

Serial 103  
Independent Commissioner Against Corruption Amendment Bill 2023  
Ms Fyles

A Bill for an Act to amend the *Independent Commissioner Against Corruption Act 2017* and for related purposes



NORTHERN TERRITORY OF AUSTRALIA

INDEPENDENT COMMISSIONER AGAINST CORRUPTION AMENDMENT  
ACT 2023

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Act No. [ ] of 2023

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# NORTHERN TERRITORY OF AUSTRALIA

Act No. [ ] of 2023

An Act to amend the *Independent Commissioner Against Corruption Act 2017*  
and for related purposes

[Assented to [ ] 2023]  
[Introduced [ ] 2023]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

This Act may be cited as the *Independent Commissioner Against Corruption Amendment Act 2023*.

### 2 Commencement

This Act commences on the day after the day on which the Administrator's assent to this Act is declared.

## Part 2 Amendment of Independent Commissioner Against Corruption Act 2017

### 3 Act amended

This Part amends the *Independent Commissioner Against Corruption Act 2017*.

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**4 Section 3 replaced**

Section 3

*repeal, insert*

**3 Object of Act and how object to be achieved**

- (1) The object of this Act is to address wrongdoing in, or connected with, public administration by:
  - (a) preventing or minimising the occurrence of improper conduct; and
  - (b) improving public confidence that improper conduct will be detected and dealt with appropriately; and
  - (c) providing mechanisms to deal with improper conduct when it occurs.
- (2) This Act achieves its object:
  - (a) primarily by establishing the ICAC; and
  - (b) by conferring functions in relation to improper conduct on the ICAC and on referral entities; and
  - (c) by providing incentives and reducing disincentives to persons, to assist in the detection, reporting, investigation, prosecution and prevention of improper conduct; and
  - (d) by protecting persons who put themselves at risk of harm by exposing or reporting improper conduct; and
  - (e) by requiring the ICAC to help public bodies to prevent, and to identify and deal effectively and appropriately with, improper conduct.
- (3) For subsection (2)(a), the primary purpose of establishing the ICAC is to augment the Territory's existing framework for responding to improper conduct by providing for the ICAC to:
  - (a) investigate the most serious, systemic and sensitive improper conduct; and
  - (b) ensure that other improper conduct is dealt with, either by an appropriate existing entity or, if the ICAC considers it appropriate, by the ICAC; and
  - (c) coordinate a response to improper conduct when multiple entities have jurisdiction in relation to the matter; and



- (d) refer information and evidence for the prosecution of offences involving improper conduct.
- (4) This Act:
- (a) primarily empowers the ICAC to investigate cases of corrupt conduct and anti-democratic conduct; and
  - (b) empowers the ICAC to refer cases of misconduct and unsatisfactory conduct to referral entities to investigate.

*Note for section 3*

*For improper conduct – see section 9.*

## **5 Section 4 amended (Definitions)**

- (1) Section 4, definition ***public inquiry report***  
*omit*
- (2) Section 4  
*insert*  
***recent political affiliation***, for Part 7, see section 112A(2).  
***reportable donation***, for Part 7, see section 112A(1).
- (3) Section 4, definition ***give evidence***  
*omit*  
for an investigation  
*insert*  
to the ICAC

## **6 Section 10 amended (Meaning of *corrupt conduct*)**

- Section 10(4)(b)  
*omit*  
all words after "under"  
*insert*  
an Act;

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**7 Section 18 amended (Functions)**

- (1) Section 18(1)(c)(ii)
- omit*
- auditing
- insert*
- evaluating
- (2) Section 18(1)(c)(v), at the end
- insert*
- and
- (3) After section 18(1)(c)(v)
- insert*
- (vi) gathering intelligence about improper conduct;

**8 Section 18A inserted**

After section 18

*insert*

**18A Limitation on functions**

- (1) The ICAC must not investigate an allegation of misconduct or unsatisfactory conduct unless:
- (a) the alleged misconduct or unsatisfactory conduct arises from the same matter that is the subject of an investigation into corrupt conduct or anti-democratic conduct; or
- (b) the gravity of the matter is such that it warrants the use of the powers and resources given to the ICAC because:
- (i) the person alleged to have engaged in the misconduct or unsatisfactory conduct is or was an MLA or the Chief Executive Officer or head of a public body or a government owned corporation; or
- (ii) in the opinion of the ICAC, the alleged misconduct or unsatisfactory conduct would have a significant effect on the Territory; or

- (iii) the alleged misconduct or unsatisfactory conduct gives rise to a suspicion on the part of the ICAC of systemic misconduct or unsatisfactory conduct.
- (2) If during the course of an investigation, the ICAC becomes of the opinion that the investigation is likely to lead to a finding of no more than misconduct or unsatisfactory conduct, the ICAC must cease to investigate the matter, unless subsection (1)(a) or (b) applies to the matter.
- (3) To avoid doubt, the ICAC has discretion to determine, in accordance subsections (1) and (2), which matters to investigate or to continue to investigate under this Act.

