

**INDEPENDENT COMMISSION AGAINST CORRUPTION
(AMENDMENT) ACT 1994 No. 86**

NEW SOUTH WALES



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**INDEPENDENT COMMISSION AGAINST CORRUPTION
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Act No. 86, 1994

An Act to amend the Independent Commission Against Corruption Act 1988 in relation to the nature of corrupt conduct. [Assented to 12 December 1994]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Independent Commission Against Corruption (Amendment) Act 1994.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Independent Commission Against Corruption Act 1988 No. 35

3. The Independent Commission Against Corruption Act 1988 is amended:

(a) by inserting at the end of section 9 (1) (c) the following:

; or

(d) in the case of conduct of a Minister of the Crown or a member of a House of Parliament—a substantial breach of an applicable code of conduct.

(b) by inserting in section 9 (3) in alphabetical order:

“applicable code of conduct” means, in relation to:

(a) a Minister of the Crown—a ministerial code of conduct prescribed or adopted for the purposes of this section by the regulations; or

(b) a member of the Legislative Council or of the Legislative Assembly (including a Minister of the Crown)—a code of conduct adopted for the purposes of this section by resolution of the House concerned.

(c) by inserting after section 9 (3) the following:

(4) Subject to subsection (5), conduct of a Minister of the Crown or a member of a House of Parliament which falls within the description of corrupt conduct in section 8 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of Parliament into serious disrepute.

(5) Without otherwise limiting the matters that it can under section 74A (1) include in a report under section 74, the Commission is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred

to in subsection (4), engaged in corrupt conduct, unless the Commission is satisfied that the conduct could also constitute a breach of a law (apart from this Act) and the Commission identifies that law in the report.

(d) by inserting after Part 7 the following:

PART 7A—PARLIAMENTARY ETHICAL STANDARDS

Division 1—Legislative Council

Definition

72A. In this Division:

“**designated committee**” means the committee of the Legislative Council that is for the time being designated under section 72B.

Designation of committee

72B. (1) As soon as practicable after the commencement of this Division and the commencement of the first session of each Parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this Division.

(2) Another committee of the Legislative Council may be designated by such a resolution from time to time in place of any previously designated.

(3) The designation of a committee under this section does not affect the functions that the committee has apart from this Division.

Functions of committee

72C. (1) The functions of the designated committee are:

- (a) to prepare for consideration by the Legislative Council draft codes of conduct for members of the Legislative Council and draft amendments to codes of conduct already adopted; and
- (b) to carry out educative work relating to ethical standards applying to members of the Legislative Council; and
- (c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Council, but not in relation to actual or alleged conduct of any particular person.

(2) The designated committee may seek comments from the public in relation to any of its functions under this section.

(3) Before presenting a draft code of conduct for consideration by the Legislative Council, the designated committee must:

- (a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public; and
- (b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice; and
- (c) specify, in the notice, the period during which submissions may be made to the committee.

(4) Any person may, during the period referred to in subsection (3) (c), make submissions in writing to the designated committee with respect to the provisions of the draft code of conduct. The committee must take any such submissions into consideration.

(5) Within 12 months after the commencement of this Division, the designated committee is to present for consideration by the Legislative Council a draft code of conduct for members of the Legislative Council.

(6) The designated committee is to review the code of conduct at least once in each period of two years.

Division 2—Legislative Assembly

Constitution of Standing Ethics Committee

72D. There is constituted by this Division a committee, to be known as the Standing Ethics Committee.

Functions

72E. (1) The functions of the Standing Ethics Committee are:

- (a) to prepare for consideration by the Legislative Assembly draft codes of conduct for members of the Legislative Assembly and draft amendments to codes of conduct already adopted; and
- (b) to carry out educative work relating to ethical standards applying to members of the Legislative Assembly; and
- (c) to give advice in relation to such ethical standards in response to requests for advice by the Legislative Assembly, but not in relation to actual or alleged conduct of any particular person.

(2) The Standing Ethics Committee may seek comments from the public in relation to any of its functions under this section.

(3) Before presenting a draft code of conduct for consideration by the Legislative Assembly, the Standing Ethics Committee must:

- (a) give public notice of the place at which, the dates on which, and the times during which, a draft code of conduct may be inspected by the public; and
- (b) publicly exhibit a copy of the draft code of conduct at the place, on the dates and during the times set out in the notice; and
- (c) specify, in the notice, the period during which submissions may be made to the Committee.

(4) Any person may, during the period referred to in subsection (3) (c), make submissions in writing to the Standing Ethics Committee with respect to the provisions of the draft code of conduct. The Committee must take any such submissions into consideration.

