



Law Enforcement Integrity Commissioner Act 2006

No. 85, 2006

**An Act to provide for the appointment of the
Integrity Commissioner, to set out the functions
and powers of the Integrity Commissioner, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

Part 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Objects of this Act	3
4 Application of Act	3
Part 2—Interpretation	4
5 Definitions	4
6 Meaning of <i>engages in corrupt conduct</i>	14
7 Meaning of <i>corruption issue</i>	15
8 Meaning of <i>ACLEI corruption issue</i>	15
9 Corruption issue that relates to a law enforcement agency	16
10 Staff members of law enforcement agencies	16
11 Staff members of ACLEI	18
12 Applying Act to staff members of former NCA	18
13 State offences that have a federal aspect	19
Part 3—The Integrity Commissioner	23
14 Integrity Commissioner	23
15 Functions of the Integrity Commissioner	23
16 Integrity Commissioner to give priority to serious corruption and systemic corruption	24
17 Integrity Commissioner may enter into agreement with head of law enforcement agency	24
Part 4—Dealing with corruption issues	25
Division 1—Referring corruption issues to Integrity Commissioner	25
18 Referral of corruption issues by Minister	25
19 Notification of corruption issues by law enforcement agency heads	25
20 Notification of corruption issue identified as significant corruption issue	26
21 Law enforcement agency head to pass on new information in relation to corruption issue already referred	27
22 Notification of corruption issue not identified as significant corruption issue	28
23 Referral of corruption issues by other people	29
24 Referral under section 23 by person in custody	30

25	Person making referral under section 23 may elect to be kept informed	31
Division 2—How Integrity Commissioner deals with corruption issues		
Subdivision A—General		33
26	How Integrity Commissioner may deal with corruption issues	33
27	Criteria for deciding how to deal with a corruption issue	33
28	Dealing with multiple corruption issues	34
29	How Integrity Commissioner may deal with corruption issues that relate to conduct of secondee from government agency	35
30	Arranging for government agencies and integrity agencies to investigate corruption issues relating to conduct of secondees	38
Subdivision B—Integrity Commissioner dealing with corruption issues referred or notified		39
31	Significant corruption issues notified under section 19 and corruption issues referred under section 18 or 23	39
32	Corruption issues notified under section 19 (other than significant corruption issues)	40
Subdivision C—Advising particular people of decision about how to deal with corruption issue		41
33	Minister	41
34	Person who refers corruption issue	41
35	Head of law enforcement agency	43
36	Heads of home agency and integrity agency	44
37	Staff member to whom corruption issue relates	45
Subdivision D—Integrity Commissioner dealing with corruption issues on own initiative		46
38	Integrity Commissioner may deal with corruption issues on own initiative	46
39	Advising head of law enforcement agency of decision to deal with corruption issue on own initiative	46
40	Advising heads of government agency and integrity agency of decision to deal with corruption issue on own initiative	48
41	Advising staff member of decision to deal with corruption issue on own initiative	49
Subdivision E—Reconsidering how to deal with a corruption issue		50
42	Reconsidering how to deal with a corruption issue	50

Part 5—Information sharing when decision made on how to deal with corruption issue	52
Division 1—Giving information to head of agency conducting investigation	52
43 Division applies if agency to conduct, or continue conducting, investigation of corruption issue	52
44 Integrity Commissioner to give information or documents to agency head	53
Division 2—Information to be given by law enforcement agency that has already commenced investigation	54
45 Division applies if law enforcement agency has already commenced investigating corruption issue	54
46 Integrity Commissioner may direct agency head to give information or documents that relate to corruption issue.....	54
Part 6—Investigations by Integrity Commissioner	55
Division 1—Investigation	55
47 Application of Division	55
48 Integrity Commissioner to determine manner of conducting investigation	55
49 Coordinating Integrity Commissioner’s investigation and law enforcement operations.....	55
50 Information sharing for joint investigation.....	56
51 Opportunity to be heard.....	56
Division 2—Reporting	59
Subdivision A—Reporting during investigation	59
52 Integrity Commissioner to keep person who referred corruption issue informed of progress of investigation.....	59
53 Integrity Commissioner to keep home agency and integrity agency informed of progress of investigation.....	60
Subdivision B—Reporting at the end of investigation	61
54 Report on investigation.....	61
55 Integrity Commissioner to give report to certain persons	62
56 Comments by head of agency.....	64
57 Follow-up action on report	64
58 Advising person who referred corruption issue of outcome of the investigation	66
59 Advising person whose conduct is investigated of outcome of the investigation	68

Part 7—Investigations by other Commonwealth agencies	69
Division 1—Nominated contact for investigations by law enforcement agencies	69
60 Nominating contact for investigation	69
Division 2—Managing or overseeing investigations by law enforcement agencies	70
61 Managing an investigation.....	70
62 Overseeing an investigation.....	70
Division 3—Reporting	71
Subdivision A—Reporting by law enforcement agencies during investigations	71
63 Integrity Commissioner may request individual progress report	71
64 Integrity Commissioner may request periodic progress reports.....	71
65 Head of law enforcement agency to keep person who referred corruption issue informed of progress of investigation	72
Subdivision B—Reporting by Commonwealth government agencies at end of investigations	73
66 Final report on investigation.....	73
67 Integrity Commissioner may comment on final report	74
68 Advising person who referred corruption issue of outcome of the investigation	76
69 Advising person whose conduct is investigated of outcome of the investigation	77
Division 4—Integrity Commissioner to pass on information relevant to agency	78
70 Integrity Commissioner to pass on information relevant to agency investigation	78
Part 8—Public inquiries into corruption issues	79
Division 1—Conducting a public inquiry	79
71 Minister may request Integrity Commissioner to conduct public inquiry	79
72 Publicising inquiry.....	79
Division 2—Reporting	80
73 Report on public inquiry.....	80
74 Giving report to Minister.....	81

Part 9—Integrity Commissioner’s powers in conducting investigations and public inquiries	82
Division 1—Requiring people to give information and produce documents or things	82
Subdivision A—Requests by Integrity Commissioner	82
75 Request to staff member of law enforcement agency	82
76 Request to person other than staff member of law enforcement agency	83
77 Integrity Commissioner may retain documents and things	83
Subdivision B—Offence and related provisions	84
78 Failure to comply with Integrity Commissioner’s request	84
79 Legal practitioner not required to disclose privileged communications	84
80 Self-incrimination etc.	85
81 Protection of person required to give information and produce documents	87
Division 2—Conducting hearings	89
Subdivision A—General provisions	89
82 Integrity Commissioner may hold hearings	89
83 Integrity Commissioner may summon person	90
84 Integrity Commissioner may take evidence outside Australia	91
Subdivision B—Procedure at hearing	92
85 Who may be represented at a hearing	92
86 Who may be present at a hearing	92
Subdivision C—Taking evidence at hearing	93
87 Evidence on oath or by affirmation	93
88 Examination and cross-examination of witnesses	94
89 Giving evidence in private	94
90 Directions in relation to confidentiality	95
Subdivision D—Prohibitions against disclosing information about a summons	97
91 Disclosure of summons may be prohibited	97
92 Offences of disclosure	99
Subdivision E—Offences in relation to hearings	102
93 Offences	102
94 Contempt	103
95 Legal practitioner not required to disclose privileged communications	104
96 Self-incrimination etc.	105

Subdivision F—Court orders for delivery of witness’s passport and witness’s arrest	108
97 Integrity Commissioner may apply for order that witness deliver his or her passport.....	108
98 Court orders.....	109
99 Applying for a warrant to arrest witness.....	111
100 Warrant for arrest	111
101 Powers of Judge in relation to person arrested	113
Subdivision G—Miscellaneous	114
102 Integrity Commissioner may retain documents or things	114
103 Person may apply for legal and financial assistance.....	114
104 Protection of Integrity Commissioner etc.....	115
104A Protection of witnesses etc.	116
Division 3—Entering certain places during an investigation without a search warrant	118
105 Power to enter places occupied by law enforcement agencies.....	118
106 Receipts of things seized under warrant	119
Division 4—Search warrants	121
Subdivision A—Preliminary	121
107 Application to things under the control of a person.....	121
Subdivision B—Applying for a search warrant	121
108 Authorised officer may apply for a search warrant.....	121
Subdivision C—Issue of a search warrant	123
109 When search warrants may be issued	123
110 Content of warrants	125
111 Application by telephone etc. and issue of warrant	128
112 The things authorised by a search warrant in relation to premises.....	130
113 The things authorised by a search warrant in relation to a person	131
114 Restrictions on personal searches	132
115 When warrant may be executed etc.	132
Subdivision D—General provisions about executing a search warrant	133
116 Announcement before entry	133
117 Availability of assistance and use of force in executing a warrant.....	133
Subdivision E—Specific provisions about executing a warrant in relation to premises	134

118	Application	134
119	Copy of warrant to be shown to occupier etc.....	134
120	Occupier entitled to watch search.....	134
121	Specific powers available to person executing a warrant	135
122	Use of equipment to examine or process things	135
123	Use of electronic equipment at premises without expert assistance.....	137
124	Use of electronic equipment at premises with expert assistance.....	138
125	Person with knowledge of a computer or a computer system to assist access etc.	139
126	Accessing data held on other premises—notification to occupier of those premises	140
127	Compensation for damage to electronic equipment.....	141
128	Copies of seized things to be provided	142
129	Receipts of things seized under warrant	142
Subdivision F—Specific provisions about executing a warrant in relation to a person		142
130	Copy of warrant to be shown to person	142
131	Conduct of an ordinary search or a frisk search.....	143
Subdivision G—Offences		143
132	Making false statements in warrants.....	143
133	Offence for stating incorrect names in telephone warrants.....	143
134	Offence for unauthorised form of warrant	143
135	Offence for executing etc. an unauthorised form of warrant	144
136	Offence for giving unexecuted form of warrant	144
Subdivision H—Miscellaneous		144
137	Other laws about search, arrest etc. not affected.....	144
138	Law relating to legal professional privilege not affected.....	145
Division 5—Powers of arrest		146
139	Authorised officers may exercise powers of arrest.....	146
Division 6—Authorised officers		147
140	Appointment of authorised officers	147
141	Identity cards	148
Part 10—Dealing with evidence and information obtained in investigation or public inquiry		150
142	Evidence of offence or liability to civil penalty.....	150
143	Evidence that could be used in confiscation proceedings	151
144	Consultation with law enforcement agency head before taking action under section 142 or 143	152

145	Notification of action taken under section 142 or 143	153
146	Evidence of breach of duty or misconduct by staff member.....	154
147	Evidence of, or information suggesting, wrongful conviction.....	155
Part 11—Attorney-General’s certificates about release of information		157
149	Attorney-General’s certificate in relation to particular information	157
150	Integrity Commissioner’s access to section 149 certified information	159
151	Giving another agency section 149 certified information.....	160
152	Integrity Commissioner giving section 149 certified information to agency head or special investigator.....	160
Part 12—Dealing with ACLEI corruption issues		161
Division 1—Referring ACLEI corruption issues to Minister		161
153	Integrity Commissioner and ACLEI staff notifying Minister of ACLEI corruption issues.....	161
154	Referral of ACLEI corruption issues by other persons	161
155	Person may elect to be kept informed.....	162
Division 2—How Minister deals with ACLEI corruption issues		163
156	How Minister may deal with ACLEI corruption issues.....	163
157	Qualification to conduct special investigation	165
158	Counsel assisting special investigator.....	165
Division 3—Investigation by Integrity Commissioner		166
159	Application of Division	166
160	Investigation and investigative powers	166
161	Keeping Minister, and person who referred ACLEI corruption issue, informed of progress of the investigation.....	167
162	Report on investigation.....	168
163	Integrity Commissioner to give report to Minister	169
164	Advising person who referred allegation or information about the outcome of the investigation	170
165	Advising person whose conduct is investigated of outcome of the investigation	171
Division 4—Special investigations		173
166	Application of Part	173
167	Investigation and investigative powers.....	173
168	Keeping Minister, and person who referred ACLEI corruption issue, informed of progress of the investigation.....	174
169	Report on investigation.....	175
170	Special investigator to give report to Minister.....	176