## **9 Section 23 amended**

- (1) Section 23, heading
- omit*
- Audits**
- insert*
- Evaluations**
- (2) Section 23(1) and (2)
- omit*
- audit
- insert*
- evaluate
- (3) Section 23(2)
- omit*
- and
- insert*
- or
- (4) Section 23(3) and (4)
- omit (all references)*
- audit

*insert*

evaluation

- (5) Section 23, note

*omit*

*audit*

*insert*

*evaluation*

## **10 Section 24A inserted**

After section 24, in Part 3, Division 3

*insert*

### **24A Power to require preliminary information and items from public bodies and public officers**

- (1) For the performance of the ICAC's functions under this Act, an authorised officer may, at any time, require a public body or public officer to:
- (a) answer specified questions or provide specified information; or
  - (b) produce specified items, or items of a specified kind, in the body's or officer's possession or control.
- (2) When making a requirement under subsection (1), the authorised officer must inform the public body or public officer about the following but is not required to give any other information about the nature or purpose of the requirement:
- (a) that the requirement is made for the purposes of the ICAC;
  - (b) if the body or officer is under investigation – that fact.
- (3) A requirement under subsection (1), and accompanying information under subsection (2), may be made:
- (a) if an oral response to a question is required – orally; or
  - (b) otherwise – by written notice.
- (4) A written notice to provide information or produce an item may require the person to verify the information or item by statutory declaration.

- (5) If an item is produced under this section:
- (a) the ICAC may retain possession of the item for a reasonable period and may make copies of, or take extracts from, the item; and
  - (b) while the item remains in the ICAC's possession, the ICAC must allow the public body or public officer reasonable access to the item.

*Note for section 24A*

*Section 147A creates an offence for failing to comply with a requirement under this section. See also Part 5, Division 1.*

## **11 Section 27 amended**

- (1) Section 27, heading, after "**Information**"

*insert*

**, documents or other items**

- (2) After section 27(2)

*insert*

- (3) The ICAC may provide to a referral entity any documents or other items the ICAC has in relation to a matter referred, or that may be referred, to the entity.

## **12 Section 30A inserted**

After section 30, in Part 3, Division 4

*insert*

### **30A Referral of other matters**

Nothing in this Division prevents the ICAC from referring a matter to a referral entity, not being a matter that amounts to improper conduct, that, in the opinion of the ICAC, warrants referral for consideration of any appropriate action by that entity.

## **13 Section 34 amended (Power to require person to attend for examination)**

- (1) Section 34(2)(b), before "stating"

*insert*

comprehensively

(2) After section 34(4)

*insert*

(5) If the ICAC gives a person a written notice under subsection (2) to attend the ICAC for examination but, in reliance on subsection (2)(b), does not comprehensively state the nature of the matters about which the person is to be questioned, the ICAC must within 3 days after the notice is given:

- (a) give the Inspector a copy of the notice; and
- (b) inform the Inspector of the reasonable grounds that form the basis of the ICAC's belief under that subsection.

(6) In this section:

***comprehensively stating*** means stating the matter or matters about which the person is to be questioned, including the following:

- (a) the factual topics to be addressed;
- (b) any applicable dates that are known to the ICAC;
- (c) the role the ICAC understands the person played in respect of the factual topics referred to in paragraph (a).

#### **14 Section 38A inserted**

After section 38, in Part 3, Division 5

*insert*

#### **38A Use of information, documents and other items**

Subject to this Act, information, documents or other items obtained by the ICAC in the lawful performance of functions in relation to an investigation may be used:

- (a) by the ICAC for the purposes of any other investigation; or
- (b) by a referral entity in relation to a matter referred to it, if provided to the entity under section 27.

#### **15 Section 48 amended (General report)**

(1) Section 48(1)(a)

*omit*

audit

*insert*

evaluation

- (2) Section 48(1)(c)

*omit*

on reasonable grounds

- (3) Section 48(1)(e)(iv)

*omit*

ICAC.

*insert*

ICAC;

- (4) After section 48(1)(e)

*insert*

(f) a general update on the ICAC's activities;

(g) the identification of integrity risks;

(h) relevant matters that have arisen in another Territory, a State or the Commonwealth.

