Act 1993*.

### **Threatening counsel assisting ICAC, witnesses and others**

Section 80 (a) of the Principal Act makes it an offence to threaten ICAC or an officer of ICAC in the exercise of functions under the Act. **Schedule 1 [37]** amends section 80 to also make it an offence to threaten the Inspector or an officer of the Inspector, a legal practitioner appointed by ICAC to assist it or a legal practitioner or other person authorised to appear before ICAC.

**Schedule 1 [44]** amends section 93 of the Principal Act to make it an offence to threaten to use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage to a person on account of his or her assisting ICAC or giving evidence to ICAC.

### **False or misleading evidence**

Section 87 of the Principal Act makes it an offence for a person to give evidence that to the knowledge of the person is false or misleading at a hearing before ICAC. This section is analogous to section 330 of the *Crimes Act 1900* which deals with false or misleading evidence that does not amount to perjury and which also makes it an offence to give false or misleading evidence not believing it to be true.

Section 331 of the *Crimes Act 1900* permits a jury to find a person guilty of an offence under section 330 with respect to the making of contradictory statements of which one (but the jury cannot determine which) must have been made by the person in the knowledge it was false. Section 332 of the *Crimes Act 1900* denies a person the right to acquittal merely because a false or misleading statement is contained in an affidavit or other document in respect of which there is a technical defect.

**Schedule 1 [42]** recasts section 87 to make it an offence to give false or misleading evidence not believing it to be true and applies sections 331 and 332 to proceedings under section 87 of the Principal Act.

### **Criminal prosecutions**

Under section 179 of the *Criminal Procedure Act 1986* proceedings for a summary offence must be commenced not later than 6 months after the offence is alleged to have been committed. The section does not apply to an offence for which an Act specifies another period. **Schedule 1 [63]** amends section 116 to provide that proceedings for an offence under section 112 (Restriction on publication of evidence) may be commenced within 2 years after the commission of the alleged offence.

**Schedule 1 [64]** inserts new section 116A into the Principal Act to prevent ICAC from commencing criminal prosecutions arising from its investigations unless the Director of Public Prosecutions has advised ICAC that it is appropriate to do so. This confirms existing practice that ICAC commences proceedings for a criminal offence only with the advice of the Director of Public Prosecutions. **Schedule 1 [11] and [30]** make consequential amendments to sections 13 and 74A, respectively.

### **Disposal of property**

ICAC has power under section 47 of the Principal Act to dispose of property seized under a search warrant but no general powers to dispose of unclaimed property. **Schedule 1 [21]** inserts proposed sections 48A–48D into the Principal Act to enable ICAC to apply to a court for an order as to how property in its possession that is not required for the purposes of a criminal prosecution or a disciplinary or other proceeding and to which no person appears to be lawfully entitled is to be dealt with. The court may, for example, order that the property be forfeited to the Crown and the proceeds of its sale be paid to the Consolidated Fund.

### **Consultation**

**Schedule 1 [12]** amends section 16 of the Principal Act to require ICAC to consult with the Ombudsman in exercising its principal functions other than those relating to investigation of conduct.

### **Delegation**

**Schedule 1 [55]** amends section 107 of the Principal Act to prevent ICAC from delegating its powers to certify that a person should in the public interest be permitted to divulge information acquired in exercising any function under the Act.

### **Savings, transitional and other provisions**

**Schedule 1 [66] and [67]** insert a power to make savings and transitional regulations and a Part containing savings and transitional provisions into Schedule 4 to the Principal Act.

**Schedule 1 [4]** amends section 3 of the Principal Act to provide that notes do not form part of the Act.

## **Schedule 2      Amendment of other Acts and regulation**

### **Criminal Records Regulation 2004**

Section 12 of the *Criminal Records Act 1991* sets out the consequences of a conviction becoming spent under the Act. These include that an offender is not required to disclose a spent conviction to another person. **Schedule 2.1** contains an amendment to exclude applicants for appointment or employment as an officer of the Inspector (which as defined in the Principal Act includes the Inspector) from the consequences of convictions becoming spent.

### **Defamation Act 1974**

**Schedule 2.2 [1]** replaces section 17K of the *Defamation Act 1974* so as to extend to the Inspector of the ICAC as Inspector and to an officer of the Inspector the defence of absolute privilege to a publication by or to the Inspector or officer.

**Schedule 2.2 [2]** replaces clause 2 (18) of Schedule 2 to that Act to make proceedings of the Inspector protected reports for the purposes of section 24 of that Act. There is a defence under section 24 for the publication of a fair protected report.

### **Freedom of Information Act 1989**

Schedule 2 to the *Freedom of Information Act 1989* lists various bodies and offices that are exempt, either wholly or partially, from the operation of that Act. **Schedule 2.3** amends that Schedule to exempt the Inspector from the operation of the Act in relation to operational auditing, complaint handling, investigative and report functions.



