

CLAUSE NOTES

Integrity Commission Amendment Bill 2017

- Clause 1:** **Short title**
This clause provides that, once passed, the Bill will be cited as the *Integrity Commission Amendment Act 2017*.
- Clause 2:** **Commencement**
This clause provides for the amendments to commence on the day on which the Bill receives the Royal Assent.
- Clause 3:** **Principal Act**
This clause provides that the Principal Act to which the amendments apply is the *Integrity Commission Act 2009* (the Act).
- Clause 4:** **Section 6 amended (Designated public officers)**
This clause amends section 6(1)(d) of the Act to exclude the Chief Commissioner and chief executive officer as designated public officers.
- The Integrity Commission was established to promote and enhance standards of ethical conduct by public officers. Section 5(2) of the Act provides a list of persons and entities that are not considered to be public authorities for the purposes of the Act, therefore excluding them from the operation of the Act. This list includes the Integrity Commission itself.
- As both the Chief Commissioner and the chief executive officer are holders of a statutory office by virtue of having been appointed by the Governor or a Minister, they are currently considered to be designated officers under section 6(1)(d) of the Act, creating potential inconsistency with section 5(2).
- Explicitly excluding the Chief Commissioner and the chief executive officer from the operation of section 6(1)(d) removes this potential inconsistency and gives effect to recommendation 5 in the Independent Review of the Integrity Commission Act 2009 (the Independent Review).
- Clause 5:** **Section 13 amended (Role of Board)**
This clause amends section 13(a) of the Act to clarify that the Board's role includes providing guidance to facilitate the functions and powers of the Integrity Commission being performed and exercised in accordance with sound public administration practice and principles of procedural fairness and the objectives of the Act. This clause addresses recommendation 6 in the Independent Review.
- Clause 6** **Section 14 amended (Members of Board)**
This clause makes changes to the composition of the Board and minor consequential amendments.

Subclause (a) removes the Auditor-General and Ombudsman as members of the Board, which gives effect to recommendation 1 in the Independent Review. Subclause (d) adds a person with “experience, in a government organisation, in both human resources and industrial relations” to the list at section 14(1)(g) of the Act, which addresses recommendation 2 in the Independent Review. These changes mean that the Board will consist of four members including the Chief Commissioner.

Subclause (e) confirms that the Chief Commissioner is the chairperson of the Board.

Subclause (f) clarifies that the Chief Commissioner ceases to be a member of the Board if he or she vacates the office of Chief Commissioner, replacing the current section 15(6) of the Act. This subclause also provides a definition of “government organisation” to support the amendment in subclause (d).

Subclauses (b) and (c) make minor consequential amendments within section 14 of the Act to support the above changes.

Clause 7

Section 15 amended (Chief Commissioner)

This clause replaces subsections (4), (5) and (6) of section 15 of the Act with updated provisions relating to the eligibility of a person to be Chief Commissioner.

The updated provisions include a contemporary reference to Australian legal practitioner qualifications and remove the current requirement under section 15(4)(b) of the Act that the Chief Commissioner must be under the age of 72 years. They also refer to the proposed new section 15A(2) of the Act, which establishes the maximum total period for which a person can be appointed and reappointed as Chief Commissioner.

This clause also confirms that the *State Service Act 2000* does not apply in relation to a person in his or her capacity as Chief Commissioner and that a person may hold the office of Chief Commissioner in conjunction with State Service employment. This replicates, in relation to the Chief Commissioner, the provisions currently contained in section 4 of Schedule 2 to the Act. The purpose of this amendment is to contain all of the provisions relating to eligibility for the office of Chief Commissioner within Division 2 of the Act and avoid duplication in Schedule 2.

Clause 8

Sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, 15J and 15K inserted

This clause inserts new sections into the Act relating to the appointment, suspension and removal of the Chief Commissioner, for the purpose of updating these provisions to be consistent with those that apply to the Director of Public Prosecutions and Solicitor-General, as recently amended by the *Law Officers (Miscellaneous Amendments) Act 2015*.