- (5) After section 48(2)

*insert*

- (2A) If, in accordance with subsection (2), the ICAC includes any details about a specific investigation in a general report, the report must not:

(a) include an opinion as to whether a person has committed, is committing or is about to commit, an offence or a breach of discipline; or

(b) include a comment as to the prospects of success of any current or future prosecution or disciplinary action; or

- (c) name or identify any person in relation to a matter that amounts to no more than misconduct or unsatisfactory conduct, unless, in the opinion of the ICAC:
  - (i) the alleged misconduct or unsatisfactory conduct gives rise to a suspicion of systemic misconduct or unsatisfactory conduct; or
  - (ii) other exceptional circumstances exist that make it appropriate to name or otherwise identify the person.
- (2B) For subsection (2A)(a), an opinion that a person has engaged, is engaging or is about to engage in improper conduct is not an opinion that the person is guilty of or has committed, is committing or is about to commit an offence or a breach of discipline.
- (2C) Subsection (2B) does not authorise the naming or identification of a person contrary to subsection (2A)(c).

## **16 Section 50 amended (Investigation report)**

- (1) After section 50(1)

*insert*
- (1A) If an investigation involved the holding of a public inquiry, the ICAC must make an investigation report under subsection (1).
- (2) After section 50(6)

*insert*
- (6A) An investigation report made to the Speaker or Deputy Speaker under subsection (6) must not name or identify any person other than an MLA in relation to a matter that amounts to no more than misconduct or unsatisfactory conduct, unless, in the opinion of the ICAC:
  - (a) the alleged misconduct or unsatisfactory conduct gives rise to a suspicion of systemic misconduct or unsatisfactory conduct; or
  - (b) other exceptional circumstances exist that make it appropriate to name or otherwise identify the person.
- (6B) Nothing in this section requires more than one investigation report to be prepared if this section requires an investigation report to be made to more than one responsible authority.



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**17 Section 50A inserted**

After section 50

*insert*

**50A Publication of investigation report**

- (1) The ICAC may publish an investigation report if the ICAC is of the opinion it is appropriate to do so.
- (2) A report published under subsection (1) must not name or identify any person in relation to a matter that amounts to no more than misconduct or unsatisfactory conduct, unless, in the opinion of the ICAC:
  - (a) the alleged misconduct or unsatisfactory conduct gives rise to a suspicion of systemic misconduct or unsatisfactory conduct; or
  - (b) other exceptional circumstances exist that make it appropriate to name or otherwise identify the person.
- (3) Subsection (1) does not apply to an investigation report made to the Speaker or Deputy Speaker under section 50(6).

**18 Section 51 amended (Brief of evidence)**

- (1) Section 51, before "Following"

*insert*

- (1)

- (2) Section 51, at the end

*insert*

- (2) Any material in a brief of evidence provided under subsection (1) that would not be admissible in a civil or criminal proceeding because of section 82 must be provided in a sealed form, separately to any other material in the brief of evidence, unless the inadmissible material is already in the public domain.

**19 Section 52 repealed (Public inquiry report)**

Section 52

*repeal*

---

**20 Section 55 amended (Public statements)**

After section 55(3)

*insert*

- (4) Subsections (1) to (3) do not authorise any of the following public statements:
- (a) an opinion as to whether a person has committed, is committing or is about to commit, an offence or a breach of discipline;
  - (b) a comment as to the prospects of success of any current or future prosecution or disciplinary action;
  - (c) the naming or identification of any person other than an MLA in relation to a matter that amounts to no more than misconduct or unsatisfactory conduct unless, in the opinion of the ICAC:
    - (i) the alleged misconduct or unsatisfactory conduct gives rise to a suspicion of systemic misconduct or unsatisfactory conduct; or
    - (ii) other exceptional circumstances exist that make it appropriate to name or otherwise identify the person.
- (5) For subsection (4)(a), a public statement that a person has engaged, is engaging or is about to engage in improper conduct is not a public statement that the person is guilty of or has committed, is committing or is about to commit an offence or a breach of discipline.
- (6) Subsection (5) does not authorise the naming or identification of a person contrary to subsection (4)(c).

**21 Section 59 amended (Certain reports and public statements not to contain inadmissible material)**

- (1) Section 59(1)(c)

*omit, insert*

- (c) an investigation report that is to be published under section 50A;

- (2) Section 59(2)  
*omit*  
civil, criminal or disciplinary  
*insert*  
civil or criminal
- (3) After section 59(3)  
*insert*
- (4) Subsection (2) does not prevent the use of material that would not be admissible in civil or criminal proceedings because of section 82 and that does not identify any individual:
- (a) for educational or training purposes; or
  - (b) to disclose systemic improper conduct.

## **22 Section 60 replaced**

Section 60

*repeal, insert*

## **60 Evidence and procedure**

- (1) For an investigation, including an examination or a public inquiry, the ICAC is not bound by the rules of evidence.
- (2) The ICAC must conduct an examination or a public inquiry with as little formality and technicality as is, in the opinion of the ICAC, appropriate in the circumstances.
- (3) For subsection (2), the ICAC must, as far as the ICAC considers appropriate in the circumstances:
- (a) accept written submissions; and
  - (b) conduct examinations and public inquiries in a non-adversarial manner.