### **Greyhound and Harness Racing Administration Act 2004**

Section 42 of the *Greyhound and Harness Racing Administration Act 2004* makes it an offence to disclose information obtained in the administration of that and certain related Acts, except in certain circumstances or to certain persons. **Schedule 2.4** includes the Inspector within the excepted persons.

### **Health Records and Information Privacy Act 2002**

Section 17 of the *Health Records and Information Privacy Act 2002* provides for the exemption of certain persons, authorities and activities from the operation of the Act. **Schedule 2.5 [3]** includes the Inspector within that exemption except in relation to the exercise of administrative and educative functions.

Sections 60 and 63 of the Act confer functions on the Privacy Commissioner with respect to the conduct of inquiries and investigations and requiring organisations to provide information concerning arrangements made by the organisations to comply with Health Privacy Principles and other things. **Schedule 2.5 [4] and [5]** amend the sections to exclude the Inspector from the conferral of functions.

**Schedule 2.5 [1] and [2]** are consequential amendments to amend and insert definitions.

### **Local Government Act 1993**

**Schedule 2.6** contains an amendment that is consequential on the amendment to section 74C of the Principal Act made by **Schedule 1 [31]**.

### **Police Act 1990**

Section 167A of the *Police Act 1990* makes it an offence to provide false or misleading information to various persons and bodies in the course of an investigation under Part 8A (Complaints about conduct of police officers) of that Act. **Schedule 2.7** includes the Inspector as one of those persons.

### **Police Integrity Commission Act 1996**

The Police Integrity Commission (*PIC*) has functions including the detection, investigation and prevention of police corruption and other serious police misconduct. At present it exercises its functions in general in relation to those members of NSW Police who hold positions designated under the *Police Act 1990* as positions to be held by police officers. **Schedule 2.8 [1]** provides for references to police officers in the *Police Integrity Commission Act 1996* to be read so as to include all other members of NSW Police so that PIC may exercise its functions in respect of all such members.

Clause 1 (1) of Schedule 2 to the *Police Integrity Commission Act 1996* provides that a person is not eligible to be appointed as Inspector of PIC or to act in that office unless the person has special legal qualifications (that is, the person is 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 is a former judge of any court of the State or elsewhere in Australia or a former justice of the High Court). **Schedule 2.8 [2]** omits that requirement.

### **Privacy and Personal Information Protection Act 1998**

Section 27 of the *Privacy and Personal Information Protection Act 1998* provides for the exemption of certain persons, authorities and activities from the operation of the Act. **Schedule 2.9 [3]** includes the Inspector within that exemption except in relation to the exercise of administrative and educative functions.

Sections 38, 40 and 42 of the Act confer functions on the Privacy Commissioner with respect to the conduct of inquiries and investigations and requiring public sector agencies to provide certain information about personal information held by them and about their privacy protection compliance arrangements. **Schedule 2.9 [4], [5] and [6]** amend the sections to exclude the Inspector from the conferral of functions.

**Schedule 2.9 [1] and [2]** are consequential amendments to amend and insert definitions.

### **Protected Disclosures Act 1994**

**Schedule 2.10 [3]** inserts new section 12C into the *Protected Disclosures Act 1994* as a consequence of the amendments described above inserting sections 111C and 111D into the Principal Act (**Schedule 1 [61]**) so as to confer functions relating to complaints about the conduct of ICAC, an officer of ICAC or an officer of the Inspector on the Inspector and referring to the Ombudsman complaints about the Inspector.

**Schedule 2.10 [4]** is a consequential amendment.

**Schedule 2.10 [1] and [2]** are consequential amendments to amend and insert definitions.

**Schedule 2.10 [5]** inserts a power to make savings and transitional regulations.

### **Totalizator Act 1997**

Section 105 of the *Totalizator Act 1997* makes it an offence to disclose information obtained in the administration of that Act, except in certain circumstances or to certain persons. **Schedule 2.11** includes the Inspector within the excepted persons.



New South Wales

# Independent Commission Against Corruption Amendment Bill 2005

## Contents

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	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

Independent Commission Against Corruption Amendment Bill 2005

Contents

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Page

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Contents page 2



New South Wales

# Independent Commission Against Corruption Amendment Bill 2005

No. , 2005

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## **A Bill for**

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.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Independent Commission Against Corruption Amendment Act 2005</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on a day or days to be appointed by proclamation.	6
<b>3 Amendment of Independent Commission Against Corruption Act 1988 No 35</b>	7 8
The <i>Independent Commission Against Corruption Act 1988</i> is amended as set out in Schedule 1.	9 10
<b>4 Amendment of other Acts and regulation</b>	11
The Acts and regulation set out in Schedule 2 are amended as set out in that Schedule.	12 13

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**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.