171	Minister may direct Integrity Commissioner to consider taking action	177
172	Advising person who referred allegation or information about the outcome of the investigation	178
173	Advising person whose conduct is investigated of outcome of the investigation	179
Division 5—Staff members of ACLEI to report corrupt conduct		180
174	Staff members of ACLEI to report corrupt conduct	180
Part 13—Administrative provisions		182
Division 1—Appointment etc. of Integrity Commissioner		182
175	Appointment of Integrity Commissioner	182
176	Judge may be appointed as Integrity Commissioner.....	183
177	Acting appointment	184
178	Remuneration	184
179	Leave	185
180	Outside employment.....	185
181	Other terms and conditions.....	185
182	Resignation.....	185
183	Termination of employment	186
184	Disclosure of interests	186
Division 2—Appointment etc. of Assistant Integrity Commissioners		187
185	Appointment of Assistant Integrity Commissioners	187
186	Judge may be appointed as an Assistant Integrity Commissioner.....	188
187	Acting appointments.....	189
188	Remuneration	189
189	Leave	190
190	Outside employment.....	190
191	Other terms and conditions.....	191
192	Resignation.....	191
193	Termination of employment	191
194	Disclosure of interests	192
Division 3—The Australian Commission for Law Enforcement Integrity		193
195	Establishment	193
196	Function.....	193
197	Staff	193
198	Engagement of consultants	193
199	Secondment of persons to assist Integrity Commissioner.....	194

200	Counsel assisting Integrity Commissioner.....	195
Division 4—Public reporting		196
201	Annual report.....	196
202	Inter-Governmental Committee comments on annual report.....	197
203	Reports on investigations and public inquiries	198
204	Special reports	199
205	Inter-Governmental Committee comments on special report in relation to ACC	200
206	Contents of annual or special report	200
Division 5—Confidentiality requirements		202
207	Confidentiality requirements for ACLEI staff	202
208	Exceptions to confidentiality requirements	203
209	Disclosure by Integrity Commissioner in public interest etc.	205
210	Opportunity to be heard.....	205
211	ACLEI staff generally not compellable in court proceedings	206
Part 14—Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity		208
212	Definitions.....	208
213	Joint Committee on the Australian Commission for Law Enforcement Integrity.....	208
214	Powers and proceedings of the Committee.....	209
215	Duties of the Committee.....	209
216	Disclosure to Committee by Integrity Commissioner.....	210
217	Disclosure to Committee by Minister.....	212
218	Ombudsman to brief committee about controlled operations	212
Part 15—Miscellaneous		213
219	Delegation	213
220	Offence of victimisation	213
221	Legal and financial assistance in relation to applications for administrative review	214
222	Immunity from civil proceedings	215
223	Immunities from certain State and Territory laws	216
223A	Review of operation of Act	216
224	Regulations.....	217



Law Enforcement Integrity Commissioner Act 2006

No. 85, 2006

**An Act to provide for the appointment of the
Integrity Commissioner, to set out the functions
and powers of the Integrity Commissioner, and for
related purposes**

[Assented to 30 June 2006]

The Parliament of Australia enacts:

Section 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Law Enforcement Integrity Commissioner Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	30 June 2006
2. Sections 3 to 224	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	30 December 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Objects of this Act

- (1) The objects of this Act are:
 - (a) to facilitate:
 - (i) the detection of corrupt conduct in law enforcement agencies; and
 - (ii) the investigation of corruption issues that relate to law enforcement agencies; and
 - (b) to enable criminal offences to be prosecuted, and civil penalty proceedings to be brought, following those investigations; and
 - (c) to prevent corrupt conduct in law enforcement agencies; and
 - (d) to maintain and improve the integrity of staff members of law enforcement agencies.
- (2) To assist in achieving these objects, this Act establishes:
 - (a) the office of the Integrity Commissioner; and
 - (b) the Australian Commission for Law Enforcement Integrity.

4 Application of Act

This Act applies both within and outside Australia and extends to every external Territory.

Part 2—Interpretation

5 Definitions

(1) In this Act:

ACC means the Australian Crime Commission.

ACLEI: see *Australian Commission for Law Enforcement Integrity*.

ACLEI corruption issue has the meaning given by section 8.

AFP means the Australian Federal Police.

Assistant Integrity Commissioner means an Assistant Integrity Commissioner appointed under section 185.

assisting officer, in relation to a warrant for a person's arrest or a search warrant, means:

(a) a person who:

- (i) is an authorised officer or a member or special member of the AFP; and
- (ii) is assisting in executing the warrant; or

(b) a person who:

- (i) is not an authorised officer; and
- (ii) is not a member or special member of the AFP; and
- (ii) has been authorised by the authorised officer who is executing the warrant to assist in executing the warrant.

Australian Commission for Law Enforcement Integrity or *ACLEI* means the Australian Commission for Law Enforcement Integrity established by section 195.

authorised officer means:

- (a) the Integrity Commissioner; or
- (b) a person authorised under section 140.

civil penalty proceeding means a proceeding for a civil penalty in relation to a contravention of a law of the Commonwealth or of a State or Territory.

civil penalty provision means a provision of a law of the Commonwealth or of a State or Territory in relation to a contravention of which a civil penalty may be imposed.

Commonwealth government agency means:

- (a) a Department of the Commonwealth; or
- (b) a body (whether incorporated or not) established for a public purpose by, or under, a law of the Commonwealth.

confiscation proceeding means a proceeding under:

- (a) the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*; or
- (b) a corresponding law within the meaning of either of those Acts;

but does not include a criminal prosecution for an offence under either of those Acts or a corresponding law.

contravene a certificate issued under section 149 has the meaning given by subsection (4).

corrupt conduct: see *engages in corrupt conduct*.

corruption investigation means:

- (a) an investigation of a corruption issue under this Act; or
- (b) an investigation of an ACLEI corruption issue under this Act (including a special investigation).

corruption issue has the meaning given by section 7.

criminal proceeding means:

- (a) a prosecution for an offence against a law of the Commonwealth or of a State or Territory; or
- (b) a confiscation proceeding.

data has the same meaning as in Part IAA of the *Crimes Act 1914*.

Section 5

data held in a computer has the same meaning as in Part IAA of the *Crimes Act 1914*.

data storage device has the same meaning as in Part IAA of the *Crimes Act 1914*.

disciplinary proceeding:

- (a) means a proceeding of a disciplinary nature under a law of the Commonwealth or of a State or Territory; and
- (b) includes action taken under Subdivision D of Division 5 of Part V of the *Australian Federal Police Act 1979*.

eligible seizable item means anything that:

- (a) would present a danger to a person; or
- (b) could be used to assist a person to escape from lawful custody.

employee of a government agency has a meaning affected by subsection (5).

engage in conduct means:

- (a) do an act; or
- (b) omit to do an act.

engages in corrupt conduct has the meaning given by section 6.

evidential material means:

- (a) in relation to an investigation warrant—a thing that may be relevant to:
 - (i) a corruption investigation; or
 - (ii) a public inquiry; or
- (b) in relation to an offence warrant—a thing relevant to an offence against a law of the Commonwealth.

former NCA means the National Crime Authority established under section 7 of the former NCA Act.

former NCA Act means the *National Crime Authority Act 1984* (as in force at any time before the commencement of Schedule 1 to the *Australian Crime Commission Establishment Act 2002*).

frisk search has the same meaning as in Part IAA of the *Crimes Act 1914*.

government agency means:

- (a) a Department of the Commonwealth or of a State or Territory; or
- (b) a body (whether incorporated or not) established for a public purpose by or under a law of the Commonwealth or of a State or Territory.

head of a government agency means:

- (a) if the agency is the AFP—the Commissioner (within the meaning of the *Australian Federal Police Act 1979*); or
- (b) if the agency is the ACC—the CEO of the ACC (within the meaning of the *Australian Crime Commission Act 2002*); or
- (c) if the agency is a Commonwealth government agency that is prescribed for the purposes of paragraph (d) of the definition of **law enforcement agency**—the person holding the office in the agency that is prescribed by the regulations for the purposes of this definition; or
- (d) if the agency is another Commonwealth government agency:
 - (i) in the case of a Department of the Commonwealth—the Secretary of the Department; or
 - (ii) in the case of a body established for a public purpose—the person holding, or performing the duties of, the principal office in respect of the body; or
- (e) if the agency is a State or Territory government agency—the person holding, or performing the duties of, the principal office in respect of the agency.

integrity agency for a State or Territory means an agency that:

- (a) is established by the law of the State or Territory for purposes that include the purpose of investigating corruption in the police force of the State or Territory; and
- (b) is prescribed for the purposes of this definition.

Integrity Commissioner means the Integrity Commissioner appointed under section 175.

Section 5

Inter-Governmental Committee means the Inter-Governmental Committee established by section 8 of the *Australian Crime Commission Act 2002*.

investigation warrant means a warrant to search for a thing that may be relevant to:

- (a) a corruption investigation; or
- (b) a public inquiry.

issuing officer means:

- (a) for an investigation warrant:
 - (i) a Judge of the Federal Court of Australia sitting in Chambers; or
 - (ii) a Judge of a court of a State or Territory; or
 - (iii) a Federal Magistrate; or
- (b) for an offence warrant—a magistrate.

law enforcement agency means:

- (a) the AFP; or
- (b) the ACC; or
- (c) the former NCA; or
- (d) any other Commonwealth government agency that:
 - (i) has a law enforcement function; and
 - (ii) is prescribed by the regulations for the purposes of this paragraph.

law enforcement function means any of the following functions:

- (a) investigating whether:
 - (i) an offence has been committed against a law of the Commonwealth; or
 - (ii) there has been a contravention of a law of the Commonwealth in relation to which civil penalty proceedings may be brought;
- (b) preparing the material necessary to prosecute a person for an offence against a law of the Commonwealth;
- (c) preparing the material necessary to bring civil penalty proceedings against a person for a contravention of a law of the Commonwealth;

- (d) collecting, maintaining, correlating, analysing, accessing or distributing information for the purpose of assisting the enforcement of laws of the Commonwealth;
- (e) assisting in carrying out a function referred to in paragraphs (a) to (d).

law enforcement secrecy provision means:

- (a) Part IV of the *Financial Transaction Reports Act 1988*; or
- (b) section 45 of the *Surveillance Devices Act 2004*; or
- (c) sections 63 and 133 of the *Telecommunications (Interception and Access) Act 1979*; or
- (d) anything done under a provision referred to in paragraphs (a) to (c).

legal aid officer means:

- (a) a member, or member of staff, of an authority established by or under a law of a State or Territory for purposes that include providing legal assistance; or
- (b) a person to whom the Attorney-General has delegated his or her powers and functions under section 103.

legal practitioner means a barrister, a solicitor, a barrister and solicitor or a legal practitioner, of the High Court or of the Supreme Court of a State or Territory.

magistrate means a magistrate who is remunerated by salary or otherwise.

manage an investigation of a corruption issue by a law enforcement agency has the meaning given by section 61.

nominated contact of a law enforcement agency for an investigation of a corruption issue means:

- (a) a staff member of the agency nominated under section 60 as the nominated contact for the investigation; or
- (b) if a staff member is not nominated—the head of the agency.

occupier of premises means the person apparently in charge of the premises.