---

**23 Section 65 amended (Restriction on access to ICAC premises and protected ICAC information)**

- (1) Section 65(6), definition ***protected ICAC information***, paragraph (a)

*omit*

audit

*insert*

evaluation

- (2) Section 65(6), definition ***protected ICAC information***, after paragraph (c)

*insert*

(ca) a protected communication;

**24 Section 71 amended (Powers of authorised officers while on or about premises)**

After section 71(1)(g)(vi)

*insert*

(via) move to a specified place in the premises or keep a specified distance from a specified person or object;

**25 Section 75 replaced**

Section 75

*repeal, insert*

**75 Persons assisting authorised officers**

- (1) An authorised officer entering premises under this Part may be accompanied and assisted by another person.
- (2) A person assisting the authorised officer may do anything required by the authorised officer that is within the scope of the authorised officer's powers.
- (3) Anything done lawfully by a person assisting the authorised officer is taken for all purposes to be done by the authorised officer.

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**26 Section 82 amended (Subsequent use of representations made by witness)**

Section 82(1), (2) and (5)

*omit*

, criminal or disciplinary

*insert*

or criminal

**27 Section 83A inserted**

After section 83, in Part 5, Division 1

*insert*

**83A Journalist privilege**

Despite section 127A of the *Evidence (National Uniform Legislation) Act 2011*:

- (a) the ICAC is not entitled to determine a claim of privilege under that section despite the ICAC being prescribed as a judicial entity under that Act; and
- (b) the Supreme Court is instead to determine a claim of privilege to which that section applies made against the ICAC, in accordance with that section and under Division 2.

**28 Section 85 amended (Meaning of *subject of privilege*)**

(1) Section 85(d)

*omit*

83.

*insert*

83; or

(2) After section 85(d)

*insert*

- (e) the subject of privilege claimed under section 127A of the *Evidence (National Uniform Legislation) Act 2011*.

---

**29 Section 93 amended (Meaning of *protected communication*)**

- (1) Section 93(1)(a)  
*omit*  
made by an individual to the ICAC in accordance with directions or guidelines under section 22
- (2) Section 93(1)(b)(xv)  
*omit*  
for the public body; or  
*insert*  
in their capacity as a nominated recipient for the public body;
- (3) After section 93(1)(b)(xv)  
*insert*  
(xvi) if the information relates to a contravention of the *Public Sector Employment and Management Act 1993* – the Commissioner as defined in section 3(1) of that Act; or
- (4) Section 93(3)(c)  
*omit, insert*  
(c) whether a protected communication is being investigated by the ICAC or is referred to another entity for investigation.
- (5) After section 93(4)  
*insert*
- (4A) Despite anything to the contrary in this section, information is not a protected communication unless:
- (a) the person making the report indicates that:
- (i) the information is being provided as a protected communication; or
- (ii) in the case of a person mentioned in subsection (1)(b) – the information is being provided to the person in the person's capacity as a nominated recipient; or

(b) the recipient otherwise determines that the information is a protected communication.

(6) Section 93(5)

*insert*

**report** means a report made by an individual to the ICAC in accordance with directions or guidelines under section 22.

### **30 Section 98 amended**

(1) Section 98, heading, after "**given to**"

*insert*

**purported**

(2) Section 98(1), after "receiving a"

*insert*

purported

(3) Section 98(1)(d), after "is"

*insert*

or may be

(4) Section 98(2) and (3)

*omit*

the protected

*insert*

a protected

### **31 Section 110 amended**

(1) Section 110, heading

*omit*

**Audits**

*insert*

**Evaluations**

- (2) Section 110(1) and (2)

*omit*

audit

*insert*

evaluate

- (3) Section 110(3) and (4)

*omit (all references)*

audit

*insert*

evaluation

## **32 Part 7, Division 1AA inserted**

Before Division 1, in Part 7

*insert*

### **Division 1AA Preliminary matters**

#### **112A Interpretation**

- (1) In this Part:

***recent political affiliation***, see subsection (2).

***reportable donation*** means a gift or loan that is required to be disclosed or reported under Part 10 of the *Electoral Act 2004* or under a similar law in force in the Commonwealth or in a State or another Territory.

- (2) For this Part, a person has a ***recent political affiliation*** if, at any time during the previous 10 years, the person:
- (a) was a member of the Legislative Assembly or a local government council; or
  - (b) was an office holder or elected representative of a political party in the Territory or elsewhere in Australia; or
  - (c) was a member of staff of a minister; or



- (d) made a reportable donation to a political party, or an associated entity of a political party, in the Territory or elsewhere in Australia.
- (3) For subsection (2)(d), a person made a reportable donation if it was made by the person or by a body corporate of which the person was an office holder or majority shareholder at the time the donation was made.