<b>[5] Section 4 Commission</b>	1
Omit “hearing” wherever occurring from section 4 (4).	2
Insert instead “compulsory examination or public inquiry”.	3
<b>[6] Section 9 Limitation on nature of corrupt conduct</b>	4
Omit “could also constitute” from section 9 (5). Insert instead “constitutes”.	5
<b>[7] Section 12A</b>	6
Insert after section 12:	7
<b>12A Serious and systemic corrupt conduct</b>	8
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.	9 10 11 12 13
<b>[8] Section 13 Principal functions</b>	14
Insert after section 13 (2):	15
(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.	16 17 18
<b>[9] Section 13 (3A)</b>	19
Insert after section 13 (3):	20
(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.	21 22 23 24 25 26
<b>[10] Section 13 (4)</b>	27
Omit “this section is the only restriction”.	28
Insert instead “section 9 (5) and this section are the only restrictions”.	29



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<b>[11] Section 13 (5) (b)</b>	1
Omit the paragraph. Insert instead:	2
(b) opinions as to:	3
(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	4 5 6 7 8
(ii) whether consideration should or should not be given to the taking of other action against particular persons,	9 10 11
<b>[12] Section 16 Co-operation with other agencies</b>	12
Insert “, the Ombudsman” after “Auditor-General” in section 16 (2).	13
<b>[13] Section 17 Evidence and procedure</b>	14
Omit “hearings” and “hearing” from section 17 (2) and (3), respectively.	15
Insert instead “compulsory examinations and public inquiries” and “compulsory examination or public inquiry”, respectively.	16 17
<b>[14] Section 18 Court proceedings</b>	18
Omit “any hearing or other matters relating to the investigation are” from section 18 (2) (a).	19 20
Insert instead “the investigation is”.	21
<b>[15] Section 20 Investigations generally</b>	22
Insert after section 20 (4):	23
(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.	24 25 26 27
<b>[16] Section 29 Powers exercisable whether or not compulsory examination or public inquiry being held</b>	28 29
Omit “hearing”. Insert instead “compulsory examination or public inquiry”.	30

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<b>[17] Part 4, Division 3, heading</b>	1
Omit the heading. Insert instead:	2
<b>Division 3 Compulsory examinations and public inquiries</b>	3 4
<b>[18] Sections 30–31A</b>	5
Omit sections 30 and 31. Insert instead:	6
<b>30 Compulsory examinations</b>	7
(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.	8 9 10
(2) A compulsory examination is to be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner.	11 12 13
(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.	14 15 16 17
(4) A failure to comply with subsection (3) does not invalidate or otherwise affect the compulsory examination.	18 19
(5) A compulsory examination is to be conducted in private.	20
<b>Note.</b> Section 17 (2) requires the Commission to conduct compulsory examinations with as little emphasis on an adversarial approach as possible.	21 22 23
(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.	24 25 26 27
<b>31 Public inquiries</b>	28
(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.	29 30 31
(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:	32 33 34
(a) the benefit of exposing to the public, and making it aware, of corrupt conduct,	35 36

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- (b) the seriousness of the allegation or complaint being investigated, 1  
2
- (c) any risk of undue prejudice to a person's reputation (including prejudice that might arise from not holding an inquiry), 3  
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5
- (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned. 6  
7  
8
- (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. 9  
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11  
12  
**Note.** Powers of the Commission under this Division may be delegated to an Assistant Commissioner under section 107 (5) (e). 13  
14
- (4) A public inquiry is to be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner. 15  
16
- (5) At a public inquiry, the person presiding must announce the general scope and purpose of the inquiry. 17  
18
- (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. 19  
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21  
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23
- (7) A failure to comply with subsection (6) does not invalidate or otherwise affect the public inquiry. 24  
25
- (8) A public inquiry is to be held in public. 26
- (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. 27  
28  
29
- (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. 30  
31  
32  
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34  
35  
**Note.** Section 17 (2) requires the Commission to conduct public inquiries with as little emphasis on an adversarial approach as possible. 36  
37

