



New South Wales

Independent Commission Against Corruption Amendment (Disciplinary Proceedings) Bill 2013

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* to enable employers of public officials to take disciplinary proceedings against public officials on the basis of corruption findings made by the Independent Commission Against Corruption (the *ICAC*) and to make admissible for that purpose self-incriminating and other evidence given to the ICAC by any such public officials.

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 Independent Commission Against Corruption Act 1988 No 35

Schedule 1 [3] enables the employer of a public official to take disciplinary proceedings in connection with the employment of the official if the ICAC finds (in a report to Parliament) that the public official has engaged or attempted to engage in corrupt conduct. The person or body determining the disciplinary proceedings may take any disciplinary or other action that the person or body may otherwise take in disciplinary proceedings against the official but must give the public official an opportunity to make a submission in relation to any proposed action. Evidence given by the official in the ICAC proceedings is admissible in the disciplinary proceedings (and in any subsequent appeal or review) but such evidence does not become admissible in any other proceedings because it is so used.

Schedule 1 [1] enables statements of information or documents or other things produced to the ICAC by a public official, that tend to incriminate the official, to be used in disciplinary proceedings based on a finding of corrupt conduct (as referred to in the amendment made by Schedule 1 [3]) even if the public official has objected to the production on that basis.

Schedule 1 [2] enables answers made, or documents or other things produced, by a public official at a compulsory examination or public inquiry before the ICAC, that tend to incriminate the official, to be used in disciplinary proceedings based on a finding of corrupt conduct (as referred to in the amendment made by Schedule 1 [3]).

First print



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Independent Commission Against Corruption Amendment (Disciplinary Proceedings) Bill 2013

No. , 2013

A Bill for

An Act to amend the *Independent Commission Against Corruption Act 1988* with respect to evidence in disciplinary proceedings after findings of corrupt conduct.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Independent Commission Against Corruption Amendment (Disciplinary Proceedings) Act 2013</i> .	3 4
2 Commencement	5
This Act commences on the date of assent to this Act.	6

Schedule 1	Amendment of Independent Commission Against Corruption Act 1988 No 35	1
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[1]	Section 26 Self-incrimination	4
	Insert “or except as provided by section 114A (5)” after “this Act” in section 26 (2).	5
		6
[2]	Section 37 Privilege as regards answers, documents etc	7
	Insert “or section 114A (5)” after “this section” in section 37 (3).	8
[3]	Section 114A	9
	Insert after section 114:	10
114A	Disciplinary proceedings—taking action based on finding of corrupt conduct	11
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(1)	This section applies if a finding is made by the Commission in a report under section 74 that a public official has engaged, or has attempted to engage, in corrupt conduct.	13
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(2)	Disciplinary proceedings in connection with the employment of the public official may be taken by the employer of the public official on the ground of the conduct of the public official on which the finding was based.	16
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(3)	The person or body determining the disciplinary proceedings:	20
(a)	is not required to further investigate whether that conduct occurred, and	21
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(b)	may take any disciplinary or other action against the public official of a kind that the person or body may otherwise take in disciplinary proceedings against any such public official, and	23
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(c)	is to give the public official an opportunity to make a submission in relation to any proposed disciplinary or other action.	27
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(4)	Any such disciplinary or other action is taken to be action under the law relating to the taking of disciplinary proceedings against the public official and that law (including any right to appeal against or seek a review of the action) applies accordingly.	30
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(5)	Evidence given to the Commission by the public official may be admitted and used in disciplinary proceedings against the public official that are authorised by this section (and in any related	34
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Schedule 1 Amendment of Independent Commission Against Corruption Act 1988
No 35

- appeal or review proceedings) despite sections 26 and 37 or any other law. However, the admission and use of the evidence in those proceedings does not cause it to be admissible against the public official in any other proceedings. 1
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- (6) The regulations may do any of the following: 5
- (a) exclude any proceedings against a public official from the operation of this section, 6
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- (b) declare that any proceedings against a public official are disciplinary proceedings in connection with the employment of a public official for the purposes of this section. 8
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- (7) This section does not apply: 12
- (a) to a finding of corrupt conduct that is made before the commencement of this section, or 13
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- (b) to any evidence given before that commencement that would not at that time have been admissible in disciplinary proceedings. 15
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- (8) In this section: 18
- employment** includes: 19
- (a) engagement under a contract for services, and 20
- (b) appointment as a statutory officer to whom a declaration under subsection (6) (b) applies. 21
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- evidence given to the Commission** means: 23
- (a) a statement of information, or a document or other thing, produced in response to a notice by the Commission, and 24
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- (b) an answer made, or a document or other thing produced, by a person summoned to attend or appearing before the Commission at a compulsory examination or public inquiry. 26
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