Section 5

offence warrant means a warrant to search for a thing relevant to an offence against a law of the Commonwealth.

official matter means any of the following (whether past, present or contingent):

- (a) a corruption investigation;
- (b) a hearing held by the Integrity Commissioner or a special investigator in relation to a corruption investigation;
- (c) court proceedings.

ordinary search means a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove his or her overcoat, coat or jacket or any gloves, shoes or hat; and
- (b) an examination of those items.

oversee an investigation of a corruption issue by a law enforcement agency has the meaning given by section 62.

premises includes a place, vehicle, vessel and aircraft.

public inquiry means a public inquiry conducted by the Integrity Commissioner under Part 8.

refer, in relation to an allegation or information, has the meaning given by subsections (2) and (3).

responsible Minister for a Commonwealth government agency means:

- (a) if the agency is established or continued in existence by an Act—the Minister administering that Act; or
- (b) in any other case—the Minister having general responsibility for the activities of the agency.

search warrant means an investigation warrant, or an offence warrant, that is issued under section 109:

- (a) to search premises; or
- (b) to carry out an ordinary search, or frisk search, of a person.

seconded:

- (a) in relation to a law enforcement agency—has the meaning given by subsection 10(5); and
- (b) in relation to ACLEI—has the meaning given by subsection 11(2).

secrecy provision means:

- (a) a provision of a law of the Commonwealth that purports to prohibit; or
- (b) anything done, under a provision of a law of the Commonwealth, to prohibit;

the communication, divulging or publication of information, the production of, or the publication of the contents of, a document, or the production of a thing.

section 149 certified information means:

- (a) information about a matter specified in a certificate in force under section 149; or
- (b) information contained in a document specified in a certificate in force under section 149.

sensitive information means information the disclosure of which:

- (a) could prejudice:
 - (i) the security, defence or international relations of Australia; or
 - (ii) relations between the Commonwealth Government and the Government of a State or between the Government of a State and the Government of another State; or
- (b) would involve disclosing:
 - (i) deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the Commonwealth or of a State; or
 - (ii) deliberations or advice of the Federal Executive Council or the Executive Council of a State or the Northern Territory; or
 - (iii) deliberations or decisions of the Australian Capital Territory Executive or of a committee of that Executive; or

Section 5

- (c) could reveal, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to:
 - (i) the enforcement of the criminal law of the Commonwealth, a State or Territory or a foreign country; or
 - (ii) a corruption investigation; or
 - (iii) a public inquiry under this Act; or
- (d) could endanger a person's life or physical safety; or
- (e) could prejudice the protection of public safety; or
- (f) could prejudice the fair trial of a person or the impartial adjudication of a matter; or
- (g) could prejudice the proper enforcement of the law (including through corruption investigations); or
- (h) would involve disclosing information whose disclosure is prohibited (absolutely or subject to qualifications) by or under another law of the Commonwealth; or
- (i) would involve unreasonably disclosing a person's personal affairs; or
- (j) would involve unreasonably disclosing confidential commercial information.

serious corruption means corrupt conduct engaged in by a staff member of a law enforcement agency that could result in the staff member being charged with an offence punishable, on conviction, by a term of imprisonment for 12 months or more.

significant corruption issue means:

- (a) a corruption issue that relates to corrupt conduct that constitutes serious corruption or systemic corruption; or
- (b) a corruption issue that:
 - (i) relates to a law enforcement agency; and
 - (ii) is of a kind that the Integrity Commissioner and the head of the agency have agreed under paragraph 17(1)(a) to be a significant corruption issue in relation to staff members of the agency; or
- (c) a corruption issue of a kind that is prescribed by the regulations for the purposes of this paragraph.

special investigation means a special investigation of an ACLEI corruption issue conducted under Division 4 of Part 12.

special investigator means a person conducting a special investigation.

staff member:

- (a) in relation to a law enforcement agency—has the meaning given by subsections 10(1) to (5); and
- (b) in relation to ACLEI—has the meaning given by subsection 11(1).

State or Territory government agency means:

- (a) a Department of a State or Territory; or
- (b) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory.

strip search has the same meaning as in Part IAA of the *Crimes Act 1914*.

systemic corruption means instances of corrupt conduct (which may or may not constitute serious corruption) that reveal a pattern of corrupt conduct in a law enforcement agency or in law enforcement agencies.

taxation secrecy provision means a secrecy provision that is a provision of a taxation law within the meaning of the *Taxation Administration Act 1953*.

thing relevant to an indictable offence has the same meaning as in the *Crimes Act 1914*.

- (2) A reference in this Act to a person **referring** an allegation includes a reference to the person making the allegation.
- (3) A reference in this Act to a person **referring** information includes a reference to the person giving information.
- (4) For the purposes of this Act, a disclosure **contravenes** a certificate issued under section 149 if the disclosure would be contrary to the public interest according to the terms of the certificate.

Section 6

- (5) A reference in this Act to a person being an *employee* of a government agency includes a reference to a person being a member of a police force of a State or Territory.

6 Meaning of *engages in corrupt conduct*

Staff members of law enforcement agencies

- (1) For the purpose of this Act, a staff member of a law enforcement agency ***engages in corrupt conduct*** if the staff member, while a staff member of the agency, engages in:
- (a) conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of the agency; or
 - (b) conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or
 - (c) conduct that, having regard to the duties and powers of the staff member as a staff member of the agency, involves, or is engaged in for the purpose of, corruption of any other kind.
- (2) If the law enforcement agency is one referred to in paragraph (d) of the definition of ***law enforcement agency***, the staff member ***engages in corrupt conduct*** only if the conduct relates to the performance of a law enforcement function of the agency.

Staff members of ACLEI

- (3) For the purpose of this Act, a staff member of ACLEI ***engages in corrupt conduct*** if the staff member, while a staff member of ACLEI, engages in:
- (a) conduct that involves, or that is engaged in for the purpose of, the staff member abusing his or her office as a staff member of ACLEI; or
 - (b) conduct that perverts, or that is engaged in for the purpose of perverting, the course of justice; or
 - (c) conduct that, having regard to the duties and powers of the staff member as a staff member of ACLEI, involves, or is engaged in for the purpose of, corruption of any other kind.

General provisions

- (4) To avoid doubt:
- (a) the conduct referred to in subsection (1) may be conduct that was engaged in before the commencement of this Act; and
 - (b) a staff member of a law enforcement agency or ACLEI ***engages in corrupt conduct*** even if the conduct engaged in by the staff member also involves or implicates someone who is not a staff member of a law enforcement agency or ACLEI.
- (5) For the purposes of this section, conduct is taken to be engaged in for a purpose if it is engaged in for purposes that include that purpose.

7 Meaning of *corruption issue*

- (1) For the purposes of this Act, a ***corruption issue*** is an issue whether a person who is, or has been, a staff member of a law enforcement agency:
- (a) has, or may have, engaged in corrupt conduct; or
 - (b) is, or may be, engaging in corrupt conduct; or
 - (c) will, or may at any time in the future, engage in corrupt conduct.
- (2) To avoid doubt, an allegation, or information, may raise a ***corruption issue*** even if the identity of the person is unknown, is uncertain or is not disclosed in the allegation or information.

8 Meaning of *ACLEI corruption issue*

- (1) For the purposes of this Act, an ***ACLEI corruption issue*** is an issue whether a person who is, or has been, a staff member of ACLEI:
- (a) has, or may have, engaged in corrupt conduct; or
 - (b) is, or may be, engaging in corrupt conduct; or
 - (c) will, or may at any time in the future, engage in corrupt conduct.

Section 9

- (2) To avoid doubt, an allegation, or information, may raise an **ACLEI corruption issue** even if the identity of the person is unknown, is uncertain or is not disclosed in the allegation or information.

9 Corruption issue that relates to a law enforcement agency

For the purposes of this Act, a corruption issue relates to a law enforcement agency if the corruption issue relates to corrupt conduct of a person as a staff member of the agency.

10 Staff members of law enforcement agencies

AFP staff members

- (1) The following are **staff members** of the AFP for the purposes of this Act:
- (a) the Commissioner;
 - (b) a Deputy Commissioner of Police;
 - (c) an AFP employee;
 - (e) a special member;
 - (f) a special protective service officer;
 - (fa) a person engaged overseas under section 69A of the *Australian Federal Police Act 1979* to perform duties overseas as an employee of the AFP;
 - (g) a person engaged under section 35 of the *Australian Federal Police Act 1979*;
 - (h) a person who is:
 - (i) a member of the police force of a State or Territory; or
 - (ii) an employee of a government agency;and who is assisting the AFP in the performance of its functions by performing functions specified in an agreement under section 69D of the *Australian Federal Police Act 1979*.

The terms used in paragraphs (a) to (f) have the same meaning as in the *Australian Federal Police Act 1979*.

ACC staff members

- (2) The following are **staff members** of the ACC for the purposes of this Act:

- (a) the CEO of the ACC (within the meaning of the *Australian Crime Commission Act 2002*);
- (b) a person appointed under subsection 46B(1) of that Act;
- (c) a member of the staff referred to in subsection 47(1) of that Act;
- (d) a person engaged under subsection 48(1) of that Act;
- (e) a person referred to in section 49 of that Act whose services are made available to the ACC;
- (f) a legal practitioner appointed under section 50 of that Act to assist the ACC as counsel.

Former NCA staff members

- (3) The following are *staff members* of the former NCA for the purposes of this Act:
 - (a) a member of the former NCA;
 - (b) a member of the staff of the former NCA referred to in subsection 47(1) of the former NCA Act;
 - (c) a person engaged under subsection 48(1) of the former NCA Act;
 - (d) a person referred to in section 49 of the former NCA Act whose services were made available to the former NCA;
 - (e) a legal practitioner appointed under section 50 of the former NCA Act to assist the former NCA as counsel.

Staff members of prescribed law enforcement agencies

- (4) For the purposes of this Act, the *staff members* of a Commonwealth government agency that is prescribed for the purposes of paragraph (d) of the definition of *law enforcement agency* are the persons in the class of persons prescribed by the regulations for the purposes of this subsection.

Secondees

- (5) For the purposes of this Act:
 - (a) a person referred to in paragraph (1)(h) is a *secondee* to the AFP; and

Section 11

- (aa) a person referred to in paragraph (1)(e) or (f) who is also an employee of another government agency is a *seconded* to the AFP; and
- (b) a person referred to in paragraph (2)(e) is a *seconded* to the ACC; and
- (c) a person referred to in paragraph (3)(d) is a *seconded* to the former NCA; and
- (d) a person is a *seconded* to a Commonwealth agency that is prescribed for the purposes of paragraph (d) of the definition of *law enforcement agency* if the regulations provide that the person is a seconded of that agency.

11 Staff members of ACLEI

- (1) The following are *staff members of ACLEI* for the purposes of this Act:
 - (a) the Integrity Commissioner;
 - (b) an Assistant Integrity Commissioner;
 - (c) a member of the staff referred to in section 197;
 - (d) a person engaged under section 198;
 - (e) a person referred to in section 199 whose services are made available to the Integrity Commissioner;
 - (f) a legal practitioner appointed under section 200 to assist the Integrity Commissioner as counsel.
- (2) For the purposes of this Act, a person referred to in paragraph (1)(e) is a *seconded* to ACLEI.

12 Applying Act to staff members of former NCA

- (1) For the purposes of this Act, a person who was a staff member of the former NCA is taken to have been a staff member of the ACC.
- (2) Subsection (1) does not apply for the purposes of section 6.

13 State offences that have a federal aspect*Object*

- (1) The object of this section is to identify State offences that have a federal aspect because:
- (a) they potentially fall within Commonwealth legislative power because of the elements of the State offence; or
 - (b) they potentially fall within Commonwealth legislative power because of the circumstances in which the State offence was committed (whether or not those circumstances are expressed to be acts or omissions involved in committing the offence); or
 - (c) the investigation of them is incidental to a corruption investigation that involves, or may involve, an offence against a law of the Commonwealth or a Territory.