### **33 Section 126 amended (Suitability checks)**

- (1) Section 126(3)
- omit*
- the person's past and present political opinion, affiliation or activity and
- (2) Section 126(3)(a)
- omit*
- they appear
- insert*
- it appears
- (3) Section 126(3)(b) and (c)
- omit*
- they
- insert*
- it
- (4) After section 126(3)
- insert*
- (3A) A person who has a recent political affiliation is not suitable to be a member of ICAC staff unless the person:
- (a) in the case of a person referred to in section 123(1)(a), (b), (c) or (e) – satisfies both the ICAC and the Inspector that the person's past and present political opinion, affiliation or activity is sufficiently minor or remote so as not to affect the person's suitability to be a member of ICAC staff; or

(b) in the case of a person referred to in section 123(1)(d) – satisfies the ICAC that the person's past and present political opinion, affiliation or activity is sufficiently minor or remote so as not to affect the person's suitability to be a member of ICAC staff.

(5) Section 126(4)

*omit*

and (3)

*insert*

, (3) and (3A)

### **34 Section 128 amended (Annual report)**

(1) After section 128(2)(a)

*insert*

(ab) the number of concluded investigations by the ICAC of misconduct and unsatisfactory conduct, including the number of concluded investigations under each of the following:

(i) section 18A(1)(a);

(ii) section 18A(1)(b);

(2) After section 128(2)(b)

*insert*

(ba) the number of times the ICAC gave a person a written notice under section 34(2) to attend the ICAC for examination but did not comprehensively state the nature of the matters about which the person was to be questioned because of the operation of section 34(2)(b)(i) or (ii);

### **35 Section 134 amended (Appointment of Inspector)**

Section 134(5)

*omit, insert*

(5) A person who is or was the Inspector may be reappointed, if still eligible, for one further period not exceeding 5 years, specified in the instrument of appointment.

---

**36 Section 134A inserted**

After section 134

*insert*

**134A Protection of Inspector**

The Inspector has, in the performance of the Inspector's functions under this Act, the same protection and immunity as a member of a court has under the *Courts and Tribunals (Immunities) Act 2008*.

**37 Section 135 amended (Functions of inspector)**

(1) Section 135(1)(b)

*omit, insert*

(b) to receive and deal with complaints of improper conduct by the ICAC or a member of ICAC staff or of conduct, though not amounting to improper conduct, by the ICAC or a member of ICAC staff, which:

- (i) is unreasonable, unjust, oppressive or improperly discriminatory in its effect; or
- (ii) arises, wholly or in part, from improper motives; or
- (iii) arises, wholly or in part, from a decision that has taken irrelevant matters into consideration; or
- (iv) involves a denial of procedural fairness; or
- (v) arises, wholly or in part, from a mistake of law or fact; or
- (vi) is conduct of a kind for which reasons should have (but have not) been given;

(ba) to evaluate any aspect of the ICAC's operations or any conduct of a member of ICAC staff;

(2) After section 135(1)

*insert*

(1A) Despite subsection (1), the functions of the Inspector do not include receiving and dealing with complaints or matters under the *Public Sector Employment and Management Act 1993*.

---

**38 Section 135A inserted**

After section 135

*insert*

**135A Powers**

The Inspector may do all things necessary or convenient to be done for, or in relation to, the performance of the Inspector's functions.

**39 Section 139 amended (Access to ICAC premises and information)**

Section 139(1)

*omit*

the ICAC.

*insert*

the ICAC, including making a copy of any document in the possession or control of the ICAC or a member of ICAC staff.

**40 Sections 139A to 139C inserted**

After section 139

*insert*

**139A Power to require person to attend Inspector for questioning etc.**

- (1) The Inspector may require the ICAC or any member of ICAC staff to attend the Inspector to answer questions or produce documents in relation to a complaint being dealt with or an evaluation being conducted by the Inspector.
- (2) The person required to attend must be given a written notice requiring the person to attend at a specified time and place.
- (3) The notice may require the person to bring and produce to the Inspector specified items, or items of a specified kind, in the person's possession or control relevant to the matter.
- (4) The Inspector may require a person attending to do one or more of the following:
  - (a) take an oath to answer all questions truthfully;

- (b) answer a question relevant to the matter asked by the Inspector;
- (c) produce any items in the possession or control of the person relevant to the complaint or evaluation.

**139B Inspection and copies of documents**

- (1) The Inspector may inspect any documents or other items produced to the Inspector under this Act.
- (2) The Inspector may:
  - (a) retain any document or other item produced to the Inspector for any reasonable period the Inspector thinks appropriate; and
  - (b) make a copy of or take an extract from any document produced to the Inspector if the Inspector is of the opinion the copy or extract is relevant to a function of the Inspector in relation to a matter under this Act.
- (3) If the retention of a document or other item ceases to be reasonably necessary for the matter to which it relates, the Inspector must return the document or other item to a person who is entitled to possession of the document or other item, on request of the person, unless the document or other item is required as evidence for an offence against this Act or another law of the Territory.

