

## INDEPENDENT COMMISSION AGAINST CORRUPTION BILL 1988 (No. 2)

NEW SOUTH WALES



### EXPLANATORY NOTE

**(This Explanatory Note relates to this Bill as introduced into Parliament)**

The object of this Bill is to constitute an Independent Commission Against Corruption, and to confer on it wide powers, with special emphasis on—

- investigating corruption or possible corruption where public officials are involved, either on a complaint or reference made to it or on its own initiative; and
- educating public authorities and the community generally on the detrimental effects of public corruption and strategies to combat it.

The expression used in the Bill is “corrupt conduct”. The description of corrupt conduct includes (among other things) conduct that adversely affects, or could adversely affect, the honest or impartial exercise of official functions by a public official or a public authority. It is immaterial whether the conduct is committed by a public official or by anyone else. Corrupt conduct must however be such as could constitute or involve a criminal offence, a disciplinary offence or reasonable grounds for terminating the services of a public official. The Bill has an extensive description of what constitutes “corrupt conduct” (clauses 7–9 below).

The Commission is to give special attention to matters referred to it by resolution of both Houses of Parliament.

The Bill provides for the appointment of a Commissioner who is to be responsible for the administration and affairs of the Commission. The Commissioner is to be assisted by Assistant Commissioners and other staff. The Commissioner may not be removed from office except by an address of both Houses of Parliament.

The Bill also provides for the appointment of the following committees:

- The Operations Review Committee, whose function is to advise the Commissioner, especially as regards action that might be taken on complaints received about possible corrupt conduct.
  - A Parliamentary joint committee, to be called the Committee on the Independent Commission Against Corruption, whose functions include monitoring and reviewing the exercise of the Commission’s functions.
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**PART 1—PRELIMINARY**

**Clause 1** specifies the short title of the proposed Act.

**Clause 2** provides that the proposed Act is to commence on a day or days to be appointed by proclamation of the Governor-in-Council.

**Clause 3** contains definitions used in the proposed Act.

**PART 2—CONSTITUTION OF COMMISSION**

**Clause 4** constitutes a corporation with the corporate name of the Independent Commission Against Corruption and provides for the Commissioner to act for the Commission.

**Clause 5** provides for the appointment by the Governor of a Commissioner for the Independent Commission Against Corruption.

**Clause 6** provides for the appointment of Assistant Commissioners, who are to assist the Commissioner.

**PART 3—CORRUPT CONDUCT**

**Clause 7** defines corrupt conduct as any conduct which falls within the description of corrupt conduct in clause 8 (1) or (2), but which is not excluded by clause 9.

**Clause 8** describes the general nature of corrupt conduct. Subclause (1) states that corrupt conduct is—

- (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority; or
- (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions; or
- (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust; or
- (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

Subclause (2) states that conduct is also corrupt conduct if it adversely affects, or could adversely affect, any exercise of official functions by a public official and it is of a criminal nature, e.g. bribery, obtaining or offering secret commissions or perverting the course of justice.

Conduct may amount to corrupt conduct even though it occurs before the commencement of the proposed provisions and even though it occurred outside the State or outside Australia.

**Clause 9** limits the general nature of corrupt conduct to conduct that could constitute or involve a criminal offence, a disciplinary offence or reasonable grounds for terminating the services of a public official.

**Clause 10** provides for the making of complaints to the Commission about possible corrupt conduct. The Commission is required to consult the proposed Operations Review Committee (see clauses 20 and 58–62) before deciding not to investigate or discontinue an investigation of a complaint.

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**Clause 11** requires the Ombudsman, the Commissioner of Police or the principal officer of, or person who constitutes, a public authority to report to the Commission any matter suspected on reasonable grounds to involve corrupt conduct.

## PART 4—FUNCTIONS OF COMMISSION

### Division 1—Functions generally

**Clause 12** requires the Commission to regard the protection of public interest and the prevention of breaches of public trust as paramount in exercising its functions.

**Clause 13** sets out the principal functions of the Commission. The Commission is required to investigate allegations of corrupt conduct and communicate the results of investigations to appropriate authorities. Its functions also include such matters as the education of public authorities and officials on strategies to combat corrupt conduct and the fostering of public support in combating corrupt conduct.

The Commission is also required to investigate matters and carry out functions referred to it by both Houses of Parliament.

**Clause 14** provides that other functions of the Commission are the provision of evidence for prosecutions to the Director of Public Prosecutions, and the furnishing of evidence relating to offences in other States etc. to the Attorney General with recommendations as to action to be taken.

