



New South Wales

# ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2021 (No 2)

## Explanatory note

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

## Overview of Bill

The object of this Bill is to make amendments to various Acts—

- (a) to facilitate the administrative and financial independence of the Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the New South Wales Electoral Commission, the Ombudsman's Office and the Audit Office (*the relevant GSF agencies*), and
- (b) to constitute, by statute, committees to review the Budget information prepared by the Department of the Legislative Council and the Department of Parliamentary Services and to determine amounts of appropriations for inclusion in annual Appropriation Acts, and
- (c) to extend the functions of the existing Public Accounts Committee to the review of Budget information prepared by the Audit Office and to the determination of amounts of appropriations for inclusion in relevant Appropriation Acts, and
- (d) to require the Treasurer to make a statement of explanation if an appropriation made by an Appropriation Act is inconsistent with the determination of a Committee on the appropriation.

## 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 the date of assent to the proposed Act.

## **Schedule 1      Amendment of Government Sector Audit Act 1983 No 152**

**Schedule 1** requires the Public Accounts Committee to—

- (a) review the information for use in Budget preparations prepared by the Audit Office, and
- (b) to determine, and report to Parliament on, the amounts for inclusion in the relevant Appropriation Act.

The Treasurer is required to make a statement of explanation to Parliament, when the relevant Appropriation Act is introduced, if the appropriation made by the relevant Appropriation Act is inconsistent with the amounts determined by the Committee.

## **Schedule 2      Amendment of Government Sector Finance Act 2018 No 55**

**Schedule 2[2]** specifies the Law Enforcement Conduct Commission as a separate GSF agency. **Schedule 2[1]** makes a consequential amendment.

**Schedule 2[3]** requires the Treasurer to make a statement of explanation to Parliament, when the annual Appropriation Act is introduced, if the appropriation made by the annual Appropriation Act is inconsistent with the amounts determined by the relevant Committees of the following agencies—

- (a) the Independent Commission Against Corruption,
- (b) the Law Enforcement Conduct Commission,
- (c) the New South Wales Electoral Commission,
- (d) the Ombudsman's Office,
- (e) the Audit Office.

**Schedule 2[4]** constitutes the Legislative Council Public Accountability Committee and the Joint Committee on Parliamentary Services. The Committees are required to—

- (a) review the information for use in Budget preparations prepared by the Department of the Legislative Council and the Department of Parliamentary Services, and
- (b) to determine, and report to Parliament on, the amounts for inclusion in the annual Appropriation Act.

The Treasurer is required to make a statement of explanation to Parliament, when the annual Appropriation Act is introduced, if the appropriation made by the annual Appropriation Act is inconsistent with the amounts determined by the Committee.

## **Amendment of other Acts**

**Schedules 3–6** amend the *Electoral Act 2017*, the *Independent Commission Against Corruption Act 1988*, the *Law Enforcement Conduct Commission Act 2016* and the *Ombudsman Act 1974* respectively, with the effect that the Committee for each agency is required—

- (a) to review the information for use in Budget preparations prepared by the agency for the purpose of the *Government Sector Finance Act 2018*, section 4.5, and
- (b) to determine, and report to Parliament on, the amounts for inclusion in the annual Appropriation Act.



New South Wales

# ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2021 (No 2)

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New South Wales

# **ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2021 (No 2)**

No           , 2021

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## **A Bill for**

An Act to make amendments to various Acts to facilitate the administrative and financial independence of certain agencies; and for related purposes.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

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This Act is the *ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Act 2021*.