The new sections also replicate some of the provisions currently contained in Schedule 2 to the Act, for the purpose of containing all of the provisions relating to the appointment, suspension and removal of the Chief Commissioner within Division 2 of the Act and avoiding duplication in Schedule 2.

- The new section 15A sets out the terms of office and terms and conditions of appointment to the office of Chief Commissioner. These include that a term of appointment may not exceed 5 years and that the total of all periods for which a person is appointed or reappointed as Chief Commissioner must not exceed a period of 10 years.
- The new section 15B specifies the circumstances in which the office of Chief Commissioner may be vacated.
- The new section 15C provides for the Governor to grant the Chief Commissioner leave of absence.
- The new section 15D provides for the Governor to appoint an Acting Chief Commissioner.
- The new section 15E provides for the Governor to suspend from office a person holding the office of Chief Commissioner. The new section 15E(3)(a) provides that suspension may occur if the Governor is satisfied that the person “has been guilty of conduct, or an attempt to engage in conduct, which if engaged in by a public officer is misconduct.” This will enable the misconduct provision to apply to the Chief Commissioner, who is not a public officer for the purposes of the Act.
- The new section 15F requires the Minister to lay before each House of Parliament a statement in relation to the suspension of a person from the office of Chief Commissioner.
- The new section 15G provides a mechanism for the Parliament to confirm or revoke the suspension of a person from the office of the Chief Commissioner, but only where the suspension has occurred for misconduct or misbehaviour.
- The new section 15H provides for the Governor to revoke or vary the suspension of a person from the office of Chief Commissioner, including provisions for Parliament to confirm or revoke the Governor’s revocation or variation.
- The new sections 15I and 15J provide for the Governor to request that Parliament revokes the appointment of a person as Chief Commissioner, and for Parliament to approve or refuse that revocation.
- The new section 15K contains provisions relating to payment of a person who is suspended from office of Chief Commissioner.

- Clause 9** **Section 27 amended (Parliamentary Standards Commissioner)**
This clause removes the current requirement that the Parliamentary Standards Commissioner be under the age of 72 years.
- Clause 10** **Schedule 2 amended (Membership of Board of Integrity Commission)**
This clause amends the Act for the purpose of ensuring that Schedule 2 covers matters relating to Board members, and that provisions relating to the appointment, suspension and removal of the Chief Commissioner (which are included in the new sections 15A to 15K inclusive) are not duplicated in Schedule 2.
- Subclause (a) removes the Chief Commissioner from the definition of “member” for purposes of Schedule 2 provisions only. It does not affect the Chief Commissioner’s membership of the Board, which is confirmed in the amendments to section 14 of the Act.
- Subclause (b) strengthens the provisions for dealing with misconduct by members of the Board. It provides that suspension may occur if the Governor is satisfied that a Board member “has been guilty of conduct, or an attempt to engage in conduct, which if engaged in by a public officer is misconduct.” This will enable the misconduct provision to apply to Board members, who are not public officers for the purposes of the Act. It gives effect to recommendation 4 in the Independent Review.
- Subclauses (c) and (d) ensure that the provisions in section 10(1) of Schedule 2 relating to validation of acts or proceedings will continue to apply to the Chief Commissioner following the removal of the Chief Commissioner from the definition of “member” in Schedule 2.
- Subclause (e) ensures that the provision in section 11 of Schedule 2 relating to proof of appointment will continue to apply to the Chief Commissioner following the removal of the Chief Commissioner from the definition of “member” in Schedule 2.
- Clause 11** **Schedule 3 amended (Meetings of Board of Integrity Commission)**
Subclause (a) amends the definition of “member” to explicitly confirm that it includes the Chief Commissioner for purposes of Schedule 3 of the Act. The purpose of this amendment is to distinguish “member” in Schedule 3 from the proposed new definition of “member” in Schedule 2 of the Act, which does not include the Chief Commissioner.
- Subclause (b) amends section 4 of Schedule 3 of the Act to reduce the number of members constituting a quorum at a meeting of the Board from four to three. It gives effect to recommendation 3 in the Independent Review.
- Clause 12** **Repeal of Act**
This is a standard provision to provide for the automatic repeal of the Amendment Act (the Bill) after the amendments have been incorporated into the Principal Act.