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<b>31A</b>	<b>Directions as to presence of persons at compulsory examinations and public inquiries</b>	1 2
	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.	3 4 5 6
	<b>Note.</b> It is an offence to contravene a direction under section 31A—see section 85.	7 8
<b>[19]</b>	<b>Section 32 Right of appearance of affected person</b>	9
	Omit “hearing” wherever occurring. Insert instead “public inquiry”.	10
<b>[20]</b>	<b>Sections 33–35, 36A and 37–39</b>	11
	Omit “hearing” wherever occurring.	12
	Insert instead “compulsory examination or public inquiry”.	13
<b>[21]</b>	<b>Part 4, Division 4A</b>	14
	Insert after section 48:	15
	<b>Division 4A Disposal of property</b>	16
<b>48A</b>	<b>Application to property</b>	17
	This Division applies to property:	18
	(a) that is lawfully in the custody of the Commission in connection with an investigation, and	19 20
	(b) is not required for the purposes of an investigation or a criminal prosecution or disciplinary or other proceeding.	21 22
<b>48B</b>	<b>Disposal of property on application to court</b>	23
	(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.	24 25 26 27
	(2) A court to which such an application is made may order that the property be dealt with as the court thinks fit.	28 29
	(3) Without limiting subsection (2), in determining an application a court may:	30 31
	(a) order that the property be forfeited to the Crown, and	32
	(b) make any necessary incidental or ancillary orders.	33

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(4)	Property ordered to be forfeited to the Crown:	1
(a)	if money, is to be paid to the Treasurer for payment into the Consolidated Fund, or	2 3
(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.	4 5 6 7
(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.	8 9 10
<b>48C</b>	<b>Application to Treasurer for recovery of money or proceeds of sale</b>	11
	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).	12 13 14 15 16 17
<b>48D</b>	<b>Courts having jurisdiction under this Division</b>	18
	The court to which an application under this Division may be made is:	19 20
(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	21 22 23
(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	24 25 26
(c)	the Supreme Court, if the estimated value of the property (or the amount of the money) exceeds \$250,000.	27 28
<b>[22]</b>	<b>Section 49 Indemnities and undertakings</b>	29
	Omit “hearing before” from section 49 (4).	30
	Insert instead “compulsory examination or public inquiry conducted by”.	31

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<b>[23] Part 5A</b>	1
Insert after Part 5:	2
<b>Part 5A Inspector of the Independent Commission Against Corruption</b>	3
	4
<b>57A Inspector of the Independent Commission Against Corruption</b>	5
(1) <b>Appointment</b>	6
The Governor may appoint an Inspector of the Independent Commission Against Corruption.	7
	8
(2) <b>Schedule of provisions relating to Inspector</b>	9
Schedule 1A has effect.	10
<b>57B Principal functions of Inspector</b>	11
(1) The principal functions of the Inspector are:	12
(a) to audit the operations of the Commission for the purpose of monitoring compliance with the law of the State, and	13
	14
(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	15
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(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	19
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(d) to assess the effectiveness and appropriateness of the procedures of the Commission relating to the legality or propriety of its activities.	24
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(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.	27
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(3) The Inspector is not subject to the Commission in any respect.	32
(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:	33
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(a) contrary to law, or	36

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- (b) unreasonable, unjust, oppressive or improperly discriminatory, or 1
  - (c) based wholly or partly on improper motives. 2

**57C Powers of Inspector** 3

The Inspector: 4

- (a) may investigate any aspect of the Commission's operations or any conduct of officers of the Commission, and 5
- (b) is entitled to full access to the records of the Commission and to take or have copies made of any of them, and 6
- (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 7
- (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 8
- (e) may investigate and assess complaints about the Commission or officers of the Commission, and 9
- (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 10
- (g) may recommend disciplinary action or criminal prosecution against officers of the Commission. 11

**57D Inquiries** 12

- (1) For the purposes of the Inspector's functions, the Inspector may make or hold inquiries. 13
- (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. 14

- (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. 1  
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**57E Staff of Inspector** 6

- (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*. 7  
8  
9
- (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. 10  
11  
12
- (3) The Inspector may engage persons as consultants to the Inspector or to perform services for the Inspector. 13  
14
- (4) The Inspector may arrange for the use of the services of: 15
- (a) any staff or facilities of the Commission, a government department or a local or public authority, or 16  
17
  - (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). 18  
19  
20
- (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. 21  
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**57F Incidental powers** 25

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. 26  
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**[24] Section 64 Functions** 31

Omit section 64 (1) (a). Insert instead: 32

- (a) to monitor and to review the exercise by the Commission and the Inspector of the Commission’s and Inspector’s functions, 33  
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**[25] Section 64 (1) (b)** 36