(5) Within 12 months after the commencement of this Division, the Standing Ethics Committee is to present for consideration by the Legislative Assembly a draft code of conduct for members of the Legislative Assembly.

(6) The Standing Ethics Committee is to review the code of conduct at least once in each period of two years.

Membership

72F. (1) The Standing Ethics Committee is to consist of 9 members, comprising:

- (a) 6 parliamentary members, being the persons who are for the time being the members of the Committee on the Independent Commission Against Corruption and who are also members of the Legislative Assembly; and
- (b) 3 community members, being persons who are appointed by at least 4 of the parliamentary members from applicants following public advertisement.

(2) A person cannot be appointed as a community member if the person is a member of either House of Parliament or a member of a party registered under Part 4A of the Parliamentary Electorates and Elections Act 1912.

(3) Community members may, but need not, be appointed for a specific term, but in any case may be discharged from office at any time by at least 4 of the parliamentary members.

Vacancies

72G. (1) A member of the Standing Ethics Committee ceases to hold office:

- (a) when the Legislative Assembly is dissolved or expires by the effluxion of time; or
- (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary; or
- (c) if, being a parliamentary member, the member ceases to be a member of Joint Committee; or
- (d) if, being a community member, the member becomes a member of the Legislative Council or Legislative Assembly; or
- (e) if, being a community member, the member becomes a member of a party registered under Part 4A of the Parliamentary Electorates and Elections Act 1912; or
- (f) if, being a community member appointed for specific term, the term expires; or
- (g) if, being a community member, the member is discharged from office by at least 4 of the parliamentary members.

(2) At least 4 of the parliamentary members may appoint a person who is or has been an applicant following public advertisement (being a person who is eligible for appointment in terms of section 72F) to fill a vacancy among the community members.

Chairman and Vice-chairman

72H. (1) There are to be a Chairman and a Vice-chairman of the Standing Ethics Committee, who are to be elected from the parliamentary members by at least 4 of the parliamentary members.

(2) A member of the Standing Ethics Committee ceases to hold office as Chairman or Vice-chairman of the Committee if

- (a) the member ceases to be a member of the Committee; or
- (b) the member resigns the office by instrument in writing presented to a meeting of the Committee; or
- (c) the member is discharged from office by at least 4 of the parliamentary members.

(3) At any time when the Chairman is absent from New South Wales or is, for any reason, unable to perform the duties of Chairman or there is a vacancy in that office, the Vice-chairman may exercise the functions of the Chairman under this Division.

Procedure generally

72I. (1) The procedure for the calling of meetings of the Standing Ethics Committee and for the conduct of business at those meetings is, subject to this Division, to be as determined by the Committee.

(2) The Clerk of the Legislative Assembly is to call the first meeting of the Standing Ethics Committee in each Parliament in such manner as the Clerk thinks fit.

(3) At a meeting of the Standing Ethics Committee:

- (a) except in the cases mentioned in paragraph (b)—
5 members constitute a quorum, of whom 4 must be parliamentary members and one must be a community member; or
- (b) in cases where this Division confers functions on at least 4 of the parliamentary members of the Standing Ethics Committee without the involvement of community members - 4 parliamentary members constitute a quorum.

(4) The Chairman or, in the absence of the Chairman, the Vice-Chairman or, in the absence of both the Chairman and the Vice-Chairman, a parliamentary member of the Standing Ethics Committee elected to chair the meeting by the parliamentary members present is to preside at a meeting of the Committee.

(5) The Vice-chairman or other parliamentary member presiding at a meeting of the Standing Ethics Committee has, in relation to the meeting, all the functions of the Chairman.

(6) The Chairman, Vice-chairman or other parliamentary member presiding at a meeting of the Standing Ethics Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) A question arising at a meeting of the Standing Ethics Committee is to be determined by a majority of the votes of the members present and voting.

(8) The Standing Ethics Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.

(9) The Standing Ethics Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.

Status of committee

72J. (1) The Standing Ethics Committee may request the attendance of persons before it and may request the production of papers and records to it.

(2) The Defamation Act 1974 and the Parliamentary Papers (Supplementary Provisions) Act 1975 apply to the Standing Ethics Committee as if it were a joint committee of both Houses of Parliament.

(3) The Parliamentary Evidence Act 1901 does not apply to the Standing Ethics Committee.

Validity of certain acts or proceedings

72K. Any act or proceeding of the Standing Ethics Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee; or
- (b) any defect in the appointment, or any disqualification, of a member of the Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

*[Minister's second reading speech made in—
Legislative Assembly on 22 September 1994
Legislative Council on 27 October 1994]*