

**CRIMES (SECRET COMMISSIONS) AMENDMENT BILL
1987**

NEW SOUTH WALES



EXPLANATORY NOTE

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

The Local Government (Secret Commissions) Amendment Bill 1987 is cognate with this Bill.

The objects of this Bill are—

- (a) to repeal the Secret Commissions Prohibition Act 1919; and
- (b) to re-enact, with modifications, the provisions of that Act as Part IVA of the Crimes Act 1900.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Clause 4 repeals the Secret Commissions Prohibition Act 1919.

Clause 5 is a saving provision relating to offences committed under the Secret Commissions Prohibition Act 1919 before the commencement of the proposed Act.

Schedule 1 (1) amends section 1 of the Crimes Act 1900 (Short title and contents of Act) as a consequence of the proposed insertion of Part IVA into that Act.

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Schedule 1 (2) inserts into the Crimes Act 1900 proposed Part IVA (Corruptly receiving commissions and other corrupt practices) which contains the following proposed sections:

Section 249A (Interpretation) which defines the words “agent” and “benefit” for the purposes of the proposed new Part. Corporations and unincorporated associations may be either agents or principals within the meaning of the proposed new Part.

Section 249B (Corrupt commissions or rewards) which restates the offence of an agent’s corruptly receiving or soliciting, or of corruptly giving to an agent, a commission or reward for the doing of or failure to do things relating to the affairs or business of the agent’s principal. The maximum penalty will be imprisonment for 7 years.

Section 249C (Misleading documents or statements used or made by agents) which restates the offence of an agent’s receiving or using false or misleading documents with intent to defraud the agent’s principal. The proposed section also makes it an offence for an agent to make a false or misleading statement to the agent’s principal with intent to defraud the principal. The maximum penalty for the offences will be imprisonment for 7 years.

Section 249D (Corrupt inducements for advice) which restates the offence of corruptly giving, receiving, offering or soliciting inducements in connection with the giving of advice, where the advice is intended or likely to influence a person to enter into a contract with another person or to promote the appointment of another person to any office. The maximum penalty will be imprisonment for 7 years.

Section 249E (Corrupt benefits for trustees and others) which restates the offence of a person’s offering or giving a benefit to a trustee, or a trustee’s receiving or soliciting a benefit, where the benefit is an inducement or reward for the appointment of anyone to the trustee’s position instead of the trustee. The offence is extended to the offering or giving of a benefit to certain other persons having control over the property of others and the receiving of a benefit by any such person. The maximum penalty will be imprisonment for 7 years. The proposed section also requires the consent of the Attorney General before proceedings can be brought for an offence under the section.

Section 249F (Aiding, abetting etc.) which provides that a person who, in New South Wales, aids, abets, counsels or procures the commission in New South Wales of an offence under the new Part, or the commission in a place outside New South Wales of an offence punishable under the corresponding provisions of a law of that place, is guilty of an offence. The maximum penalty will be imprisonment for 7 years.

Section 249G (Repayment of value of gift etc.) which provides that, in addition to imposing a penalty on a person convicted of an offence under the new Part, the court may order the person to pay the amount or value of any relevant benefit as the court directs.

Section 249H (Disqualification for office) which states that a person convicted of an offence under the new Part is disqualified for a civic office (within the meaning of the Local Government Act 1919) for 7 years or for any lesser period the court orders.

Section 249I (Dismissal of trivial case) which provides for the dismissal of a case if the alleged offence appears to the court to be trivial or purely technical.

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Section 249J (Custom not a defence) which states that it is not a defence in proceedings for an offence under the new Part that the receiving, soliciting, giving or offering of a benefit is customary in a trade, business, profession or calling.

Schedule 1 (3) amends section 476 of the Crimes Act 1900 to enable offences under proposed section 249C or 249F (where no benefit which may be assessed in terms of money is concerned) to be dealt with by a Local Court with the consent of the accused and offences under proposed section 249B, 249D, 249E or 249F to be so dealt with if the relevant benefit is an amount or has a value not exceeding \$10,000.

Schedule 1 (4) amends section 501 of the Crimes Act 1900 to enable offences under proposed section 249B, 249D, 249E or 249F to be dealt with by a Local Court without the consent of the accused if the relevant benefit is an amount or has a value not exceeding \$2,000.