Insert “or the Inspector” after “Commission”. 37



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<b>[26] Section 64 (1) (c) and (d)</b>	1
Insert “and of the Inspector” and “and the Inspector”, respectively, after “Commission” wherever occurring.	2 3
<b>[27] Section 64A Power to veto proposed appointment of Commissioner or Inspector</b>	4 5
Insert “or Inspector” after “Commissioner” in section 64A (1).	6
<b>[28] Part 8, Division 1, heading</b>	7
Insert after the heading to Part 8:	8
<b>Division 1      References to Commission by, and reports by Commission to, Parliament</b>	9 10
<b>[29] Section 74 Reports on referred matters etc</b>	11
Omit “public hearing” from section 74 (3). Insert instead “public inquiry”.	12
<b>[30] Section 74A Contents of reports to Parliament</b>	13
Omit “the prosecution” from section 74A (2) (a).	14
Insert instead “obtaining the advice of the Director of Public Prosecutions with respect to the prosecution”.	15 16
<b>[31] Section 74C Reports relating to local government authorities</b>	17
Insert after section 74C (2):	18
(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 <i>Local Government Act 1993</i> .	19 20 21 22 23
<b>[32] Section 76 Annual reports of Commission</b>	24
Insert after section 76 (2) (b):	25
(ba) the following details with respect to matters investigated by the Commission:	26 27
(i) the time interval between the lodging of each complaint and the Commission deciding to investigate the complaint,	28 29 30
(ii) the number of complaints commenced to be investigated but not finally dealt with during the year,	31 32 33

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(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,	1 2 3
(iv)	the total number of compulsory examinations and public inquiries conducted during the year,	4 5
(v)	the number of days spent during the year in conducting public inquiries,	6 7
(vi)	the time interval between the completion of each public inquiry conducted during the year and the furnishing of a report on the matter,	8 9 10
<b>[33]</b>	<b>Part 8, Division 2</b>	11
	Insert after section 77:	12
	<b>Division 2 Reports by Inspector</b>	13
	<b>77A Special reports</b>	14
	The Inspector may, at any time, make a special report to the Presiding Officer of each House of Parliament on:	15 16
	(a) any matters affecting the Commission, including, for example, its operational effectiveness or needs, and	17 18
	(b) any administrative or general policy matter relating to the functions of the Inspector.	19 20
	<b>77B Annual reports of Inspector</b>	21
	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.	22 23 24 25
<b>[34]</b>	<b>Part 8, Division 3, heading</b>	26
	Insert before section 78:	27
	<b>Division 3 General</b>	28
<b>[35]</b>	<b>Section 78 Provisions relating to reports</b>	29
	Insert after section 78 (1):	30
	(1A) The Inspector may include in a report a recommendation that the report be made public forthwith.	31 32

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<b>[36] Section 78 (3)</b>	1
Insert “or the Inspector” after “Commission”.	2
<b>[37] Section 80 Obstruction of Commission, Inspector and others</b>	3
Omit section 80 (a). Insert instead:	4
(a) without reasonable excuse, wilfully obstruct, hinder, resist or threaten:	5
(i) the Commission or an officer of the Commission in the exercise of functions under this Act, or	6
(ii) the Inspector or an officer of the Inspector in the exercise of functions under this Act, or	7
(iii) a legal practitioner appointed by the Commission to assist the Commission as counsel in the exercise of functions as such counsel, or	8
(iv) a legal practitioner or other person authorised to appear before the Commission in relation to that appearance, or	9
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<b>[38] Section 80 (b) and (c)</b>	17
Insert “, or the Inspector or an officer of the Inspector,” after “officer of the Commission” wherever occurring.	18
	19
<b>[39] Section 80 (d)</b>	20
Omit “hearing”. Insert instead “compulsory examination or public inquiry”.	21
<b>[40] Section 85 Compulsory examinations and public inquiries</b>	22
Omit “hearing in contravention of section 31”.	23
Insert instead “compulsory examination or public inquiry in contravention of section 31A”.	24
	25
<b>[41] Section 86 Failure to attend etc</b>	26
Omit “hearing” wherever occurring.	27
Insert instead “compulsory examination or public inquiry”.	28

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<b>[42] Section 87</b>	1
Omit the section. Insert instead:	2
<b>87 False and misleading evidence</b>	3
(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.	4 5 6 7 8
Maximum penalty: 200 penalty units or imprisonment for 5 years, or both.	9 10
(2) Sections 331 and 332 of the <i>Crimes Act 1900</i> 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.	11 12 13 14
<b>[43] Section 89 Procuring false testimony by witness</b>	15
Omit “hearing” from section 89 (a).	16
Insert instead “compulsory examination or public inquiry”.	17
<b>[44] Section 93 Injury to witness or person assisting Commission</b>	18
Insert “, or threatens to use, cause, inflict or procure,” after “procures” in section 93 (1).	19 20
<b>[45] Section 98 Contempt in the face or hearing of the Commission</b>	21
Omit “Commission, or” from section 98 (d) (iv). Insert instead:	22
Commission,	23
in proceedings before the Commission, or	24
<b>[46] Section 98 (f)</b>	25
Omit the paragraph. Insert instead:	26
(f) interrupts or obstructs any proceedings before the Commission,	27 28
<b>[47] Section 98 (g), (h) and (i)</b>	29
Omit the paragraphs.	30