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**2 Commencement**

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

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<b>Schedule 1</b>	<b>Amendment of Government Sector Audit Act</b>	1
	<b>1983 No 152</b>	2
<b>Section 57B</b>		3
Insert after section 57A—		4
<b>57B</b>	<b>Functions of Committee for annual appropriations</b>	5
(1)	The Committee has the following functions in relation to annual appropriations—	6
	(a) to review the information for use in Budget preparations prepared by the Audit Office for the purposes of the <i>Government Sector Finance Act 2018</i> , section 4.5,	7
	(b) to determine the amounts for inclusion in a Bill for the annual Appropriation Act for appropriations for the Audit Office,	8
	(c) to report to Parliament on its determinations before the introduction of the relevant Bill.	9
(2)	The Treasurer must make a statement of explanation to Parliament when the relevant Bill is introduced if the appropriation made by the relevant Bill is inconsistent with the amounts determined by the Committee.	10
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<b>Schedule 2</b>	<b>Amendment of Government Sector Finance Act 2018 No 55</b>	1
		2
<b>[1] Section 2.4 GSF agencies</b>		3
	Omit section 2.4(1)(e).	4
<b>[2] Section 2.5 Separate GSF agency</b>		5
	Insert after section 2.5(1)(c)—	6
	(c1) the Law Enforcement Conduct Commission,	7
<b>[3] Section 4.6A</b>		8
	Insert after section 4.6—	9
<b>4.6A Treasurer to provide statement of explanation in certain circumstances</b>		10
(1)	This section applies only to the following GSF agencies—	11
(a)	the Independent Commission Against Corruption,	12
(b)	the Law Enforcement Conduct Commission,	13
(c)	the New South Wales Electoral Commission,	14
(d)	the Ombudsman’s Office,	15
(e)	the Audit Office.	16
(2)	The Treasurer must make a statement of explanation to Parliament when the Bill for the relevant annual Appropriation Act is introduced if the appropriation made by the annual Appropriation Act for a GSF agency to which this section applies is inconsistent with the amount determined by the agency’s Committee.	17 18 19 20 21
(3)	In this section—	22
	<i>agency’s Committee</i> means the following—	23
(a)	for the Independent Commission Against Corruption—the Committee on the Independent Commission Against Corruption constituted under the <i>Independent Commission Against Corruption Act 1988</i> , section 63,	24 25 26
(b)	for the Law Enforcement Conduct Commission and the Ombudsman’s Office—the Committee on the Ombudsman, the Law Enforcement Conduct Commission and the Crime Commission constituted under the <i>Ombudsman Act 1974</i> , section 31A,	27 28 29 30
(c)	for the New South Wales Electoral Commission—the Joint Standing Committee on Electoral Matters,	31 32
(d)	for the Audit Office—the Public Accounts Committee constituted under the <i>Government Sector Audit Act 1983</i> , section 54.	33 34
<b>[4] Parts 9A and 9B</b>		35
	Insert after Part 9—	36
<b>Part 9A The Legislative Council Public Accountability Committee</b>		37 38
<b>9A.1 Definitions</b>		39
	In this Part—	40

<i>Chair</i> means the Chair of the Committee.	1
<i>Committee</i> means the Public Accountability Committee for the time being constituted under this Part.	2 3
<i>Deputy Chair</i> means the Deputy Chair of the Committee.	4
<b>9A.2 Constitution of Legislative Council Public Accountability Committee</b>	5
(1) As soon as practicable after the commencement of the first session of each Parliament, a committee of members of the Legislative Council, known as the Legislative Council Public Accountability Committee, must be appointed.	6 7 8
(2) The Committee must consist of 7 members.	9
(3) The appointment of members of the Committee must be in accordance with the practice of the Legislative Council for the appointment of members to serve on select committees of the Legislative Council.	10 11 12
(4) A member of the Committee ceases to hold office—	13
(a) when the Legislative Council is dissolved or expires by the effluxion of time, or	14 15
(b) if the member ceases to be a member of the Legislative Council, or	16
(c) if the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or	17 18
(d) if the member is discharged from office by the Legislative Council.	19
(5) The Legislative Council may appoint a member to fill a vacancy in the office of a member of the Committee.	20 21
(6) An act or proceeding of the Committee is valid despite—	22
(a) a vacancy in the office of a member of the Committee, or	23
(b) a defect in the appointment or disqualification of a member of the Committee.	24 25
<b>9A.3 Chair and Deputy Chair of Committee</b>	26
(1) There must be a Chair and a Deputy Chair of the Committee elected by and from the members of the Committee.	27 28
(2) A member of the Committee ceases to hold office as Chair or Deputy Chair if—	29 30
(a) the member ceases to be a member of the Committee, or	31
(b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or	32 33
(c) the member is discharged from the office by the Committee.	34
(3) If the Chair is absent or unable to perform the duties of the office of Chair or if there is a vacancy in the office, the Deputy Chair may exercise the functions of the Chair under this Act or under the <i>Parliamentary Evidence Act 1901</i> .	35 36 37
<b>9A.4 Procedure of Committee</b>	38
(1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings must, subject to this Part, be as determined by the Committee.	39 40 41
(2) The Clerk of the Legislative Council must call the first meeting of the Committee in each Parliament in the way the Clerk thinks appropriate.	42 43