State offences that have a federal aspect

- (2) For the purposes of this Act, a State offence has a federal aspect if, and only if:
- (a) both:
 - (i) the State offence is not an ancillary offence; and
 - (ii) assuming that the provision creating the State offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
 - (b) both:
 - (i) the State offence is an ancillary offence that relates to a particular primary offence; and
 - (ii) assuming that the provision creating the primary offence had been enacted by the Parliament of the Commonwealth instead of by the Parliament of the State—the provision would have been a valid law of the Commonwealth; or
 - (c) assuming that the Parliament of the Commonwealth had enacted a provision that created an offence penalising the specific acts or omissions involved in committing the State

Section 13

offence—that provision would have been a valid law of the Commonwealth; or

(d) both:

- (i) the Integrity Commissioner is investigating a corruption issue that involves, or may involve, an offence against a law of the Commonwealth or a Territory; and
- (ii) if the Integrity Commissioner is investigating, or were to investigate, a corruption issue that involves, or may involve, the State offence—that investigation is, or would be, incidental to the investigation referred to in subparagraph (i).

Specificity of acts or omissions

- (3) For the purposes of paragraph (2)(c), the specificity of the acts or omissions involved in committing a State offence is to be determined having regard to the circumstances in which the offence was committed (whether or not those circumstances are expressed to be elements of the offence).

State offences covered by paragraph (2)(c)

- (4) A State offence is taken to be covered by paragraph (2)(c) if the conduct constituting the State offence:
 - (a) affects the interests of:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; or
 - (iii) a constitutional corporation; or
 - (b) was engaged in by a constitutional corporation; or
 - (c) was engaged in in a Commonwealth place; or
 - (d) involved the use of a postal service or other like service; or
 - (e) involved an electronic communication; or
 - (f) involved trade or commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
 - (g) involved:

Section 13

- (i) banking (other than State banking not extending beyond the limits of the State concerned); or
 - (ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or
 - (h) relates to a matter outside Australia; or
 - (i) relates to a matter in respect of which an international agreement to which Australia is a party imposes obligations to which effect could be given by the creation of an offence against the domestic laws of the parties to the agreement; or
 - (j) relates to a matter that affects the relations between Australia and another country or countries or is otherwise a subject of international concern.
- (5) Subsection (4) does not limit paragraph (2)(c).

Definitions

- (6) In this section:

ancillary offence, in relation to an offence (the ***primary offence***), means:

- (a) an offence of conspiring to commit the primary offence; or
- (b) an offence of aiding, abetting, counselling or procuring, or being in any way knowingly concerned in, the commission of the primary offence; or
- (c) an offence of attempting to commit the primary offence.

Commonwealth place has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

conduct has the same meaning as in the *Criminal Code*.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

electronic communication means a communication of information:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or

Section 13

- (d) whether in the form of visual images (animated or otherwise); or
 - (e) whether in any other form; or
 - (f) whether in any combination of forms;
- by means of guided and/or unguided electromagnetic energy.

engage in conduct has the same meaning as in the *Criminal Code*.

State includes the Australian Capital Territory and the Northern Territory.

State offence means an offence against a law of a State.

Part 3—The Integrity Commissioner

14 Integrity Commissioner

There is to be an Integrity Commissioner.

Note: For provisions in relation to the Integrity Commissioner's appointment, see Division 1 of Part 13.

15 Functions of the Integrity Commissioner

The Integrity Commissioner has the following functions:

- (a) to investigate and report on corruption issues;
- (b) to refer corruption issues, in appropriate circumstances, to a law enforcement agency for investigation;
- (c) to manage, oversee or review, in appropriate circumstances, the investigation of corruption issues by law enforcement agencies;
- (d) at the request of the Minister, to conduct public inquiries into:
 - (i) corruption issues; or
 - (ii) corruption generally in, or the integrity of staff members of, law enforcement agencies;
- (e) to collect, correlate, analyse and disseminate information and intelligence in relation to corruption generally in, or the integrity of staff members of, both:
 - (i) law enforcement agencies; and
 - (ii) other Commonwealth government agencies that have law enforcement functions;
- (f) on the Integrity Commissioner's own initiative, or on request by the Minister, to make reports and recommendations to the Minister in relation to any matter that concerns the need for or the desirability of legislative or administrative action on issues in relation to corruption generally in, or the integrity of staff members of, law enforcement agencies;
- (g) any other function conferred on the Integrity Commissioner by other provisions of this Act or by another Act.

Section 16

Note: Paragraph (a)—the investigation of a corruption issue may be conducted in response to a referral or notification of the corruption issue to the Integrity Commissioner or on the Integrity Commissioner's own initiative.

16 Integrity Commissioner to give priority to serious corruption and systemic corruption

In carrying out the Integrity Commissioner's functions, the Integrity Commissioner must give priority to corruption issues that relate to corrupt conduct that constitutes serious corruption or systemic corruption.

17 Integrity Commissioner may enter into agreement with head of law enforcement agency

- (1) The Integrity Commissioner may enter into an agreement with the head of a law enforcement agency in relation to all or any of the following matters:
 - (a) the kinds of issues that are significant corruption issues in relation to staff members of the agency;
 - (b) the level of detail required to notify the Integrity Commissioner of a corruption issue;
 - (c) the way in which information or documents in relation to a corruption issue may be given to the Integrity Commissioner (whether for the purpose of notifying the Integrity Commissioner or allowing the Integrity Commissioner to manage, oversee or review an investigation or otherwise);
 - (d) the level of detail required in the final report given to the Integrity Commissioner on the law enforcement agency's investigation of a corruption issue.
- (2) The Integrity Commissioner may agree with the head of the law enforcement agency to vary or revoke the agreement.
- (3) The agreement, or the variation or revocation of the agreement, must be in writing.

Part 4—Dealing with corruption issues

Division 1—Referring corruption issues to Integrity Commissioner

18 Referral of corruption issues by Minister

The Minister may refer to the Integrity Commissioner an allegation, or information, that raises a corruption issue.

19 Notification of corruption issues by law enforcement agency heads

- (1) As soon as practicable after the head of a law enforcement agency becomes aware of an allegation, or information, that raises a corruption issue that relates to the agency, the head of the agency must:
 - (a) notify the Integrity Commissioner in writing of the corruption issue (including a description of the corruption issue and the allegation or information giving rise to the corruption issue); and
 - (b) indicate whether the corruption issue is a significant corruption issue.
- (2) The head of the agency does not need to take action under subsection (1), however, if the head of the agency:
 - (a) has already notified the Integrity Commissioner of the corruption issue under subsection (1); or
 - (b) has reasonable grounds to believe that the Integrity Commissioner is already aware of the allegation or the information.
- (3) The action taken under subsection (1) must be taken in accordance with any agreement entered into under section 17 between the head of the agency and the Integrity Commissioner.
- (4) With the agreement of the Integrity Commissioner, the head of the agency may:

Section 20

- (a) notify the Integrity Commissioner under subsection (1) of a corruption issue; and
 - (b) indicate whether the corruption issue is a significant corruption issue;
- by entering the required details on a database.
- (5) This section applies to a corruption issue that relates to a staff member of the former NCA as if the staff member were a staff member of the ACC.

20 Notification of corruption issue identified as significant corruption issue

- (1) If the head of a law enforcement agency notifies the Integrity Commissioner of a corruption issue and indicates that it is a significant corruption issue, the head of the agency must:
- (a) give the Integrity Commissioner all the information and documents that:
 - (i) relate to the corruption issue; and
 - (ii) are in the possession, or under the control, of the head of the agency; and
 - (b) stop any investigation of the corruption issue that the agency is already conducting; and
 - (c) take all reasonable steps to prevent the loss, destruction or fabrication of evidence in relation to the corruption issue.

This subsection has effect subject to subsection 150(1) but despite any secrecy provision (other than a law enforcement secrecy provision or a taxation secrecy provision).

Note: Paragraph (a)—section 21 requires the head of the agency to pass on new information that relates to a significant corruption issue that has already been referred to the Integrity Commissioner.

- (2) The law enforcement agency may resume an investigation of a corruption issue stopped under paragraph (1)(b), or commence an investigation of a corruption issue to which subsection (1) applies, only if the Integrity Commissioner:
- (a) refers the corruption issue to the agency under paragraph 26(1)(b) for investigation; or

- (b) decides to investigate the corruption issue jointly with the agency under subsection 26(2); or
- (c) decides under subsection 31(1) to take no further action in relation to the corruption issue.

21 Law enforcement agency head to pass on new information in relation to corruption issue already referred

- (1) If the head of a law enforcement agency:
 - (a) notifies the Integrity Commissioner of a corruption issue under section 19 and indicates that it is a significant corruption issue; and
 - (b) subsequently becomes aware of an allegation, or information, that is relevant to the corruption issue;the head of the agency must give the Integrity Commissioner details of the allegation, or give the Integrity Commissioner the information, as soon as practicable after the head of the agency becomes aware of the allegation or information.
- (2) Subsection (1) has effect subject to subsection 150(1) but despite any secrecy provision (other than a law enforcement secrecy provision or a taxation secrecy provision).
- (3) The head of the agency does not need to take action under subsection (1), however, if the head of the agency:
 - (a) has reasonable grounds to believe that the Integrity Commissioner is already aware of the allegation or the information; or
 - (b) becomes aware of the allegation or information in the course of an investigation of the corruption issue and:
 - (i) the agency is conducting the investigation as a result of the Integrity Commissioner referring that corruption issue to the agency for investigation; or
 - (ii) the Integrity Commissioner is managing or overseeing the investigation.

Section 22

22 Notification of corruption issue not identified as significant corruption issue

- (1) If the head of a law enforcement agency notifies a corruption issue to the Integrity Commissioner under section 19 but does not indicate that it is a significant corruption issue, the head of the agency must:
- (a) if the agency is already investigating the corruption issue—ensure that the investigation is continued and completed; and
 - (b) if the agency is not already investigating the corruption issue—ensure that the agency investigates the corruption issue.

This subsection applies subject to any action taken by the Integrity Commissioner under section 32 or 42.

- (2) The head of the agency does not need to take the action referred to in subsection (1) if he or she is satisfied that:
- (a) the matter:
 - (i) involves or implicates a secondee to the agency who is an employee of a government agency (the *home agency*); and
 - (ii) is already being investigated by the home agency or an integrity agency for a State or Territory; or
 - (b) the making of the allegation that raises the corruption issue, or the giving of the information that raises the corruption issue, is frivolous or vexatious; or
 - (d) the corrupt conduct to which the corruption issue relates has been, is or will be, the subject of proceedings before a court; or
 - (e) subject to subsection (2A), a Commonwealth law that applies to the agency allows the agency to decide not to deal with the allegation or information that raises the corruption issue.

However, the head of the agency must advise the Integrity Commissioner that the agency will not be investigating the corruption issue and the reason why the agency will not be investigating the corruption issue.

- (2A) Despite paragraph (2)(e), the agency must continue and complete, or begin and complete, an investigation of the corruption issue if

the Integrity Commissioner considers, despite the Commonwealth law, that it would be more appropriate for the issue to be investigated.

- (3) With the agreement of the Integrity Commissioner, the head of the agency may advise the Integrity Commissioner under subsection (2) by entering the required details on a database to which the Integrity Commissioner has access.

23 Referral of corruption issues by other people

- (1) A person (other than the Minister) may refer to the Integrity Commissioner under this section an allegation, or information, that raises a corruption issue.
- (2) Without limiting subsection (1):
 - (a) the person may refer the allegation or information on behalf of:
 - (i) another person; or
 - (ii) a government agency (other than a law enforcement agency); or
 - (iii) a body or association of persons; and
 - (b) the person may refer the allegation or information anonymously; and
 - (c) the person may refer the allegation or information either orally or in writing.
- (3) If the person refers the allegation or information orally, the Integrity Commissioner may require the person to put the allegation or the information in writing.
- (4) If the person is asked to put the allegation or information in writing under subsection (3), the Integrity Commissioner may refuse to investigate the corruption issue that the allegation or information raises, or to investigate the corruption issue further, until the allegation or information is put in writing.

Section 24

- (5) If the Ombudsman:
- (a) decides, under subsection 6(16) of the *Ombudsman Act 1976*, to refer an allegation or information to the Integrity Commissioner; or
 - (b) is required, under subsection 6(17) of that Act, to refer an allegation or information to the Integrity Commissioner;
- the person who referred the allegation or information to the Ombudsman is taken to have referred the allegation or information to the Integrity Commissioner under this section.