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<b>[48] Section 99 Punishment of contempt</b>	1
Omit section 99 (2). Insert instead:	2
(2) The Commissioner may present to the Supreme Court a certificate (in this Part called a <i>contempt of the Commission certificate</i> ) in which the Commissioner sets out the facts that constitute the alleged contempt.	3 4 5 6
<b>[49] Section 99 (3)</b>	7
Omit “certifies the contempt of a person”.	8
Insert instead “presents a contempt of the Commission certificate”.	9
<b>[50] Section 100 General provisions regarding contempt</b>	10
Insert after section 100 (1):	11
(1A) The summons is to set out the details of the alleged contempt.	12
<b>[51] Section 100 (3)</b>	13
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”.	14 15
Insert instead “No summons need be issued against an offender committing a contempt in the face or hearing of the Commission”.	16 17
<b>[52] Section 100 (3)</b>	18
Insert “, after being advised of the details of the alleged contempt,” after “offender may”.	19 20
<b>[53] Section 100 (6)</b>	21
Omit the subsection. Insert instead:	22
(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.	23 24 25
<b>[54] Section 101B Commission investigator who is seconded police officer to have all powers of NSW police officer</b>	26 27
Insert “, but may be made to the Inspector” after “1990” in section 101B (5).	28
<b>[55] Section 107 Delegation</b>	29
Insert after section 107 (4) (d):	30
(e) the power of the Commissioner to certify as referred to in section 111 (4) (c).	31 32

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<b>[56] Section 107 (5) (e)</b>	1
Omit “hearing”. Insert instead “compulsory examination or public inquiry”.	2
<b>[57] Section 109 Protection from liability</b>	3
Omit “or any person acting under the direction of the Commission or Commissioner” from section 109 (1).	4
Insert instead “, the Inspector or any person acting under the direction of the Commission, the Commissioner or the Inspector”.	5
<b>[58] Section 109 (1)</b>	6
Insert “, the Inspector” after “subject the Commissioner”.	7
<b>[59] Section 111 Secrecy</b>	8
Insert at the end of section 111 (1) (d):	9
, and	10
(e) a person who is or was an officer of the Inspector.	11
<b>[60] Section 111 (4) (c)</b>	12
Insert “or Inspector” after “Commissioner” wherever occurring.	13
<b>[61] Sections 111C and 111D</b>	14
Insert after section 111B:	15
<b>111C Relationship with Ombudsman regarding conduct of Commission and Inspector</b>	16
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 <i>Ombudsman Act 1974</i> , except in relation to matters referred to the Ombudsman by the Inspector.	17
<b>111D Complaints by public officials</b>	18
(1) A public official within the meaning of the <i>Protected Disclosures Act 1994</i> 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.	19
(2) In this section:	20
<b>conduct</b> includes conduct by way of action or inaction or alleged action or inaction.	21
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<b>[62] Section 112 Restriction on publication of evidence</b>	1
Omit “hearing” from section 112 (1) (d).	2
Insert instead “compulsory examination or public inquiry”.	3
<b>[63] Section 116 Proceedings for offences</b>	4
Insert after section 116 (4):	5
(5) Proceedings for an alleged offence under section 112 may be commenced within 2 years after the commission of the alleged offence.	6 7 8
<b>[64] Section 116A</b>	9
Insert after section 116:	10
<b>116A Commencement of proceedings for offences</b>	11
Without limiting the other persons who may commence proceedings for an offence against a law of the State in connection with corrupt conduct, the Commission may commence proceedings for such an offence but only if the Director of Public Prosecutions advises that it is appropriate to do so.	12 13 14 15 16 17
<b>[65] Schedule 1A</b>	18
Insert after Schedule 1:	19
<b>Schedule 1A Provisions relating to Inspector</b>	20
(Section 57A (2))	21
<b>1 Eligibility for appointment</b>	22
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.	23 24 25 26 27
<b>2 Acting Inspector</b>	28
(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.	29 30 31 32

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(2)	The Governor may, at any time, remove a person from the office to which the person was appointed under this clause.	1 2
(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.	3 4 5
(4)	For the purposes of this clause, a vacancy in the office of Inspector is taken to be an absence from office of Inspector.	6 7
<b>3</b>	<b>Basis of office</b>	8
(1)	The office of Inspector may be a full-time or part-time office, according to the terms of appointment.	9 10
(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.	11 12 13
<b>4</b>	<b>Terms of office</b>	14
(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.	15 16 17 18
(2)	A person may not hold the office of Inspector for terms totalling more than 5 years.	19 20
<b>5</b>	<b>Remuneration</b>	21
(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.	22 23 24 25
(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.	26 27 28
(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.	29 30 31
<b>6</b>	<b>Provisions where Judge is holding office as Inspector</b>	32
(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:	33 34 35
(a)	the person's tenure of that judicial office, or	36