**Clause 15** provides for the establishment of task forces and the co-operation with other State, or Commonwealth, task forces.

**Clause 16** provides for the Commission to work in co-operation with law enforcement agencies, the Auditor-General, the Ombudsman, the National Crime Authority, the Australian Bureau of Criminal Intelligence and certain other officials and bodies. The Commission is authorised to disseminate information to other persons and bodies.

**Clause 17** requires the Commission to exercise its functions with as little formality as is possible and provides that it is not bound by the rules or practice of evidence.

**Clause 18** authorises the Commission to carry out investigations even though court proceedings are in progress subject to any such investigations being carried out, as far as practicable, in private and no report on the investigations being made during the court proceedings.

**Clause 19** gives the Commission powers incidental to its functions. The clause also specifically authorises the Commission to apply for warrants under the Listening Devices Act 1984.

### Division 2—Investigations

**Clause 20** allows the Commission to conduct investigations on its own initiative, on complaint or on report or reference being made to it. The Commission may refuse to conduct an investigation if the matter is trivial or remote in time or if a complaint is frivolous, vexatious or not in good faith.

**Clause 21** gives the Commission power to require public authorities or officials to produce information.

**Clause 22** allows the Commission to require persons to attend before the Commissioner or an Assistant Commissioner and produce specified documents etc.

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**Clause 23** empowers the Commissioner or an authorised officer to enter premises occupied or used by a public authority or official and inspect and copy documents.

**Clause 24** saves certain claims of privilege in relation to information requested by the Commission.

**Clause 25** saves certain claims of privilege in relation to entry on premises and inspection and copying of documents.

**Clause 26** protects certain persons from prosecution in respect of self-incriminating statements, documents or other things produced at the request of the Commission.

**Clause 27** authorises the Supreme Court to grant injunctions restraining conduct by persons (whether or not public authorities or officials) if it relates to an investigation or proposed investigation.

**Clause 28** provides that an injunction is not to be granted unless the conduct concerned is likely to impede an investigation or cause irreparable harm. The clause also provides that the Commission need not give an undertaking as to damages.

**Clause 29** provides that the powers under the Division may be exercised whether or not the Commission is conducting a hearing for the purposes of the investigation.

**Division 3—Hearings**

**Clause 30** authorises the Commission to hold hearings for the purposes of an investigation.

**Clause 31** provides for the holding of public or private hearings.

**Clause 32** allows a right of appearance for interested parties.

**Clause 33** allows the Commission to authorise legal representation at a hearing.

**Clause 34** provides for examination or cross-examination of witnesses, with the leave of the Commission.

**Clause 35** allows the summoning of witnesses to give evidence and produce documents.

**Clause 36** authorises the Commissioner to issue a warrant for the arrest of a person failing to attend in answer to a summons, or a person not likely to attend unless compelled to do so.

**Clause 37** makes provisions in relation to answering of questions by witnesses, the production of documents and the admissibility of answers or documents in other proceedings. The clause provides that a witness must answer questions or produce documents, even though self-incriminating.

**Clause 38** empowers the making of a declaration that answers, documents or other things are given or produced subject to a general objection by the witness concerned, so as to avoid repeated objections.

**Clause 39** provides for the bringing of prisoners before the Commission where their attendance is required.

**Division 4—Search warrants**

**Clause 40** authorises the issue of search warrants by justices or by the Commissioner.

**Clause 41** sets out the powers conferred by a search warrant.

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**Clause 42** requires production of search warrants.

**Clause 43** provides for the use of force to enter premises.

**Clause 44** allows the use of assistants to execute warrants.

**Clause 45** contains special provisions for the execution of warrants by night.

**Clause 46** provides for the expiry of warrants.

**Clause 47** provides for the seizure and retention of documents found.

**Clause 48** applies certain provisions of the Search Warrants Act 1985 to search warrants issued under the Division.

**Division 5—Miscellaneous**

**Clause 49** provides for the granting by the Attorney General on the recommendation of the Commission of indemnities from prosecution of persons, or undertakings not to use statements as evidence in other proceedings.

**Clause 50** provides for the protection of witnesses whose safety may be prejudiced.

**Clause 51** relates to the payment of witnesses' expenses.

**Clause 52** allows the giving, by the Attorney General, of legal and financial assistance to witnesses.

**PART 5—REFERRAL OF MATTERS BY COMMISSION**

**Clause 53** authorises the Commission, before, during or after an investigation by it, to refer a matter to any other appropriate person or body ("a relevant authority") for investigation.