24 Referral under section 23 by person in custody

Application of section

- (1) This section applies if a person who is detained in custody (the **prisoner**) wishes to refer an allegation or information to the Integrity Commissioner under section 23.
- (2) A reference in this section to a **custodian** is a reference to:
- (a) the person in whose custody the prisoner is detained; or
 - (b) any other person performing duties in connection with the prisoner's detention.

Facilities to be provided for communicating with Integrity Commissioner

- (3) The prisoner is entitled to be provided with facilities for:
- (a) preparing a written record of the allegation or information; and
 - (b) for enclosing that written record in a sealed envelope;
- if the prisoner requests a custodian to have those facilities provided.
- (4) The prisoner is entitled to have sent to the Integrity Commissioner, without undue delay, a sealed envelope that is:
- (a) delivered by the prisoner to a custodian; and
 - (b) addressed to the Integrity Commissioner;
- if the prisoner requests a custodian to have the envelope sent to the Integrity Commissioner.

- (5) The prisoner is entitled to have delivered to the prisoner, without undue delay, any sealed envelope that:
- (a) is addressed to the prisoner; and
 - (b) is sent by the Integrity Commissioner; and
 - (c) comes into the possession, or under the control, of a custodian.

Dealing with communications between prisoner and Integrity Commissioner

- (6) If:
- (a) the prisoner delivers to a custodian a sealed envelope addressed to the Integrity Commissioner for sending to the Integrity Commissioner; or
 - (b) a sealed envelope addressed to the prisoner and sent by the Integrity Commissioner comes into the possession, or under the control, of a custodian;
- neither that custodian, nor any other custodian, is entitled to open the envelope or to inspect any document enclosed in the envelope.

Arrangements with State and Territory prison authorities

- (7) For the purposes of this section, the Integrity Commissioner may make arrangements with the appropriate authority of a State or a Territory for the identification and delivery of sealed envelopes sent by the Integrity Commissioner to persons detained in custody in that State or Territory.

25 Person making referral under section 23 may elect to be kept informed

- (1) If a person refers an allegation or information to the Integrity Commissioner under section 23, the Integrity Commissioner must ask the person to elect whether or not to be kept informed of the action taken in relation to the corruption issue raised by the allegation or information.
- (2) Subsection (1) does not apply if the person refers the allegation or information anonymously.

Part 4 Dealing with corruption issues

Division 1 Referring corruption issues to Integrity Commissioner

Section 25

- (3) If the person fails to make an election when asked to do so, the person is taken to have elected not to be kept informed of the action taken in relation to the corruption issue.
- (4) If the person elects to be kept informed of the action taken in relation to the corruption issue, the person may revoke the election at any time by notice to the Integrity Commissioner.

Division 2—How Integrity Commissioner deals with corruption issues

Subdivision A—General

26 How Integrity Commissioner may deal with corruption issues

- (1) The Integrity Commissioner may deal with a corruption issue that relates to a law enforcement agency in any of the following ways:
 - (a) by investigating the corruption issue;
 - (b) by referring the corruption issue to the law enforcement agency for investigation and:
 - (i) managing the investigation; or
 - (ii) overseeing the investigation; or
 - (iii) neither managing nor overseeing the investigation;
 - (c) if the law enforcement agency is not the AFP—by referring the corruption issue to the AFP for investigation and:
 - (i) managing the investigation; or
 - (ii) overseeing the investigation; or
 - (iii) neither managing nor overseeing the investigation;
 - (d) by managing an investigation of the corruption issue that is being conducted by the law enforcement agency;
 - (e) by overseeing an investigation of the corruption issue that is being conducted by the law enforcement agency.

Note: Subsection 29(6) gives the Integrity Commissioner further options for dealing with the corruption issue to the extent to which it relates to the conduct of a secondee to the law enforcement agency.

- (2) The Integrity Commissioner may investigate the corruption issue under paragraph (1)(a) either alone or jointly with another government agency or an integrity agency for a State or Territory.

27 Criteria for deciding how to deal with a corruption issue

- (1) The Integrity Commissioner must have regard to the matters set out in subsection (2) in deciding:

Part 4 Dealing with corruption issues

Division 2 How Integrity Commissioner deals with corruption issues

Section 28

- (a) how to deal with a corruption issue that relates to a law enforcement agency; or
 - (b) whether to take no further action in relation to a corruption issue that relates to a law enforcement agency.
- (2) The matters to which the Integrity Commissioner must have regard are the following:
- (a) the need to ensure that the corruption issue is fully investigated;
 - (b) the rights and obligations of the law enforcement agency to investigate the corruption issue;
 - (c) if a joint investigation of the corruption issue by the Integrity Commissioner and the law enforcement agency is being considered—the extent to which the law enforcement agency is able to cooperate in the investigation;
 - (d) the resources that are available to each of the following to investigate the corruption issue:
 - (i) the Integrity Commissioner;
 - (ii) the AFP;
 - (iii) the law enforcement agency;
 - (e) the need to ensure a balance between:
 - (i) the Integrity Commissioner’s role in dealing with corruption issues in law enforcement agencies (particularly in dealing with significant corruption issues); and
 - (ii) ensuring that the heads of law enforcement agencies take responsibility for managing their agencies;
 - (f) the likely significance of the corruption issue for the law enforcement agency.

28 Dealing with multiple corruption issues

- (1) The Integrity Commissioner may, in his or her discretion, deal with a number of corruption issues together (whether or not they are raised by the same allegation or information).
- (2) Without limiting subsection (1), if an allegation, or information, raises a number of corruption issues, the Integrity Commissioner:

- (a) may deal with some or all of those corruption issues together; and
 - (b) may deal with some or all of those corruption issues separately.
- (3) Without limiting subsection (1), the Integrity Commissioner may prepare a single report in relation to a number of corruption issues.

29 How Integrity Commissioner may deal with corruption issues that relate to conduct of secondee from government agency

Section applies if secondee is employee of government agency

- (1) This section applies if:
- (a) a corruption issue relates to the conduct of a secondee to a law enforcement agency; and
 - (b) the secondee is an employee of a government agency (the **home agency**).

Informing head of government agency and integrity agency about corruption issue

- (2) The Integrity Commissioner must:
- (a) inform the head of the home agency of the corruption issue; and
 - (b) give the head of the home agency such further information in relation to the corruption issue as the head of the home agency requests; and
 - (c) if the home agency is the police force of a State or Territory:
 - (i) inform the head of the integrity agency (if any) for the State or Territory of the corruption issue; and
 - (ii) give the head of the integrity agency (if any) for the State or Territory such further information in relation to the corruption issue as the head of the integrity agency requests.

This subsection has effect subject to section 152 (which deals with section 149 certified information).

Section 29

- (3) However, the Integrity Commissioner need not inform the head of the home agency, and the head of the integrity agency, of the corruption issue if doing so is likely to prejudice:
 - (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (4) If the Integrity Commissioner does not inform the head of the home agency, or the head of the integrity agency, of the corruption issue because of subsection (3), the Integrity Commissioner must:
 - (a) inform the Minister that the head of the home agency, or the head of the integrity agency, has not been informed of the corruption issue; and
 - (b) give the Minister the Integrity Commissioner's reasons for not informing the head of the home agency, or the head of the integrity agency, of the corruption issue.
- (5) The Integrity Commissioner does not need to take action under paragraph (2)(a) or subparagraph (2)(c)(i) if the Integrity Commissioner has reasonable grounds to believe that the head of the home agency, or the head of the integrity agency, is already aware of the corruption issue.

Arranging for government agency to investigate corruption issue

- (6) The Integrity Commissioner may deal with the corruption issue:
 - (a) by arranging, in writing, with the head of the home agency for the home agency to investigate the corruption issue; or
 - (b) if the secondee is from the police force of a State or Territory—by arranging, in writing, with the head of the integrity agency for the State or Territory for the integrity agency to investigate the corruption issue.
- (7) To avoid doubt, subsection (6) does not limit the operation of section 26 in relation to the corruption issue.

Criteria for deciding how to deal with corruption issue

- (8) The Integrity Commissioner must have regard to the matters set out in subsection (9) in deciding:
 - (a) how to deal with the corruption issue; or
 - (b) whether to take no further action in relation to a corruption issue.

- (9) The matters that the Integrity Commissioner must have regard to are the following:
 - (a) the rights and obligations of:
 - (i) the home agency; and
 - (ii) the integrity agency (if any) for the State or Territory; to investigate the corruption issue;
 - (b) if a joint investigation of the corruption issue is being considered—the extent to which the agencies referred to in paragraph (a) are able to cooperate in the investigation;
 - (c) the resources available to the Integrity Commissioner, the AFP and the agencies referred to in paragraph (a) to investigate the corruption issue;
 - (d) the need to ensure a balance between:
 - (i) the Integrity Commissioner’s role in dealing with corruption issues in law enforcement agencies (particularly in dealing with significant corruption issues); and
 - (ii) ensuring that the head of the home agency takes responsibility for managing the home agency; and
 - (iii) the role of the integrity agency (if any) for the State or Territory in dealing with corruption issues that relate to the State’s or Territory’s police force; and
 - (e) the likely significance of the corruption issue for:
 - (i) the law enforcement agency; and
 - (ii) the home agency; and
 - (iii) the integrity agency (if any) for the State or Territory.

Section 30

Operation of section 27

- (10) To avoid doubt, subsections (8) and (9) do not limit the operation of section 27 in relation to the corruption issue.

30 Arranging for government agencies and integrity agencies to investigate corruption issues relating to conduct of secondees

- (1) If a government agency, or an integrity agency for a State or Territory, has power to investigate a corruption issue that relates to the conduct of a secondee to a law enforcement agency, the Integrity Commissioner may arrange with the head of the agency for the agency to investigate the corruption issue.
- (2) If the Integrity Commissioner enters into such an arrangement, the agency may investigate the corruption issue to the full extent of its powers under any laws of the Commonwealth or of a State or Territory.
- (3) The arrangement may relate to:
- (a) a particular corruption issue or issues; or
 - (b) a series of related corruption issues.
- (4) The Integrity Commissioner may arrange with the agency for the variation or revocation of the arrangement.
- (5) The arrangement, or the variation or revocation of the arrangement, must be in writing.
- (6) The regulations may make provision for and in relation to the participation by the Integrity Commissioner in the carrying out of a joint investigation in accordance with an arrangement under this section.
- (7) Nothing in this section affects the powers and duties of the Integrity Commissioner under any other provision of this Act.

**Subdivision B—Integrity Commissioner dealing with
corruption issues referred or notified**

**31 Significant corruption issues notified under section 19 and
corruption issues referred under section 18 or 23**

- (1) This section applies if:
 - (a) the head of a law enforcement agency:
 - (i) notifies the Integrity Commissioner of a corruption issue under section 19; and
 - (ii) indicates that it is a significant corruption issue; or
 - (b) an allegation, or information, that raises a corruption issue is referred to the Integrity Commissioner under section 18 or 23.
- (2) The Integrity Commissioner must decide:
 - (a) to deal with the corruption issue in one of the ways referred to in subsection 26(1) or 29(6); or
 - (b) to take no further action in relation to the corruption issue.
- (3) Subsection (2) does not apply if the Integrity Commissioner has already made a decision under that subsection in relation to the corruption issue.
- (4) The Integrity Commissioner may decide under subsection (2) to take no further action in relation to the corruption issue only if he or she is satisfied that:
 - (a) the corruption issue is already being, or will be, investigated by:
 - (i) a law enforcement agency; or
 - (ii) a government agency; or
 - (iii) an integrity agency for a State or Territory; or
 - (b) the referral of the allegation or information to the Integrity Commissioner is frivolous or vexatious; or
 - (d) the corrupt conduct to which the corruption issue relates has been, is or will be, the subject of proceedings before a court; or

Section 32

- (e) an investigation of the corruption issue is not warranted having regard to all the circumstances.