(3)	At a meeting of the Committee, 4 members constitute a quorum.	1
(4)	The presiding member at a meeting of the Committee is—	2
(a)	the Chair, or	3
(b)	in the absence of the Chair—the Deputy Chair, or	4
(c)	in the absence of both the Chair and the Deputy Chair—a member of the Committee elected by the members present.	5 6
(5)	The Deputy Chair or other member presiding at a meeting of the Committee has all the functions and powers of the Chair.	7 8
(6)	The Chair, Deputy Chair or other member presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.	9 10 11
(7)	A question arising at a meeting of the Committee must be determined by a majority of votes of the members present and voting.	12 13
(8)	The Committee may sit and transact business despite a prorogation or adjournment of the Legislative Council.	14 15
(9)	The Committee may sit and transact business on a sitting day of the Legislative Council during the time of the sitting.	16 17
<b>9A.5</b>	<b>Review of Budget preparations</b>	18
(1)	In addition to other functions provided for in the resolution appointing the Committee, the Committee must—	19 20
(a)	review the information for use in Budget preparations prepared by the Department of the Legislative Council, and	21 22
(b)	determine the amount for inclusion in a Bill for the relevant annual Appropriation Act for appropriations for the Department of the Legislative Council, and	23 24 25
(c)	report to Parliament on its determination before the introduction of the Bill.	26 27
(2)	The Treasurer must make a statement of explanation to Parliament, when the Bill is introduced, if the appropriation made by the relevant annual Appropriation Act is inconsistent with the amount determined by the Committee.	28 29 30 31
<b>Part 9B</b>	<b>Joint Committee on Parliamentary Services</b>	32
<b>9B.1</b>	<b>Definitions</b>	33
	In this Part—	34
	<i>Chair</i> means the Chair of the Joint Committee.	35
	<i>Deputy Chair</i> means the Deputy Chair of the Joint Committee.	36
	<i>Joint Committee</i> means the Joint Committee on Parliamentary Services for the time being constituted under this Part.	37 38
<b>9B.2</b>	<b>Constitution of Joint Committee</b>	39
	As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a joint committee of members of Parliament, known as the Joint Committee on Parliamentary Services, must be appointed.	40 41 42 43

<b>9B.3</b>	<b>Membership</b>	1
(1)	The Joint Committee must consist of 10 members, of whom—	2
(a)	5 are members of, and appointed by, the Legislative Council, and	3
(b)	5 are members of, and appointed by, the Legislative Assembly.	4
(2)	The appointment of members of the Joint Committee must, as far as practicable, be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.	5 6 7 8
(3)	A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.	9 10
<b>9B.4</b>	<b>Vacancies</b>	11
(1)	A member of the Joint Committee ceases to hold office—	12
(a)	when the Legislative Assembly is dissolved or expires by the effluxion of time, or	13 14
(b)	if the member becomes a Minister of the Crown or a Parliamentary Secretary, or	15 16
(c)	if the member ceases to be a member of the Legislative Council or Legislative Assembly, or	17 18
(d)	for a member of the Legislative Council—if the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or	19 20 21
(e)	for a member of the Legislative Assembly—if the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or	22 23 24
(f)	if the member is discharged from office by the House of Parliament to which the member belongs.	25 26
(2)	Either House of Parliament may appoint a member to fill a vacancy among the members of the Joint Committee appointed by that House.	27 28
<b>9B.5</b>	<b>Chair and Deputy Chair</b>	29
(1)	There must be a Chair and a Deputy Chair of the Joint Committee, elected by and from the members of the Joint Committee.	30 31
(2)	A member of the Joint Committee ceases to hold office as Chair or Deputy Chair of the Joint Committee if—	32 33
(a)	the member ceases to be a member of the Joint Committee, or	34
(b)	the member resigns the office by instrument in writing presented to a meeting of the Joint Committee, or	35 36
(c)	the member is discharged from office by the Joint Committee.	37
(3)	If the Chair is absent or unable to perform the duties of Chair or if there is a vacancy in the office, the Deputy Chair may exercise the functions of the Chair under this Act or under the <i>Parliamentary Evidence Act 1901</i> .	38 39 40
<b>9B.6</b>	<b>Procedure</b>	41
(1)	The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings must, subject to this Part, be as determined by the Joint Committee.	42 43 44