**Clause 54** enables the Commission to require a relevant authority to report on the action taken.

**Clause 55** sets out the action that may be taken by the Commission if it is dissatisfied with a report of a relevant authority. This includes the submission of a report to the relevant Minister.

**Clause 56** requires a relevant authority to comply with the Commission's requirements.

**Clause 57** provides for the revocation, variation etc. of referrals, requirements or directions under the Part.

**PART 6—OPERATIONS REVIEW COMMITTEE**

**Clause 58** constitutes an Operations Review Committee.

**Clause 59** sets out the Committee's functions, which are to advise the Commissioner as to whether complaints should be investigated and to advise on such other matters as the Commissioner refers to it.

**Clause 60** provides that the Committee shall consist of 8 members, being the Commissioner, an Assistant Commissioner, the Commissioner of Police, a person nominated by the Attorney General and 4 persons nominated by the Minister to represent community views.

**Clause 61** sets out the procedure for Committee meetings. Questions arising at a meeting are to be determined by a majority, the Chairperson having a casting vote.

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**Clause 62** requires members to disclose any interests in matters before the Committee and prohibits them taking part in matters in which they have an interest (unless the Committee or the Minister determines otherwise).

**PART 7—PARLIAMENTARY JOINT COMMITTEE**

**Clause 63** provides for the appointment of a joint committee of members of Parliament to be known as the Committee on the Independent Commission Against Corruption.

**Clause 64** sets out the functions of the Joint Committee. They include reviewing the exercise of the Commission's functions, reporting to both Houses of Parliament, inquiring into questions referred to it by both Houses and reporting to both Houses on the questions. The Joint Committee cannot investigate any particular conduct or reconsider the findings of the Commission in a particular case.

**Clause 65** provides for the appointment, in accordance with Parliamentary practice, of 9 members of the Joint Committee (3 from the Legislative Council and 6 from the Legislative Assembly). Ministers and Parliamentary Secretaries are not eligible.

**Clause 66** provides for the vacation of office by members and the filling of vacancies.

**Clause 67** relates to the election of a Chairman and Vice-Chairman of the Joint Committee.

**Clause 68** sets out the procedure for Joint Committee meetings.

**Clause 69** gives the Joint Committee power to send for persons, papers and records and provides for the taking of evidence in public.

**Clause 70** provides for the taking of evidence in private where a secret or confidential matter is involved. Penalties are provided for disclosing, without the consent of the witness, evidence taken in private.

**Clause 71** relates to the application of the Parliamentary Evidence Act 1901 and the Parliamentary Papers (Supplementary Provisions) Act 1975 to the Joint Committee.

**Clause 72** states that acts or proceedings of the Joint Committee are valid even though there is a vacancy in the office of a member or a defect in the appointment of a member.

**PART 8—REFERENCES BY AND REPORTS TO PARLIAMENT**

**Clause 73** provides that both Houses of Parliament, by resolution, may refer matters to the Commission for investigation or other action. The matters that may be referred include whether corrupt conduct may have occurred or may be about to occur, whether practices of a public authority or official need to be changed in order to reduce the likelihood of corrupt conduct occurring and the developing of educational programs in relation to combating corrupt conduct.

**Clause 74** relates to the preparation and furnishing to Parliament of reports on matters investigated and on other matters referred to it. A report may include a statement as to whether there is evidence warranting consideration of the prosecution of, or the taking of other action against, specified persons.

**Clause 75** authorises the Commission to make special reports to Parliament on administrative or policy matters.

**Clause 76** requires the Commission to make annual reports to Parliament on its operations.

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**Clause 77** provides that, if the Commission has made a recommendation to an authority that certain action be taken in relation to a matter under investigation and that recommendation has not been adopted, the Commission may report the matter to Parliament.

**Clause 78** provides for the tabling of reports. If the Commission so recommends, a Presiding Officer of a House of Parliament may make a report public forthwith even though the House is not in session. If published, it attracts the same privileges and immunities as if it had been tabled.

**Clause 79** defines Presiding Officer as meaning the President of the Legislative Council or the Speaker of the Legislative Assembly or, in the event of vacancies, the respective Clerks of the Houses.

**PART 9—CERTAIN OFFENCES**

**Clause 80** makes it an offence to obstruct the Commission or fail to comply with a lawful requirement of the Commission, to give false or misleading statements to the Commission or to disrupt a hearing before the Commission.

**Clause 81** relates to the making of false or misleading statements in complaints to the Commission.

**Clause 82** relates to failure to comply with notices to produce information and furnishing false or misleading information.