32 Corruption issues notified under section 19 (other than significant corruption issues)

- (1) This section applies if the head of a law enforcement agency:
 - (a) notifies the Integrity Commissioner of a corruption issue under section 19; and
 - (b) does not indicate that it is a significant corruption issue.
- (2) The Integrity Commissioner may decide to deal with the corruption issue in one of the ways referred to in subsection 26(1) or 29(6).
- (3) For the purposes of making a decision about how to deal with the corruption issue, the Integrity Commissioner may request the head of a law enforcement agency to give the Integrity Commissioner the information specified in the request.
- (4) The head of the law enforcement agency must comply with the request.
- (5) Subsection (3) does not limit the information to which the Integrity Commissioner may have regard in making a decision about how to deal with the corruption issue.
- (6) If the Integrity Commissioner does decide to deal with the corruption issue in one of the ways referred to in subsection 26(1) or 29(6), the Integrity Commissioner may direct the head of the law enforcement agency that the agency is not to investigate the corruption issue.
- (7) A direction under subsection (6) is not a legislative instrument.

Subdivision C—Advising particular people of decision about how to deal with corruption issue

33 Minister

- (1) If the Minister refers an allegation, or information, that raises a corruption issue to the Integrity Commissioner under section 18, the Integrity Commissioner must advise the Minister of:
 - (a) the Integrity Commissioner’s decision under section 31 in relation to the corruption issue; and
 - (b) any decision the Integrity Commissioner makes under section 42 on a reconsideration of how the corruption issue should be dealt with.
- (2) The Integrity Commissioner must advise the Minister of the decision:
 - (a) in writing; and
 - (b) as soon as reasonably practicable after the decision is made.

34 Person who refers corruption issue

Integrity Commissioner to advise person who refers corruption issue

- (1) If a person:
 - (a) refers an allegation, or information, that raises a corruption issue to the Integrity Commissioner under section 23; and
 - (b) elects under section 25 to be kept informed of the action taken in relation to the corruption issue;the Integrity Commissioner must advise the person of:
 - (c) the Integrity Commissioner’s decision under section 31 in relation to the corruption issue; and
 - (d) any decision the Integrity Commissioner makes under section 42 on a reconsideration of how the corruption issue should be dealt with.

Part 4 Dealing with corruption issues

Division 2 How Integrity Commissioner deals with corruption issues

Section 34

Form and timing of advice

- (2) The Integrity Commissioner must advise the person of the decision:
- (a) in writing; and
 - (b) as soon as reasonably practicable after the decision is made.

Exception

- (3) However, the Integrity Commissioner need not advise the person if the Integrity Commissioner is satisfied that doing so is likely to prejudice:
- (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).

Advice to nominated person or office holder

- (4) If:
- (a) a person refers an allegation, or information, that raises the corruption issue to the Integrity Commissioner on behalf of:
 - (i) another person; or
 - (ii) a government agency (other than a law enforcement agency); or
 - (iii) a body or association of persons; and
 - (b) the other person, the agency, the body or the association nominates:
 - (i) another person; or
 - (ii) the holder of a particular office in the agency, body or association;
- by notice in writing to the Integrity Commissioner, to receive communications from the Integrity Commissioner;
- the Integrity Commissioner must give the advice required by subsection (1) to the person nominated or the person for the time being holding the office nominated.

35 Head of law enforcement agency

Commissioner to advise head of law enforcement agency

- (1) If:
- (a) an allegation, or information, that raises a corruption issue is referred to the Integrity Commissioner under section 18 or 23; and
 - (b) the corruption issue relates to a law enforcement agency;
- the Integrity Commissioner must advise the head of the agency of:
- (c) the Integrity Commissioner's decision under section 31 in relation to the corruption issue; and
 - (d) any decision the Integrity Commissioner makes under section 42 on a reconsideration of how the corruption issue should be dealt with.

Form and timing of advice

- (2) The Integrity Commissioner must advise the head of the agency of the decision:
- (a) in writing; and
 - (b) as soon as reasonably practicable after the decision is made.

Exception

- (3) However, the Integrity Commissioner need not advise the head of the agency if doing so would be likely to prejudice:
- (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (4) If the Integrity Commissioner does not advise the head of the agency of the decision because of subsection (3), the Integrity Commissioner must:
- (a) inform the Minister that the head of the agency has not been advised of the decision; and
 - (b) give the Minister the Integrity Commissioner's reasons for not advising the head of the agency of the decision; and

Section 36

- (c) inform the Minister that the consultations that would otherwise take place under section 49 will not take place.

36 Heads of home agency and integrity agency

Section applies to secondment situations

- (1) This section applies if:
 - (a) an allegation, or information, that raises a corruption issue is referred to the Integrity Commissioner under section 18 or 23; and
 - (b) the corruption issue relates to the conduct of a person who:
 - (i) is, or has been, a secondee to a law enforcement agency; and
 - (ii) is an employee of a government agency (the **home agency**).

Advising head of home agency

- (2) The Integrity Commissioner must advise the head of the home agency of:
 - (a) the Integrity Commissioner's decision under section 31 in relation to the corruption issue; and
 - (b) any decision the Integrity Commissioner makes under section 42 on a reconsideration of how the corruption issue should be dealt with.

Advising head of integrity agency

- (3) If the home agency is the police force of a State or Territory, the Integrity Commissioner must also advise the head of the integrity agency (if any) for the State or Territory of:
 - (a) the Integrity Commissioner's decision under section 31 in relation to the corruption issue; and
 - (b) any decision the Integrity Commissioner makes under section 42 on a reconsideration of how the corruption issue should be dealt with.

Form and timing of advice

- (4) The Integrity Commissioner must advise the head of the home agency or integrity agency:
- (a) in writing; and
 - (b) as soon as reasonably practicable after the decision is made.

Exception

- (5) However, the Integrity Commissioner need not advise the head of the home agency, or integrity agency, if doing so would be likely to prejudice:
- (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (6) If the Integrity Commissioner does not advise the head of the home agency, or integrity agency, of the decision because of subsection (5), the Integrity Commissioner must:
- (a) inform the Minister that the head of the home agency, or integrity agency, has not been advised of the decision; and
 - (b) give the Minister the Integrity Commissioner's reasons for not advising the head of the home agency, or integrity agency, of the decision; and
 - (c) inform the Minister that the consultations that would otherwise take place under section 49 will not take place.

37 Staff member to whom corruption issue relates

If the Integrity Commissioner makes a decision under section 31, 32 or 42 in relation to a corruption issue that relates to a person who is, or has been, a staff member of a law enforcement agency, the Integrity Commissioner may advise the person of the Integrity Commissioner's decision.

Subdivision D—Integrity Commissioner dealing with corruption issues on own initiative

38 Integrity Commissioner may deal with corruption issues on own initiative

- (1) If the Integrity Commissioner becomes aware of an allegation, or information, that raises a corruption issue, the Integrity Commissioner may, on his or her own initiative, deal with the corruption issue in one of the ways referred to in subsection 26(1) or 29(6).
- (2) Subsection (1) does not apply if the Integrity Commissioner becomes aware of the allegation or information because of action taken under Division 1 of this Part.
- (3) If the Integrity Commissioner decides to deal with the corruption issue in one of the ways referred to in subsection 26(1) or 29(6), the Integrity Commissioner may direct the head of the law enforcement agency to which the corruption issue relates that the agency is not to investigate the corruption issue.
- (4) A direction under subsection (3) is not a legislative instrument.
- (5) Without limiting subsection (1), if the Integrity Commissioner:
 - (a) is investigating, or inquiring into, a particular corruption issue; and
 - (b) in the course of doing so, becomes aware of an allegation, or information, that raises another corruption issue;the Integrity Commissioner may deal with that other corruption issue in one of the ways referred to in subsection 26(1) or 29(6).

39 Advising head of law enforcement agency of decision to deal with corruption issue on own initiative

Advice to head of law enforcement agency

- (1) If:

- (a) the Integrity Commissioner decides, on his or her own initiative, to deal with a corruption issue in one of the ways referred to in subsection 26(1) or 29(6); and
- (b) the corruption issue relates to a law enforcement agency; the Integrity Commissioner must advise the head of the agency of:
- (c) the Integrity Commissioner's decision to deal with the corruption issue in that way; and
- (d) any decision the Integrity Commissioner makes under section 42 on a reconsideration of how the corruption issue should be dealt with.

Form and timing of advice

- (2) The Integrity Commissioner must advise the head of the agency of the decision:
 - (a) in writing; and
 - (b) as soon as reasonably practicable after the decision is made.

Exception

- (3) However, the Integrity Commissioner need not advise the head of the agency if doing so is likely to prejudice:
 - (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (4) If the Integrity Commissioner does not advise the head of the agency of the decision because of subsection (3), the Integrity Commissioner must:
 - (a) inform the Minister that the head of the agency has not been advised of the decision; and
 - (b) give the Minister the Integrity Commissioner's reasons for not advising the head of the agency of the decision; and
 - (c) inform the Minister that the consultations that would otherwise take place under section 49 will not take place.

Section 40

40 Advising heads of government agency and integrity agency of decision to deal with corruption issue on own initiative

Section applies to secondment situations

- (1) This section applies if:
- (a) the Integrity Commissioner decides, on his or her own initiative, to deal with a corruption issue in one of the ways referred to in subsection 26(1) or 29(6); and
 - (b) the corruption issue relates to the conduct of a person who:
 - (i) is, or has been, a secondee to a law enforcement agency; and
 - (ii) is an employee of a government agency (the *home agency*).

Advising head of home agency

- (2) The Integrity Commissioner must advise the head of the home agency of:
- (a) the Integrity Commissioner's decision to deal with the corruption issue in that way; and
 - (b) any decision the Integrity Commissioner makes under section 42 on a reconsideration of how the corruption issue should be dealt with.

Advising head of integrity agency

- (3) If the home agency is the police force of a State or Territory, the Integrity Commissioner must also advise the head of the integrity agency (if any) for the State or Territory of:
- (a) the Integrity Commissioner's decision to deal with the corruption issue in that way; and
 - (b) any decision the Integrity Commissioner makes under section 42 on a reconsideration of how the corruption issue should be dealt with.

Form and timing of advice

- (4) The Integrity Commissioner must advise the head of the home agency or integrity agency of the decision:

- (a) in writing; and
- (b) as soon as reasonably practicable after the decision is made.

Exception

- (5) However, the Integrity Commissioner need not advise the head of the home agency, or integrity agency, if doing so would be likely to prejudice:
 - (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (6) If the Integrity Commissioner does not advise the head of the home agency, or integrity agency, of the decision because of subsection (5), the Integrity Commissioner must:
 - (a) inform the Minister that the head of the home agency, or integrity agency, has not been advised of the decision; and
 - (b) give the Minister the Integrity Commissioner's reasons for not advising the head of the home agency, or integrity agency, of the decision; and
 - (c) inform the Minister that the consultations that would otherwise take place under section 49 will not take place.

41 Advising staff member of decision to deal with corruption issue on own initiative

If:

- (a) the Integrity Commissioner decides, on his or her own initiative, to deal with a corruption issue in one of the ways referred to in subsection 26(1) or 29(6); and
- (b) the corruption issue relates to a person who is, or has been, a staff member of a law enforcement agency;

the Integrity Commissioner may advise the person of:

- (c) the Integrity Commissioner's decision to deal with the corruption issue in that way; and
- (d) any decision the Integrity Commissioner makes under section 42 on a reconsideration of how the corruption issue should be dealt with.