**139C Assistance**

- (1) The Inspector may engage any assistance the Inspector thinks appropriate in relation to a complaint being dealt with or an evaluation being conducted by the Inspector.
- (2) For subsection (1), the Inspector may, in writing, authorise any person engaged to inspect and report to the Inspector on any document or other item relevant to the complaint or evaluation.

**41 Section 140A inserted**

After section 140

*insert*

**140A Disapplication of section 52 of Surveillance Devices Act 2007**

Section 52 of the *Surveillance Devices Act 2007* does not apply to the use, communication or publication of protected information within the meaning of that Act in relation to the performance of the Inspector's functions under this Division.

**42 Section 143 amended (Suitability checks)**

(1) Section 143(1)

*omit*

the Inspector's

*insert*

Inspector

(2) Section 143(3)

*omit*

the person's past and present political opinion, affiliation or activity and

(3) Section 143(3)(a)

*omit*

they appear

*insert*

it appears

(4) Section 143(3)(b) and (c)

*omit*

they

*insert*

it

(5) After section 143(3)

*insert*

(3A) A person who has a recent political affiliation is not suitable to be a member of Inspector staff unless the person satisfies the Inspector that the person's past and present political opinion, affiliation or activity is sufficiently minor or remote so as not to affect the person's suitability to be a member of Inspector staff.

(6) Section 143(4)

*omit*

and (3)

*insert*

, (3) and (3A)

#### **43 Section 145 replaced**

Section 145

*repeal, insert*

#### **144A Former members of staff**

The powers of the Inspector under this Division in relation to the ICAC and members of ICAC staff include a former ICAC and former members of ICAC staff.

#### **145 Offence to disclose certain information – official functions under this Act**

(1) A person commits an offence if:

- (a) the person obtains information in the course of performing a function connected with the administration of this Act or exercising a power under this Act; and
- (b) the person intentionally engages in conduct; and
- (c) the conduct results in the disclosure of the information and the disclosure is not:
  - (i) for a purpose connected with the administration of this Act, including a legal proceeding arising out of the operation of this Act or a referral; or

(ii) to a person who is otherwise entitled to the information;  
and

(d) the person is reckless in relation to the result and circumstance referred to in paragraph (c).

Maximum penalty: 400 penalty units or imprisonment for  
2 years.

(2) Strict liability applies to subsection (1)(a).

(3) It is a defence to a prosecution for an offence against subsection (1) if:

(a) the person discloses the information for obtaining professional legal advice from a legal practitioner; or

(b) the person has knowledge of the information independently from obtaining it in the course of performing functions connected with the administration of this Act; or

(c) the person is an independent entity, or an officer or employee of an independent entity, and:

(i) the information is not identifying information; or

(ii) the information is identifying information but the person has given consideration to the principles mentioned in section 91 and disclosure is reasonably necessary to perform the functions of the independent entity; or

(d) the disclosure is authorised in writing by the ICAC or the Inspector; or

(e) the information is otherwise available to the public; or

(f) the person discloses the information believing on reasonable grounds that:

(i) circumstances of sudden or extraordinary emergency exist; and

(ii) disclosing the information is the only reasonable way to deal with the emergency; and

(iii) the disclosure is made in response to the risk and that risk significantly outweighs any risk to a protected person in disclosing the information; or



- (g) the disclosure is reasonably required to protect a protected person.

*Note for subsection (3)*

*In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).*

#### **44 Section 146 amended**

- (1) Section 146, heading

*omit*

**in other circumstances**

*insert*

**other than in performing official functions in administering this Act**

- (2) Section 146(3)

*omit, insert*

- (3) It is a defence to a prosecution for an offence against subsection (1) if:

- (a) the person discloses the information:

- (i) for the administration of this Act, including to a person specified in section 93(1)(b) for their administration of Part 6; or
- (ii) for a legal proceeding if, after considering section 156, the court considers the disclosure is in the interests of justice; or
- (iii) for obtaining professional legal advice from a legal practitioner; or
- (iv) for obtaining professional assistance from a health practitioner or an accredited counsellor; or
- (v) for obtaining spiritual assistance from a religious or spiritual advisor who is subject to ethical confidentiality obligations; or

- (b) the person has knowledge of the information independently from obtaining it in the course of performing functions connected with the administration of this Act; or
- (c) the information is information relating to the person and the person discloses it to a close family member; or
- (d) the person is an independent entity, or an officer or employee of an independent entity, and:
  - (i) the information is not identifying information; or
  - (ii) the information is identifying information but the person has given consideration to the principles mentioned in section 91 and disclosure is reasonably necessary to perform the functions of the independent entity; or
- (e) the disclosure is authorised in writing by the ICAC or the Inspector; or
- (f) the person discloses the information believing on reasonable grounds that:
  - (i) circumstances of sudden or extraordinary emergency exist; and
  - (ii) disclosing the information is the only reasonable way to deal with the emergency; or
- (g) the disclosure is reasonably required to protect a protected person.