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(b)	the person's rank, title, status, remuneration or other rights or privileges as the holder of that judicial office.	1 2
(2)	The person's service as Inspector is, for all purposes, taken to be service as the holder of that judicial office.	3 4
(3)	In this clause: <i>judicial office</i> means an office of Judge of a court of New South Wales.	5 6 7
<b>7</b>	<b>Vacancy in office</b>	8
(1)	<b>Vacancies</b>	9
	The office of Inspector becomes vacant if the holder:	10
(a)	dies, or	11
(b)	completes a term of office and is not re-appointed, or	12
(c)	holds office for longer than the relevant term mentioned in clause 4, or	13 14
(d)	resigns the office by instrument in writing addressed to the Governor, or	15 16
(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	17 18 19 20
(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	21 22 23 24
(g)	becomes a mentally incapacitated person, or	25
(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	26 27 28 29 30
(i)	is removed from office under subclause (2).	31
(2)	<b>Removal from office</b>	32
	The Inspector may be removed from office by the Governor on the address of both Houses of Parliament.	33 34
<b>8</b>	<b>Filling of vacancy</b>	35
	If the office of Inspector becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	36 37

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**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.

**[66] Schedule 4 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Independent Commission Against Corruption Amendment Act 2005*

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<b>[67] Schedule 4, Part 5</b>	1
Insert after clause 10:	2
<b>Part 5 Provisions consequent on enactment of Independent Commission Against Corruption Amendment Act 2005</b>	3
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	5
<b>11 Definition</b>	6
In this Part, <i>amending Act</i> means the <i>Independent Commission Against Corruption Amendment Act 2005</i> .	7
	8
<b>12 Pending investigations</b>	9
(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.	10
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	13
(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.	14
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(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.	19
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<b>13 Annual reports</b>	22
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.	23
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<b>14 References to hearings</b>	26
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.	27
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<b>15 Inspector</b>	30
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.	31
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<b>Schedule 2</b>	<b>Amendment of other Acts and regulation</b>	1
	(Section 4)	2
<b>2.1</b>	<b>Criminal Records Regulation 2004</b>	3
	<b>Clause 7 Exclusion of applicants for employment with ICAC or ICAC Inspector from consequences of conviction being spent</b>	4
	Insert at the end of the clause:	6
	(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 <i>Independent Commission Against Corruption Act 1988</i> .	7 8 9 10
<b>2.2</b>	<b>Defamation Act 1974 No 18</b>	11
<b>[1]</b>	<b>Section 17K</b>	12
	Omit the section. Insert instead:	13
<b>17K</b>	<b>Matters arising under the Independent Commission Against Corruption Act 1988</b>	14 15
	(1) There is a defence of absolute privilege for a publication:	16
	(a) to or by the Independent Commission Against Corruption, or	17 18
	(b) to or by the Commissioner for the Commission as Commissioner, or	19 20
	(c) to or by the Inspector of the Independent Commission Against Corruption as Inspector, or	21 22
	(d) to any officer of the Commission or officer of the Inspector (within the meaning of the <i>Independent Commission Against Corruption Act 1988</i> ) as such an officer.	23 24 25
	(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.	26 27 28 29 30 31
	(3) This section extends to publications made before the commencement of this section.	32 33

<b>[2] Schedule 2 Proceedings of public concern and official and public documents and records</b>	1 2
Omit clause 2 (18). Insert instead:	3
(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,	4 5 6 7
<b>2.3 Freedom of Information Act 1989 No 5</b>	8
<b>Schedule 2 Exempt bodies and offices</b>	9
Insert after the matter relating to the Independent Commission Against Corruption:	10 11
The office of Inspector of the Independent Commission Against Corruption—operational auditing, complaint handling, investigative and report functions.	12 13
<b>2.4 Greyhound and Harness Racing Administration Act 2004 No 36</b>	14 15
<b>Section 42 Secrecy</b>	16
Insert after section 42 (5) (a):	17
(a1) the Inspector of the Independent Commission Against Corruption,	18 19
<b>2.5 Health Records and Information Privacy Act 2002 No 71</b>	20
<b>[1] Section 4 Definitions</b>	21
Insert after paragraph (b) of the definition of <i>investigative agency</i> in section 4 (1):	22 23
(b1) the Inspector of the Independent Commission Against Corruption,	24 25
<b>[2] Section 4</b>	26
Insert in alphabetical order:	27
<i>staff of the Inspector of the Independent Commission Against Corruption</i> means:	28 29
(a) any staff employed under section 57E (1) or (2) of the <i>Independent Commission Against Corruption Act 1988</i> , and	30 31 32
(b) any consultants engaged under section 57E (3) of that Act.	33