(2)	The Clerk of the Legislative Assembly must call the first meeting of the Joint Committee in each Parliament in the way the Clerk thinks appropriate.	1 2
(3)	At a meeting of the Joint Committee, 6 members constitute a quorum, but the Joint Committee must meet as a joint committee at all times.	3 4
(4)	The presiding member at a meeting of the Committee is—	5
	(a) the Chair, or	6
	(b) in the absence of the Chair—the Deputy Chair, or	7
	(c) in the absence of both the Chair and the Deputy Chair—a member of the Committee elected by the members present.	8 9
(5)	The Deputy Chair or other member presiding at a meeting of the Joint Committee has all the functions of the Chair.	10 11
(6)	The Chair, Deputy Chair or other member presiding at a meeting of the Joint Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.	12 13 14
(7)	A question arising at a meeting of the Joint Committee must be determined by a majority of votes of the members present and voting.	15 16
(8)	The Joint Committee may sit and transact business despite a prorogation of the Houses of Parliament or an adjournment of either House of Parliament.	17 18
(9)	The Joint Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.	19 20
<b>9B.7</b>	<b>Procedure if Parliament not in session</b>	21
(1)	If a House of Parliament is not sitting when the Joint Committee seeks to give a report to the House, the Committee may present copies of the report to the Clerk of the House.	22 23 24
(2)	The report—	25
	(a) on presentation and for all purposes is taken to have been laid before the House, and	26 27
	(b) may be printed by authority of the Clerk, and	28
	(c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and	29 30
	(d) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.	31 32 33
<b>9B.8</b>	<b>Validity of certain acts or proceedings</b>	34
	An act or proceeding of the Joint Committee is valid despite—	35
	(a) a vacancy in the office of a member of the Joint Committee, or	36
	(b) a defect in the appointment or disqualification of a member of the Joint Committee.	37 38
<b>9B.9</b>	<b>Review of Budget preparations</b>	39
(1)	The Joint Committee must—	40
	(a) review the information for use in Budget preparations prepared by the Department of Parliamentary Services, and	41 42

- (b) determine the amount for inclusion in a Bill for the relevant annual Appropriation Act for appropriations for the Department of Parliamentary Services, and 1
    - (c) report to Parliament on its determination before the introduction of the Bill. 2
  - (2) The Treasurer must make a statement of explanation to Parliament, when the Bill is introduced, if the appropriation made by the relevant annual Appropriation Act is inconsistent with the amount determined by the Committee. 3
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<b>Schedule 3</b>	<b>Amendment of Electoral Act 2017 No 66</b>	1
<b>Part 2, Division 4</b>		2
Insert after Part 2, Division 3—		3
<b>Division 4</b>	<b>Joint Standing Committee on Electoral Matters</b>	4
<b>16A</b>	<b>Review of Budget preparations</b>	5
	The Joint Standing Committee on Electoral Matters must—	6
	(a) review the information for use in Budget preparations prepared by the Electoral Commission for the purposes of the <i>Government Sector Finance Act 2018</i> , section 4.5, and	7 8 9
	(b) determine the amount for inclusion in the Bill for the relevant annual Appropriation Act for appropriations for the Electoral Commission, and	10 11
	(c) report to Parliament on its determination before the introduction of the Bill.	12 13

**Schedule 4      Amendment of Independent Commission Against  
Corruption Act 1988 No 35**

**Section 64 Functions**

Insert after section 64(1)(e)—

- (f) to review the information for use in Budget preparations prepared by the Commission for the purposes of the *Government Sector Finance Act 2018*, section 4.5,
- (g) to determine the amount for inclusion in the Bill for the relevant annual Appropriation Act for appropriations for the Commission,
- (h) to report to Parliament on its determination before the introduction of the Bill.

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<b>Schedule 5</b>	<b>Amendment of Law Enforcement Conduct Commission Act 2016 No 61</b>	1
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<b>Section 131 Functions</b>		3
Insert after section 131(1)(e)—		4
(f)	to review the information for use in Budget preparations prepared by the Commission for the purposes of the <i>Government Sector Finance Act 2018</i> , section 4.5,	5
		6
		7
(g)	determine the amount for inclusion in the Bill for the relevant annual Appropriation Act for appropriations for the Commission,	8
		9
(h)	to report to Parliament on its determination before the introduction of the Bill.	10
		11

<b>Schedule 6</b>	<b>Amendment of Ombudsman Act 1974 No 68</b>	1
<b>Section 31B Functions</b>		2
Insert after section 31B(1)(e)—		3
(f)	to review the information for use in Budget preparations prepared by the Ombudsman’s Office for the purposes of the <i>Government Sector Finance Act 2018</i> , section 4.5,	4 5 6
(g)	determine the amount for inclusion in the Bill for the relevant annual Appropriation Act for appropriations for the Ombudsman’s Office,	7 8
(h)	report to Parliament on its determination before the introduction of the Bill.	9 10