

INDEPENDENT COMMISSION AGAINST CORRUPTION (AMENDMENT) BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

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

The object of this Bill is to amend the Independent Commission Against Corruption Act 1988, so as—

- (a) to introduce legal professional privilege as a ground of refusal to comply with a requirement to give certain evidence before the Independent Commission Against Corruption; and
- (b) to introduce a form of privilege, based on religious confession, as a ground of refusal to comply with a requirement to give certain evidence before the Commission; and
- (c) to limit the nature of contempt of the Commission; and
- (d) to limit the Commission's exemption from being required to produce to a court information obtained by the Commission; and
- (e) to state that certain parliamentary rights and privileges are not affected by the Act; and
- (f) to extend the qualifications for appointment as Commissioner or Assistant Commissioner.

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 published in the Gazette.

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

SCHEDULE 1—AMENDMENTS

Legal professional privilege

Schedule 1 (1) inserts subsection (5) into section 37 of the Act.

Independent Commission Against Corruption (Amendment) 1988

Subsection (5) authorises a witness appearing at a hearing before the Commission to refuse to divulge a privileged communication passing between a legal practitioner and a person for the purpose of providing or receiving legal professional services in connection with a person's appearance, or anticipated appearance, before the Commission. The communication must be "privileged" (the common law establishes the principles according to which a communication with a legal practitioner is privileged), but is protected by the proposed amendment only where the communication relates to a person's appearance or anticipated appearance before the Commission.

Religious professional privilege

Schedule 1 (1) also inserts subsection (6) into section 37 of the Act.

Subsection (6) authorises a member of the clergy to refuse to divulge to the Commission the contents of a confession made by a person, unless the person agrees or a criminal purpose was involved.

Contempt of the Commission

Schedule 1 (2) omits from section 98 of the Act the element of contempt of the Commission arising from the use of "words that are false or defamatory of the Commission, the Commissioner or an Assistant Commissioner"

Production of information

Schedule 1 (3) amends section 111 of the Act to provide that the exemption, in favour of the Commission, from being required to produce to a court information obtained by the Commission does not apply where production is for the purposes of a prosecution instituted as a result of an investigation conducted by the Commission.

Parliamentary privilege

Schedule 1 (4) inserts into the Act a new section 122, which provides that the Act is not to be taken to affect parliamentary rights and privileges in relation to the freedom of speech, and debates and proceedings, in Parliament.

Qualifications for appointment

Schedule 1 (5) amends Schedule 1 to the Act.

The amended provisions extend eligibility for appointment as Commissioner or Assistant Commissioner, so as to cover persons who are eligible for appointment to judicial office in the Supreme Court of another State or Territory, the Federal Court or the High Court.

The amendment also defines "judicial office" as meaning judicial office in Australia, to make it clear that the Commissioner or an Assistant Commissioner may not hold such a judicial office.