Subdivision E—Reconsidering how to deal with a corruption issue

42 Reconsidering how to deal with a corruption issue

- (1) The Integrity Commissioner may, at any time, reconsider how a particular corruption issue should be dealt with.
- (2) On that reconsideration, the Integrity Commissioner may:
 - (a) if the corruption issue is not being dealt with in one of the ways referred to in subsection 26(1) or 29(6)—decide to deal with the corruption issue in one of the ways referred to in those subsections; or
 - (b) if the corruption issue is being dealt with in one of the ways referred to in subsection 26(1) or 29(6)—decide to deal with the corruption issue in another of the ways referred to in those subsections, or to take no further action in relation to the corruption issue.
- (3) The Integrity Commissioner may decide under subsection (2) to take no further action in relation to the corruption issue only if he or she is satisfied that:
 - (a) the corruption issue is already being, or will be, investigated by:
 - (i) a law enforcement agency; or
 - (ii) a government agency; or
 - (iii) an integrity agency for a State or Territory; or
 - (b) the referral of the allegation, or information, that raises the corruption issue is frivolous or vexatious; or
 - (d) the corrupt conduct to which the corruption issue relates has been, is or will be, the subject of proceedings before a court; or
 - (e) further investigation of the corruption issue is not warranted having regard to all the circumstances.
- (4) If, on that reconsideration, the Integrity Commissioner decides to deal with the corruption issue in one of the ways referred to in subsection 26(1) or 29(6), the Integrity Commissioner may direct the head of the law enforcement agency to which the corruption

issue relates that the agency is not to investigate the corruption issue.

- (5) A direction under subsection (4) is not a legislative instrument.

Part 5—Information sharing when decision made on how to deal with corruption issue

Division 1—Giving information to head of agency conducting investigation

43 Division applies if agency to conduct, or continue conducting, investigation of corruption issue

- (1) This Division applies if:
 - (a) the Integrity Commissioner decides to deal with a corruption issue that relates to a law enforcement agency by referring the corruption issue to:
 - (i) the law enforcement agency; or
 - (ii) the AFP;for investigation; or
 - (b) the Integrity Commissioner is notified of a corruption issue under section 19 by the head of a law enforcement agency and the law enforcement agency is investigating the corruption issue.
- (2) This Division also applies if:
 - (a) a corruption issue relates in whole or in part to the conduct of a secondee of a law enforcement agency; and
 - (b) the secondee is an employee of a Commonwealth government agency; and
 - (c) the Integrity Commissioner decides to deal with the corruption issue, to the extent to which it relates to the conduct of the secondee, by arranging for the Commonwealth government agency to investigate the corruption issue.
- (3) This Division also applies if:
 - (a) a corruption issue relates in whole or in part to the conduct of a secondee of a law enforcement agency; and

- (b) the secondee is an employee of a State or Territory government agency; and
- (c) the Integrity Commissioner decides to deal with the corruption issue, to the extent to which it relates to the conduct of the secondee by arranging for:
 - (i) the State or Territory government agency; or
 - (ii) the integrity agency for the State or Territory;to investigate the corruption issue.

44 Integrity Commissioner to give information or documents to agency head

- (1) The Integrity Commissioner must give the head of the agency investigating the corruption issue information or a document if:
 - (a) the information or document:
 - (i) relates to the corruption issue to the extent to which the agency is investigating the issue; and
 - (ii) is in the possession, or under the control, of the Integrity Commissioner; and
 - (b) the head of the agency does not already have the information or document.
- Note: Under section 70, the Integrity Commissioner has a continuing obligation to pass on information that the Integrity Commissioner becomes aware of and that is relevant to the corruption issue.
- (2) Subsection (1) has effect subject to section 152 (which deals with section 149 certified information).
 - (3) The Integrity Commissioner may give the original or a copy of a document.

Part 5 Information sharing when decision made on how to deal with corruption issue

Division 2 Information to be given by law enforcement agency that has already commenced investigation

Section 45

Division 2—Information to be given by law enforcement agency that has already commenced investigation

45 Division applies if law enforcement agency has already commenced investigating corruption issue

This Division applies if:

- (a) the Integrity Commissioner decides to deal with a corruption issue that relates to a law enforcement agency in one of the ways referred to in subsection 26(1) or 29(6); and
- (b) the law enforcement agency has started or continued investigating the corruption issue before the Integrity Commissioner makes that decision.

46 Integrity Commissioner may direct agency head to give information or documents that relate to corruption issue

- (1) The Integrity Commissioner may direct the head of the agency investigating the corruption issue to give the Integrity Commissioner, or the head of another government agency, all information or documents that:
 - (a) relate to the corruption issue; and
 - (b) are in the possession, or under the control, of the head of the agency.
- (2) The direction must be in writing.
- (3) Subject to subsection 150(1) and section 151, the head of a law enforcement agency must comply with the direction.
- (4) A direction given under this section is not a legislative instrument.

Part 6—Investigations by Integrity Commissioner

Division 1—Investigation

47 Application of Division

This Division applies if the Integrity Commissioner investigates a corruption issue (whether alone or jointly with another person or persons).

48 Integrity Commissioner to determine manner of conducting investigation

The Integrity Commissioner may conduct the investigation in such manner as the Integrity Commissioner thinks fit.

Note: Part 9 provides for particular powers that are available to the Integrity Commissioner for the purposes of the investigation.

49 Coordinating Integrity Commissioner’s investigation and law enforcement operations

- (1) If the Integrity Commissioner informs the head of a law enforcement agency under section 35 that the Integrity Commissioner has decided to investigate a corruption issue that relates to the agency, the Integrity Commissioner must consult, from time to time, with the head of the agency and take reasonable steps to ensure that the investigation does not prejudice the agency’s law enforcement operations.
- (2) If the Integrity Commissioner informs the head of a government agency under section 36 that the Integrity Commissioner has decided to investigate a corruption issue, the Integrity Commissioner may consult, from time to time, with the head of the government agency with a view to taking reasonable steps to ensure that the investigation does not prejudice the government agency’s law enforcement operations.

Note: The government agency may be the integrity agency for a State or Territory (see subsection 36(3)).

Section 50

50 Information sharing for joint investigation

- (1) If:
- (a) the Integrity Commissioner is investigating a corruption issue jointly with:
 - (i) a law enforcement agency; or
 - (ii) a government agency; or
 - (iii) an integrity agency for a State or Territory; and
 - (b) information or documents in relation to the investigation are in the possession, or under the control, of the Integrity Commissioner; and
 - (c) the head of the agency does not already have the information or documents;
- the Integrity Commissioner may give the head of the agency the information or documents.
- (2) Subsection (1) has effect subject to section 152 (which deals with section 149 certified information).
- (3) The Integrity Commissioner may give the head of the agency the original or a copy of a document under subsection (1).

51 Opportunity to be heard

Opinion or finding critical

- (1) Subject to subsection (2), the Integrity Commissioner must not include in a report under section 54 in relation to an investigation of a corruption issue an opinion or finding that is critical of a government agency or person (either expressly or impliedly) unless the Integrity Commissioner has taken the action required by subsection (3) or (4) before completing the investigation.
- (2) Subsection (1) does not apply if the Integrity Commissioner is satisfied that:
- (a) a person may have:
 - (i) committed a criminal offence; or
 - (ii) contravened a civil penalty provision; or

- (iii) engaged in conduct that could be the subject of disciplinary proceedings; or
- (iv) engaged in conduct that could be grounds for terminating the person's appointment or employment; and
- (b) taking action under subsection (3) or (4) would compromise the effectiveness of:
 - (i) the investigation of the corruption issue or another corruption investigation; or
 - (ii) any action taken as a result of an investigation referred to in subparagraph (i).

Opportunity to appear and make submissions

- (3) If the opinion or finding is critical of an agency, the Integrity Commissioner must give the head of the agency:
 - (a) a statement setting out the opinion or finding; and
 - (b) a reasonable opportunity to appear before him or her and to make submissions in relation to the opinion or finding.
- (4) If the opinion or finding is critical of a person, the Integrity Commissioner must give the person:
 - (a) a statement setting out the opinion or finding; and
 - (b) a reasonable opportunity to appear before him or her and to make submissions in relation to the opinion or finding.
- (5) Submissions under subsection (3) or (4) may be made orally or in writing.

Representation

- (6) The head of an agency may:
 - (a) appear before the Integrity Commissioner personally; or
 - (b) authorise another person to appear before the Integrity Commissioner on his or her behalf.
- (7) A person referred to in subsection (4):
 - (a) may appear before the Integrity Commissioner personally; or

Part 6 Investigations by Integrity Commissioner

Division 1 Investigation

Section 51

- (b) may, with the Integrity Commissioner's approval, be represented by another person.

Division 2—Reporting

Subdivision A—Reporting during investigation

52 Integrity Commissioner to keep person who referred corruption issue informed of progress of investigation

Minister

- (1) If:
- (a) the Minister refers an allegation, or information, that raises a corruption issue to the Integrity Commissioner under section 18; and
 - (b) the Integrity Commissioner investigates the corruption issue; the Integrity Commissioner must take such steps as the Integrity Commissioner considers reasonable to keep the Minister informed of the progress of the investigation of that corruption issue.

Head of law enforcement agency

- (2) If:
- (a) the head of a law enforcement agency notifies the Integrity Commissioner of a corruption issue under section 19; and
 - (b) the Integrity Commissioner investigates the corruption issue; the Integrity Commissioner must take such steps as the Integrity Commissioner considers reasonable to keep the head of the agency informed of the progress of the investigation of that corruption issue.

Person who refers issue under section 23

- (3) If:
- (a) a person refers an allegation, or information, that raises a corruption issue to the Integrity Commissioner under section 23; and
 - (b) the Integrity Commissioner investigates the corruption issue; and

Section 53

- (c) the person elects under section 25 to be kept informed of the action taken in relation to the corruption issue and has not revoked the election;

the Integrity Commissioner must take such steps as the Integrity Commissioner considers reasonable to keep the person informed of the progress of the investigation of that corruption issue.

53 Integrity Commissioner to keep home agency and integrity agency informed of progress of investigation

- (1) This section applies if:
 - (a) a corruption issue relates to the conduct of a secondee to a law enforcement agency; and
 - (b) the secondee is an employee of a government agency (the *home agency*).
- (2) If the Integrity Commissioner informs the head of the home agency of the corruption issue under subsection 29(2), the Integrity Commissioner must take such steps as the Integrity Commissioner considers reasonable to keep the head of the home agency informed of the progress of the investigation of that corruption issue.
- (3) If:
 - (a) if the secondee is from the police force of a State or Territory; and
 - (b) the Integrity Commissioner informs the head of the integrity agency (if any) for the State or Territory of the corruption issue under subsection 29(2);

the Integrity Commissioner must take such steps as the Integrity Commissioner considers reasonable to keep the head of the integrity agency informed of the progress of the investigation of that corruption issue.

Subdivision B—Reporting at the end of investigation

54 Report on investigation

Report and its contents

- (1) After completing an investigation of a corruption issue that relates to a law enforcement agency, the Integrity Commissioner must prepare a report on the investigation.
- (2) The report must set out:
 - (a) the Integrity Commissioner’s findings on the corruption issue; and
 - (b) the evidence and other material on which those findings are based; and
 - (c) any action that the Integrity Commissioner has taken, or proposes to take, under Part 10 in relation to the investigation; and
 - (d) any recommendations that the Integrity Commissioner thinks fit to make and, if recommendations are made, the reasons for those recommendations.

This subsection has effect subject to subsections (4), (5) and (6).

Note: See section 51 for the need for the Integrity Commissioner to give certain people an opportunity to be heard before including critical statements in a report.

- (3) Without limiting paragraph (2)(d), the Integrity Commissioner may recommend that the head of the law enforcement agency consider:
 - (a) taking action in relation to any staff member of the agency, in accordance with the procedures of the agency, with a view to the staff member improving his or her performances; or
 - (b) terminating a staff member’s employment in accordance with the procedures of the agency; or
 - (c) taking action to rectify or mitigate the effects of the conduct of a staff member of the agency; or
 - (d) adopting measures to remedy deficiencies in policy or practice that facilitated:
 - (i) an unsuitable person becoming a staff member of the agency; or

Section 55

- (ii) a staff member of the agency engaging in corrupt conduct; or
- (iii) the failure to detect corrupt conduct engaged in by a staff member of the agency.

Section 149 certified information and sensitive information

- (4) The Integrity Commissioner must exclude section 149 certified information from the report if one or more public hearings were held in the course of the investigation to which the report relates.

