



New South Wales

ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Bill 2020

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 independence of the Independent Commission Against Corruption, the Law Enforcement Conduct Commission, the New South Wales Electoral Commission and the Ombudsman's Office (*the relevant GSF agencies*), and
- (b) to require the annual appropriation for each relevant GSF agency, including a contingency fund, to be paid directly to the agency, and
- (c) to require the Treasurer to authorise payments out of each relevant GSF agency's contingency fund with the approval of the relevant Joint Committee for the agency and if certain other requirements are met.

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 Employment Act 2013 No 40

The proposed amendment amends Schedule 1 to the *Government Sector Employment Act 2013* to specify, as a separate Public Service agency, the Office of the Independent Commission Against Corruption (*ICAC*).

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] inserts proposed section 4.6A, which—

- (a) specifies that an appropriation made by the annual Appropriation Act to each relevant GSF agency is taken to include, as a contingency fund for the annual reporting period, an amount equal to 25% of the appropriation made (the *contingency fund*), and
- (b) requires an appropriation made by the annual Appropriation Act to each relevant GSF agency to be paid directly out of the Consolidated Fund to the agency, and
- (c) requires the Treasurer to authorise the payment of a requested sum out of the contingency fund for a relevant GSF agency if the appropriation has otherwise been exhausted, the total payments authorised will not exceed the contingency fund, the Joint Committee for the agency has approved the payment and any other requirements prescribed by the regulations have been met.

Amendments to 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—

- (a) the Joint Committee for each relevant GSF agency is required to review the information for use in Budget preparations prepared by ICAC for the purpose of section 4.5 of the *Government Sector Finance Act 2018* and to make recommendations to the Treasurer on priorities for funding having regard to the information, and
- (b) the relevant GSF agency is required to refer to the Joint Committee a request for payment of a sum out of the agency's contingency fund.

The Joint Committee may approve the request if the sum is no more than is necessary in the public interest to fund expenditure to meet the purpose for which the sum is required and if any other requirements prescribed by the regulations have been met.



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The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *ICAC and Other Independent Commissions Legislation Amendment (Independent Funding) Act 2020*.

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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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Schedule 1 Amendment of Government Sector Employment Act 2013 No 40

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Schedule 1 Public Service agencies

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Insert in appropriate order in Part 3—

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Office of the Independent Commission
Against Corruption

*Chief Executive Officer

Schedule 2	Amendment of Government Sector Finance Act 2018 No 55	1
		2
[1] Section 2.4 GSF agencies		3
Omit section 2.4(1)(e).		4
[2] Section 2.5 Separate GSF agency		5
Insert after section 2.5(1)(c)—		6
(ca) the Law Enforcement Conduct Commission,		7
[3] Section 4.6A		8
Insert after section 4.6—		9
4.6A Money to be paid out of Consolidated Fund directly to certain separate GSF agencies		10
		11
(1) This section applies only to the following separate GSF agencies—		12
(a) the Independent Commission Against Corruption,		13
(b) the Law Enforcement Conduct Commission,		14
(c) the New South Wales Electoral Commission,		15
(d) the Ombudsman’s Office.		16
(2) The appropriation made by the annual Appropriation Act to an agency is taken to include, as a contingency fund for the annual reporting period, an amount equal to 25% of the appropriation made (the <i>contingency fund</i>).		17
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(3) Despite any other provision of this Act, an appropriation made by the annual Appropriation Act to an agency, including the contingency fund, must be paid out of the Consolidated Fund directly to the agency.		20
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(4) The Treasurer must, at the request of an agency, authorise the payment of a sum out of the contingency fund if—		23
		24
(a) the appropriation made by the annual Appropriation Act for the agency for the annual reporting period has been exhausted, and		25
		26
(b) payments authorised to be made under this section will not exceed the contingency fund, and		27
		28
(c) the relevant Joint Committee has approved the payment of the sum, and		29
(d) any other requirements prescribed by the regulations have been met.		30
(5) The Treasurer must cause details of an authorisation to be included in the Budget Papers for the next annual reporting year for the NSW Government.		31
		32
(6) In this section—		33
<i>relevant Joint Committee</i> means the following—		34
(a) for the Independent Commission Against Corruption—the Committee on the Independent Commission Against Corruption constituted under section 63 of the <i>Independent Commission Against Corruption Act 1988</i> ,		35
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(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 section 31A of the <i>Ombudsman Act 1974</i> ,		39
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- (c) for the New South Wales Electoral Commission—the Joint Standing Committee on Electoral Matters.