*Note for subsection (3)*

*In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).*

#### **45 Section 146A inserted**

After section 146

*insert*

#### **146A Identity of protected person to be kept confidential**

- (1) A person commits an offence if:
  - (a) the person obtains information about the identity of a protected person; and

- (b) the person intentionally engages in conduct; and
- (c) the conduct results in the disclosure of the information and the person is reckless in relation to that result.

Maximum penalty: 400 penalty units or imprisonment for 2 years.

- (2) Strict liability applies to subsection (1)(a).
- (3) It is a defence to a prosecution for an offence against subsection (1) if:
  - (a) the person discloses the information:
    - (i) for the administration of this Act; or
    - (ii) for a legal proceeding; or
    - (iii) for obtaining professional legal advice from a legal practitioner; or
    - (iv) for obtaining professional assistance from a health practitioner or an accredited counsellor; or
    - (v) for obtaining spiritual assistance from a religious or spiritual advisor who is subject to ethical confidentiality obligations; or
  - (b) the person is an independent entity, or an officer or employee of an independent entity, and the information is identifying information but:
    - (i) the person has given consideration to the principles mentioned in section 91; and
    - (ii) disclosure is reasonably necessary to perform the functions of the independent entity; or
  - (c) the disclosure is authorised in writing by the ICAC or the Inspector; or
  - (d) the person discloses the information believing on reasonable grounds that:
    - (i) circumstances of sudden or extraordinary emergency exist; and
    - (ii) disclosing the information is the only reasonable way to deal with the emergency; and

- (iii) the disclosure is made in response to the risk and that risk significantly outweighs any risk to a protected person in disclosing the information; or
- (e) the disclosure is only to the extent necessary to ensure the matters to which the information relates are properly investigated; or
- (f) the disclosure is in accordance with any applicable guidelines issued under section 96.

*Note for subsection (3)*

*In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).*

- (4) The obligation to maintain confidentiality imposed by this section applies despite anything in this Act or any other law of the Territory to the contrary.

#### **46 Section 147 amended (Direction not to disclose certain information)**

- (1) Section 147(1)

*omit, insert*

- (1) The ICAC or the Inspector may, in writing, direct a person not to disclose information if the ICAC or the Inspector believes on reasonable grounds the information would:
  - (a) put a person at personal risk; or
  - (b) prejudice an investigation or activities related to an investigation.
- (1A) A direction under subsection (1) may direct a person not to disclose to particular persons or classes of person or, subject to this section, to all persons, as specified in the direction.

(2) Section 147(5)

*omit, insert*

- (5) It is a defence to a prosecution for an offence against subsection (1) if:
- (a) the disclosure is made:
    - (i) to a legal practitioner for obtaining professional legal advice; or
    - (ii) to a health practitioner or an accredited counsellor for obtaining professional assistance; or
    - (iii) to a religious or spiritual advisor who is subject to ethical confidentiality obligations, for obtaining spiritual assistance; or
  - (b) the person discloses the information believing on reasonable grounds that:
    - (i) circumstances of sudden or extraordinary emergency exist; and
    - (ii) disclosing the information is the only reasonable way to deal with the emergency; and
    - (iii) the risk that the disclosure is made in response to significantly outweighs any risk to a protected person in disclosing the information.

**47 Sections 148 to 150 replaced**

Sections 148 to 150

*repeal, insert*

**147A Failing to comply with requirement for preliminary information or items from public bodies and public officers**

A person commits an offence if:

- (a) a requirement under section 24A is given to the person; and
- (b) the person intentionally fails to comply with the requirement:
  - (i) if an oral response to a question is required – immediately; or

- (ii) otherwise – within a reasonable time stated in the notice given under section 24A(3)(b).

Maximum penalty: 100 penalty units or imprisonment for 12 months or both.

**148 Failing to comply with requirement for information or items during investigation**

A person commits an offence if:

- (a) a requirement under section 32 is given to the person; and
- (b) the person intentionally fails to comply with the requirement:
  - (i) if an oral response to a question is required – immediately; or
  - (ii) otherwise – within a reasonable time stated in the notice given under section 32(3)(b).

Maximum penalty: 100 penalty units or imprisonment for 12 months or both.

**149 Contravening notice to attend, or give evidence at, examination or public inquiry**

A person commits an offence if the person intentionally fails to comply with a requirement applicable to the person under section 34.

Maximum penalty: 100 penalty units or imprisonment for 12 months or both.

**150 Contravening direction of ICAC at public inquiry**

A person commits an offence if the person intentionally contravenes a direction of the ICAC under section 46.

Maximum penalty: 100 penalty units or imprisonment for 12 months or both.