**Clause 83** makes it an offence to fail to comply with a notice to attend before the Commission and produce documents.

**Clause 84** relates to obstruction of persons executing search warrants.

**Clause 85** makes it an offence to be present (in contravention of a Commission direction) at a hearing in private before the Commission.

**Clause 86** provides a penalty for failing to attend the Commission in answer to a summons or to answer questions or produce documents.

**Clause 87** provides that it is an offence to give false or misleading evidence at a hearing before the Commission.

**Clause 88** makes it an offence to destroy or dispose of potential evidence or to alter documents with intent to delay or obstruct.

**Clause 89** relates to the procuring of false testimony.

**Clause 90** relates to bribery of witnesses.

**Clause 91** concerns fraud or deceit with intent to affect the testimony of witnesses.

**Clause 92** makes it an offence to prevent a witness from attending before the Commission.

**Clause 93** makes it an offence to use violence against or to cause loss, disadvantage etc. to a witness.

**Clause 94** provides that an employer who dismisses or prejudices an employee on account of the employee giving evidence is guilty of an offence.

**Clause 95** relates to impersonation of officers of the Commission.

**Clause 96** relates to bribery of officers of the Commission.

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**PART 10—CONTEMPT OF COMMISSION**

**Clause 97** defines “offender” for the purposes of the Part as including a person alleged to have committed contempt.

**Clause 98** sets out the circumstances in which a person is guilty of contempt of the Commission.

**Clause 99** provides for the Commissioner to certify a contempt to the Supreme Court, and for the examination and punishment of the offender by the Supreme Court.

**Clause 100** contains ancillary provisions in relation to dealing with cases of contempt. The Commissioner may summon a person to show cause why the offender should not be dealt with for contempt, and the Commissioner may have the offender arrested and brought before the Supreme Court.

**Clause 101** states that an act or omission which is both contempt and an offence can be punished as either contempt or an offence but not both.

**PART 11—MISCELLANEOUS**

**Clause 102** states that the proposed Act will bind the Crown.

**Clause 103** gives effect to a schedule of provisions relating to the appointment, tenure of office and remuneration of the Commissioner and Assistant Commissioners.

**Clause 104** provides for the employment by the Commission of a Director of Operations, a Director of Administration and such other staff as may be necessary. The Commission may, with the approval of the relevant Minister, make use of the staff of government departments or authorities (including members of the Police Force) in carrying out its functions.

**Clause 105** provides that a member of the Police Force seconded to the Commission may continue to act as a constable.

**Clause 106** authorises the Commission to appoint counsel to assist it, either generally or in relation to particular matters.

**Clause 107** provides for the delegation, subject to certain specified exceptions, of functions by the Commission, the Commissioner or an Assistant Commissioner.

**Clause 108** specifies how documents may be served for the purposes of the proposed Act.

**Clause 109** provides certain protections from liability to the Commissioner, any person acting under the direction of the Commission or the Commissioner and other persons involved in proceedings before the Commission.

**Clause 110** authorises the making of regulations with respect to the disclosure of pecuniary interests and other matters by officers of the Commission.

**Clause 111** contains secrecy provisions regarding information acquired in the exercise of functions under the proposed Act.

**Clause 112** authorises the Commission to give a direction prohibiting the publication of evidence or other matters.

**Clause 113** provides that if a person is charged with an offence in a court, the court may (after considering any representations by the Commissioner) require that evidence subject to a direction referred to in clause 112 be made available to the person charged or to the prosecutor.



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**Clause 114** provides that it is an offence to disclose information about a notice to furnish information or produce documents to the Commission if the disclosure will prejudice an investigation.

**Clause 115** provides that the maximum pecuniary penalty applicable to a corporation is double that otherwise applying to an offence.

**Clause 116** contains provisions relating to proceedings for offences.

**Clause 117** authorises the making of regulations.

**Clause 118** amends the Ombudsman Act 1974 so as to exclude the conduct of the Commission or its officers, where exercising functions under the proposed Act, from the operation of the Ombudsman Act.

**Clause 119** makes a consequential amendment to the Statutory and Other Offices Remuneration Act 1975.

**Clause 120** makes a consequential amendment to the Public Finance and Audit Act 1983.

**Clause 121** amends the Crimes (Confiscation of Profits) Act 1985 so as to authorise the Commissioner to apply for restraining orders under that Act.

#### **SCHEDULES**

**Schedule 1** contains the provisions relating to the appointment etc. of the Commissioner and Assistant Commissioners.

**Schedule 2** contains provisions applying to the office of the appointed members of the Operations Review Committee.

**Schedule 3** sets out the employment rights of staff of the Commission who were previously employed in the service of the Government.

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