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Schedule 3	Amendment of Electoral Act 2017 No 66	1
Part 2, Division 4		2
Insert after Division 3—		3
Division 4	Joint Standing Committee on Electoral Matters	4
16A	Review of Budget preparations	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 purpose of section 4.5 of the <i>Government Sector Finance Act 2018</i> , and	7 8 9
	(b) make recommendations to the Treasurer on priorities for funding having regard to the information.	10 11
16B	Approval of payment of sums out of contingency fund	12
	(1) The Commission is to refer to the Joint Standing Committee on Electoral Matters a request for payment of a sum out of the Commission’s contingency fund during an annual reporting period.	13 14 15
	(2) The Joint Standing Committee on Electoral Matters may approve the request if—	16 17
	(a) the sum is no more than is necessary in the public interest to fund expenditure to meet the purpose for which the sum is required, and	18 19
	(b) any other requirements prescribed by the regulations have been met.	20
	(3) In this section—	21
	<i>contingency fund</i> has the same meaning as in section 4.6A of the <i>Government Sector Finance Act 2018</i> .	22 23

Schedule 4	Amendment of Independent Commission Against Corruption Act 1988 No 35	1
		2
[1] Section 64 Functions		3
Insert after section 64(1)(e)—		4
(f)	to review the information for use in Budget preparations prepared by the Commission for the purpose of section 4.5 of the <i>Government Sector Finance Act 2018</i> and to make recommendations to the Treasurer on priorities for funding having regard to the information.	5
		6
		7
		8
[2] Section 64B		9
Insert after section 64A—		10
64B Approval of payment of sums out of contingency fund		11
(1)	The Commission is to refer to the Joint Committee a request for payment of a sum out of the Commission’s contingency fund during an annual reporting period.	12
		13
		14
(2)	The Joint Committee may approve the request if—	15
(a)	the sum is no more than is necessary in the public interest to fund expenditure to meet the purpose for which the sum is required, and	16
		17
(b)	any other requirements prescribed by the regulations have been met.	18
(3)	In this section—	19
	<i>contingency fund</i> has the same meaning as in section 4.6A of the <i>Government Sector Finance Act 2018</i> .	20
		21

Schedule 5	Amendment of Law Enforcement Conduct Commission Act 2016 No 61	1
		2
[1] Section 131 Functions		3
Insert after section 131(1)(e)—		4
(f)	to review the information for use in Budget preparations prepared by the Commission for the purpose of section 4.5 of the <i>Government Sector Finance Act 2018</i> and to make recommendations to the Treasurer on priorities for funding having regard to the information.	5 6 7 8
[2] Section 131A		9
Insert after section 131—		10
131A Approval of payment of sums out of contingency fund		11
(1)	The Commission is to refer to the Joint Committee a request for payment of a sum out of the contingency fund during an annual reporting period.	12 13
(2)	The Joint Committee may approve the request if—	14
(a)	the sum is no more than is necessary in the public interest to fund expenditure to meet the purpose for which the sum is required, and	15 16
(b)	any other requirements prescribed by the regulations have been met.	17
(3)	In this section—	18
	<i>contingency fund</i> has the same meaning as in section 4.6A of the <i>Government Sector Finance Act 2018</i> .	19 20

Schedule 6	Amendment of Ombudsman Act 1974 No 68	1
[1]	Section 31B Functions	2
	Insert after section 31B(1)(e)—	3
	(f) to review the information for use in Budget preparations prepared by the Commission for the purpose of section 4.5 of the <i>Government Sector Finance Act 2018</i> and to make recommendations to the Treasurer on priorities for funding having regard to the information.	4 5 6 7
[2]	Section 31BB	8
	Insert after section 31BA—	9
31BB	Approval of payment of sums out of contingency fund	10
(1)	The Ombudsman is to refer to the Joint Committee a request for payment of a sum out of the contingency fund during an annual reporting period.	11 12
(2)	The Joint Committee may approve the request if—	13
	(a) the sum is no more than is necessary in the public interest to fund expenditure to meet the purpose for which the sum is required, and	14 15
	(b) any other requirements prescribed by the regulations have been met.	16
(3)	In this section—	17
	<i>contingency fund</i> has the same meaning as in section 4.6A of the <i>Government Sector Finance Act 2018</i> .	18 19