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**48 Section 151A inserted**

After section 151

*insert*

**151A Contravening requirement for ICAC or member of ICAC staff to attend**

- (1) A person commits an offence if the person does not comply with a requirement applicable to the person under section 139A.

Maximum penalty: 100 penalty units or imprisonment for 12 months or both.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant has a reasonable excuse.

**49 Sections 155A and 155B inserted**

After section 155

*insert*

**155A Time for commencing prosecutions**

A prosecution for an offence against this Act (other than an offence against section 100(1)) must be commenced within 12 months after the date on which the offence is alleged to have been committed.

**155B Powers of police officers**

- (1) An authorised officer may request a police officer to assist in the exercise of a power under this Act.
- (2) The powers conferred by this Act on a police officer are in addition to, and do not limit, any other power the police officer may have under another law of the Territory.

**50 Section 158 amended (Dealing with unclaimed property)**

After section 158(5)

*insert*

- (6) In this section:

***proceedings*** means any of the following:

- (a) an investigation by a law enforcement agency or an Agency;

- (b) a prosecution or a court proceeding;
- (c) a hearing of the Assembly Committee.

**51 Part 10, Division 2 inserted**

After section 170

*insert*

**Division 2 Transitional matters for Independent Commissioner Against Corruption Amendment Act 2023****171 Definition**

In this Part:

***amending Act*** means the *Independent Commissioner Against Corruption Amendment Act 2023*.

**172 Application of section 18A**

Section 18A does not apply to any investigation that began before the commencement of that section.

**173 Application of amendments to section 82**

Section 82, as in force immediately before the commencement of section 26 of the amending Act, continues to apply for the purposes of a disciplinary proceeding that occurs after the commencement in relation to a representation made by a witness in evidence given to the ICAC or an authorised officer before the commencement.

**174 Application of amendments to section 126**

The amendments to section 126 by the amending Act do not apply to a person who was a member of ICAC staff immediately before the commencement of section 33 of the amending Act for as long as the person remains continuously employed or engaged as a member of ICAC staff after that commencement.

**175 Application of amendments to section 143**

The amendments to section 143 by the amending Act do not apply to a person who was a member of Inspector staff immediately before the commencement of section 42 of the amending Act for as long as the person remains continuously employed or engaged as a member of Inspector staff after that commencement.



**176 Application of new defences included in sections 146 and 147**

- (1) The defences in section 146(3)(a)(v) and (f) also apply to an offence against section 146(1) committed before the commencement of section 44(2) of the amending Act.
- (2) The defence in section 147(5)(a)(iii) also applies to an offence against section 147(4) committed before the commencement of section 46(2) of the amending Act.

**177 Application of offences against sections 148 to 150**

- (1) Sections 148, 149 and 150, as in force immediately before the commencement, continue to apply in relation to offences committed before the commencement.
- (2) For subsection (1), if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement
- (3) In this section:

**commencement** means the commencement of section 47 of the amending Act.

*Note for section 177*

*See section 121(1) of the Sentencing Act 1995.*

**178 Application of section 155A**

Section 155A also applies to an offence committed before the commencement of section 49 of the amending Act.

**52 Act further amended**

The Schedule has effect.

**Part 3 Other amendments and repeal**

**Division 1 Amendment of Court Security Regulations 1998**

**53 Regulations amended**

This Division amends the *Court Security Regulations 1998*.

**54 Regulation 2 amended**

(1) Regulation 2, heading

*omit, insert*

**2 Prescribed courts, tribunals, bodies and persons**

(2) After regulation 2(3)

*insert*

(4) For the purposes of paragraph (j) of the definition of ***court*** in section 4 of the Act, the ICAC, while conducting an examination under the *Independent Commissioner Against Corruption Act 2017*, is prescribed.

**Division 2 Amendment of Evidence (National Uniform Legislation) Regulations 2012**

**55 Regulations amended**

This Division amends the *Evidence (National Uniform Legislation) Regulations 2012*.

**56 Regulation 7A inserted**

After regulation 7

*insert*

**7A Judicial entity**

For the purposes of the Dictionary to the Act, definition ***judicial entity***, paragraph (b), the ICAC is prescribed.

**Division 3 Repeal**

**57 Repeal of Act**

This Act is repealed on the day after it commences.

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**Schedule Act further amended**

section 52

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
section 15(1)(a)	or Chapter 8 of the <i>Local Government Act 2008</i> ; and	, Chapter 8 of the <i>Local Government Act 2019</i> or Chapter 8 of the <i>Local Government Act 2008</i> (before its repeal); and
Part 3, Division 2, heading	<b>Audits</b>	<b>Evaluations</b>
sections 37(2)(b) and 45(2)(b)	of other	or other
section 101(7)	whole subsection	
section 112(6)	Chief Commissioner	Commissioner of Police
section 114(2), (3) and (5)	whole subsection	
section 142(2)	the Inspector's	Inspector

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