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<b>[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)</b>	1 2 3
Insert “, the Inspector of the Independent Commission Against Corruption, the staff of the Inspector of the Independent Commission Against Corruption” after “Against Corruption”.	4 5 6
<b>[4] Section 60 Inquiries and investigations</b>	7
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).	8 9 10
<b>[5] Section 63 Information about compliance arrangements</b>	11
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).	12 13 14
<b>2.6 Local Government Act 1993 No 30</b>	15
<b>Section 440H How is the process for suspension of a councillor for misbehaviour initiated?</b>	16 17
Omit section 440H (1) (c). Insert instead:	18
(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	19 20 21
(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.	22 23 24 25
<b>2.7 Police Act 1990 No 47</b>	26
<b>Section 167A Offence of making false complaint about conduct of police officer or giving false information</b>	27 28
Insert after section 167A (2) (e):	29
(e1) the Inspector of the Independent Commission Against Corruption,	30 31

<b>2.8 Police Integrity Commission Act 1996 No 28</b>	1
<b>[1] Section 4 Definitions</b>	2
Insert after section 4 (3):	3
(3A) <b>References to police officers extend to all members of NSW Police</b>	4
	5
A reference in this Act to a police officer includes a reference to any member (whether or not a police officer) of NSW Police.	6
	7
<b>[2] Schedule 2 Provisions relating to Inspector</b>	8
Omit clause 1 (1).	9
<b>2.9 Privacy and Personal Information Protection Act 1998 No 133</b>	10
	11
<b>[1] Section 3 Definitions</b>	12
Insert after paragraph (b) of the definition of <i>investigative agency</i> in section 3 (1):	13
	14
(b1) the Inspector of the Independent Commission Against Corruption,	15
	16
<b>[2] Section 3 (1)</b>	17
Insert in alphabetical order:	18
<i>staff of the Inspector of the Independent Commission Against Corruption</i> means:	19
	20
(a) any staff employed under section 57E (1) or (2) of the <i>Independent Commission Against Corruption Act 1988</i> ,	21
and	22
	23
(b) any consultants engaged under section 57E (3) of that Act.	24
<b>[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</b>	25
	26
	27
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.	28
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<b>[4] Section 38 Inquiries and investigations</b>	31
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).	32
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<b>[5] Section 40 Personal information digest</b>	1
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).	2 3 4
<b>[6] Section 42 Information about compliance arrangements</b>	5
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).	6 7 8
<b>2.10 Protected Disclosures Act 1994 No 92</b>	9
<b>[1] Section 4 Definitions</b>	10
Insert in alphabetical order:	11
<i>ICAC Inspector</i> means the Inspector of the Independent Commission Against Corruption appointed under the <i>Independent Commission Against Corruption Act 1988</i> .	12 13 14
<i>officer of the ICAC Inspector</i> means an officer of the Inspector, as defined in the <i>Independent Commission Against Corruption Act 1988</i> .	15 16 17
<b>[2] Section 4</b>	18
Insert at the end of the definition of <i>investigating authority</i> :	19
, or	20
(g) the ICAC Inspector.	21
<b>[3] Section 12C</b>	22
Insert after section 12B:	23
<b>12C Disclosure concerning Commission, ICAC Inspector and officers of Commission and ICAC Inspector</b>	24 25
(1) To be protected by this Act, a disclosure by a public official to the ICAC Inspector must:	26 27
(a) be made in accordance with the <i>Independent Commission Against Corruption Act 1988</i> , and	28 29
(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.	30 31 32 33



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<p>(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 <i>Independent Commission Against Corruption Act 1988</i>.</p> <p>(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.</p> <p>(4) The Ombudsman may investigate, and report, in accordance with the <i>Ombudsman Act 1974</i> on any matter raised by a disclosure made to it that is of a kind referred to in subsection (3).</p> <p><b>[4] Section 13 Disclosures about investigating authorities</b></p> <p>Omit section 13 (3) (a) and (b).</p> <p><b>[5] Schedule 2 Savings, transitional and other provisions</b></p> <p>Insert at the end of clause 1 (1):</p> <p style="padding-left: 40px;"><i>Independent Commission Against Corruption Amendment Act 2005</i> (but only in so far as Schedule 2 to that Act amends this Act)</p> <p><b>2.11 Totalizator Act 1997 No 45</b></p> <p><b>Section 105 Secrecy</b></p> <p>Insert after section 105 (5) (a):</p> <p style="padding-left: 40px;">(a1) the Inspector of the Independent Commission Against Corruption,</p>	<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p>
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