Note: Under section 203, the report must be laid before each House of the Parliament.

- (5) The Integrity Commissioner may exclude information from the report if the Integrity Commissioner is satisfied that:
 - (a) the information is sensitive information or section 149 certified information; and
 - (b) it is desirable in the circumstances to exclude the information from the report.
- (6) In deciding whether to exclude information from the report prepared under subsection (5), the Integrity Commissioner must seek to achieve an appropriate balance between:
 - (a) the public interest that would be served by including the information in the report; and
 - (b) the prejudicial consequences that might result from including the information in the report.

Supplementary report

- (7) If the Integrity Commissioner excludes information from a report prepared under subsection (4) or (5), the Integrity Commissioner must prepare a supplementary report that sets out:
 - (a) the information; and
 - (b) the reasons for excluding the information from the report prepared under subsection (4) or (5).

55 Integrity Commissioner to give report to certain persons

- (1) The Integrity Commissioner must give the Minister:
-

- (a) the report prepared under subsection 54(1); and
- (b) if a supplementary report is prepared under subsection 54(7) in relation to the investigation—the supplementary report.

Note: Section 203 provides that the Minister must lay a copy of the report prepared under subsection 54(1) before each House of the Parliament if a public hearing has been held in the course of the investigation to which the report relates. The Minister is not required, however, to lay a copy of a supplementary report under subsection 54(7) before each House of the Parliament.

- (2) Subject to subsection (5), the Integrity Commissioner:
 - (a) must give the head of a law enforcement agency a copy of a report prepared under subsection 54(1) in relation to a corruption issue; and
 - (b) may give the head of a law enforcement agency a copy of the whole or a part of a supplementary report prepared under subsection 54(7) in relation to the investigation of a corruption issue;

to the extent to which the report relates to the law enforcement agency.

- (3) Subject to subsection (5), if:
 - (a) a corruption issue relates to the conduct of a secondee to a law enforcement agency; and
 - (b) the secondee is an employee of a government agency (the *home agency*); and
 - (c) the Integrity Commissioner informs the head of the home agency of the corruption issue under subsection 29(2);

the Integrity Commissioner:

- (d) must give the head of the home agency a copy of a report prepared under subsection 54(1) in relation to the corruption issue; and
- (e) may give the head of the home agency a copy of the whole or a part of a supplementary report prepared under subsection 54(7) in relation to the investigation of the corruption issue;

to the extent to which the report relates to the law enforcement agency.

- (4) Subject to subsection (5), if:

Section 56

- (a) a corruption issue relates to the conduct of a seconded to a law enforcement agency; and
 - (b) the seconded is an employee of the police force of a State or Territory; and
 - (c) the Integrity Commissioner informs the head of the integrity agency (if any) for the State or Territory of the corruption issue under subsection 29(2);
- the Integrity Commissioner:
- (d) must give the head of the integrity agency a copy of a report prepared under subsection 54(1) in relation to the corruption issue; and
 - (e) may give the head of the integrity agency a copy of the whole or a part of a supplementary report prepared under subsection 54(7) in relation to the investigation of the corruption issue;
- to the extent to which the report relates to the law enforcement agency.
- (5) The Integrity Commissioner must not include information in a copy of a report given to a person under subsection (2), (3) or (4) if:
- (a) the information is section 149 certified information; and
 - (b) the disclosure of the information to the person would contravene the certificate issued under section 149.

56 Comments by head of agency

If the Integrity Commissioner gives the head of a law enforcement agency a copy of a report, or a supplementary report, under section 55, the head of the agency may give the Integrity Commissioner such comments concerning the report, or supplementary report, as he or she wishes to make.

57 Follow-up action on report

- (1) The Integrity Commissioner may request the head of a law enforcement agency to whom a report is given under subsection 55(2) to give the Integrity Commissioner, within a specified time, details of any action that the head of the agency proposes to take with respect to a recommendation included in the report.

- (2) The head of the agency must comply with the request.
- (3) If the Integrity Commissioner is not satisfied with the response of the head of the agency to the request, the Integrity Commissioner may refer to the responsible Minister for the agency:
 - (a) the Integrity Commissioner's recommendation and the reasons for that recommendation; and
 - (b) the response of the head of the agency to the recommendation; and
 - (c) the Integrity Commissioner's reasons for not being satisfied with that response.
- (4) If the Integrity Commissioner refers material to a Minister under subsection (3), the Integrity Commissioner may also send a copy of that material to:
 - (a) the President of the Senate for presentation to the Senate; and
 - (b) the Speaker of the House of Representatives for presentation to the House of Representatives.
- (5) The Integrity Commissioner must exclude section 149 certified information from the copy of the material sent under subsection (4).
- (6) The Integrity Commissioner may exclude information from the copy of the material sent under subsection (4) if the Integrity Commissioner is satisfied that:
 - (a) the information is sensitive information; and
 - (b) it is desirable in the circumstances to exclude the information from the material sent.
- (7) In deciding whether to exclude information from the copy of the material sent under subsection (4), the Integrity Commissioner must seek to achieve an appropriate balance between:
 - (a) the public interest that would be served by including the information in the material sent; and
 - (b) the prejudicial consequences that might result from including the information in the material sent.

Section 58

- (8) After the material is presented to the Parliament, the Integrity Commissioner may discuss any matter to which the material relates with the head of the agency for the purpose of resolving the matter.

58 Advising person who referred corruption issue of outcome of the investigation

Advice to person who referred issue under section 23

- (1) If a person:
- (a) refers an allegation, or information, that raises a corruption issue to the Integrity Commissioner under section 23; and
 - (b) elects under section 25 to be kept informed of the action taken in relation to the corruption issue and has not revoked the election;

the Integrity Commissioner must advise the person of the outcome of the investigation of the corruption issue.

Exception

- (2) However, the Integrity Commissioner need not advise the person if the Integrity Commissioner is satisfied that doing so is likely to prejudice:
- (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).

Manner of giving advice

- (3) If the Integrity Commissioner advises the person of the outcome of the investigation, the Integrity Commissioner may do so by giving the person a copy of the whole or a part of the report prepared in relation to the investigation under subsection 54(1).
- (4) In advising the person of the outcome of the investigation, the Integrity Commissioner:
- (a) must not disclose section 149 certified information to the person if the disclosure of the information to the person

- would be contravene the certificate issued under section 149;
and
- (b) may exclude information from the advice if the Integrity Commissioner is satisfied that:
 - (i) the information is sensitive information; and
 - (ii) it is desirable in the circumstances to exclude the information from the advice.
- (5) In deciding whether to exclude information from the advice under paragraph (4)(b), the Integrity Commissioner must seek to achieve an appropriate balance between:
- (a) the person's interest in having the information included in the advice; and
 - (b) the prejudicial consequences that might result from including the information in the advice.

Advice to nominated person

- (6) If:
- (a) a person refers an allegation, or information, that raises the corruption issue to the Integrity Commissioner on behalf of:
 - (i) another person; or
 - (ii) a government agency (other than a law enforcement agency); or
 - (iii) a body or association of persons; and
 - (b) the other person, the agency, the body or the association nominates:
 - (i) another person; or
 - (ii) the holder of a particular office in the agency, body or association;
- by notice in writing to the Integrity Commissioner, to receive communications from the Integrity Commissioner;
- the Integrity Commissioner must give the advice required by subsection (1) to the person nominated or the person for the time being holding the office nominated.

Section 59

59 Advising person whose conduct is investigated of outcome of the investigation

- (1) If the Integrity Commissioner investigates a corruption issue that relates to a person who is, or has been, a staff member of a law enforcement agency, the Integrity Commissioner may advise the person of the outcome of the investigation.
- (2) Without limiting subsection (1), the Integrity Commissioner may advise the person of the outcome of the investigation by giving the person a copy of the whole or a part of the report prepared in relation to the investigation under subsection 54(1).
- (3) In advising the person under subsection (1), the Integrity Commissioner:
 - (a) must not disclose section 149 certified information to the person if the disclosure of the information to the person would contravene the certificate issued under section 149; and
 - (b) may exclude information from the advice if the Integrity Commissioner is satisfied that:
 - (i) the information is sensitive information; and
 - (ii) it is desirable in the circumstances to exclude the information from the advice.
- (4) In deciding whether to exclude information from the advice under paragraph (3)(b), the Integrity Commissioner must seek to achieve an appropriate balance between:
 - (a) the person's interest in having the information included in the advice; and
 - (b) the prejudicial consequences that might result from including the information in the advice.

Part 7—Investigations by other Commonwealth agencies

Division 1—Nominated contact for investigations by law enforcement agencies

60 Nominating contact for investigation

- (1) If the Integrity Commissioner decides to deal with a corruption issue by:
 - (a) referring the corruption issue to a law enforcement agency for investigation; or
 - (b) managing or overseeing an investigation of the corruption issue by a law enforcement agency;the head of the agency may nominate a staff member of the agency as the contact for the investigation.

Note: If the head of the agency does not nominate someone under this subsection, the head of the agency is the nominated contact for the investigation (see the definition of *nominated contact* in subsection 5(1)).

- (2) The nomination must be made by notice in writing to the Integrity Commissioner.

Division 2—Managing or overseeing investigations by law enforcement agencies

61 Managing an investigation

- (1) The Integrity Commissioner *manages* an investigation of a corruption issue by a law enforcement agency by giving the agency's nominated contact for the investigation detailed guidance about the planning, and carrying out, of the investigation.

Note: The Integrity Commissioner can request the agency to provide information about the investigation under sections 63 and 64.

- (2) In managing the investigation, the Integrity Commissioner must not give directions directly to any other staff members of the agency.
- (3) The head of the agency must ensure that:
 - (a) the agency adheres to the Integrity Commissioner's detailed guidance in planning and carrying out the investigation; and
 - (b) the staff members of the agency cooperate with the Integrity Commissioner in relation to the planning and carrying out the investigation.

62 Overseeing an investigation

- (1) The Integrity Commissioner *oversees* an investigation of a corruption issue by a law enforcement agency by giving the agency's nominated contact for the investigation general guidance about the planning, and carrying out, of the investigation.
- (2) In overseeing the investigation, the Integrity Commissioner must not give directions directly to any other staff members of the agency.
- (3) The head of the agency must ensure that the agency follows the Integrity Commissioner's general guidance in relation to the planning and carrying out the investigation.

Division 3—Reporting

Subdivision A—Reporting by law enforcement agencies during investigations

63 Integrity Commissioner may request individual progress report

- (1) If a law enforcement agency is investigating a corruption issue, the Integrity Commissioner may request:
 - (a) if the Integrity Commissioner referred the corruption issue to the agency for investigation or is managing or overseeing the investigation—the nominated contact for the investigation; or
 - (b) in any other case—the head of the agency;to give him or her a progress report on the investigation.
- (2) The request:
 - (a) must be in writing; and
 - (b) must specify the date by which the progress report must be given to the Integrity Commissioner; and
 - (c) may specify particular matters in relation to the investigation that the report is to address.The date specified under paragraph (b) must be at least 7 days after the request is made.
- (3) The nominated contact, or the head of the agency, must comply with the request.

64 Integrity Commissioner may request periodic progress reports

- (1) If a law enforcement agency is investigating a corruption issue, the Integrity Commissioner may request:
 - (a) if the Integrity Commissioner referred the corruption issue to the agency for investigation or is managing or overseeing the investigation—the nominated contact for the investigation; or
 - (b) in any other case—the head of the agency;to give him or her periodic progress reports on the investigation.

Section 65

- (2) The request:
 - (a) must be in writing; and
 - (b) must specify the frequency with which the reports are to be given and the periods to which they are to relate; and
 - (c) may specify particular matters in relation to the investigation that the reports are to address.
- (3) The nominated contact, or the head of the agency, must comply with the request.

65 Head of law enforcement agency to keep person who referred corruption issue informed of progress of investigation

Minister

- (1) If:
 - (a) the Minister refers an allegation, or information, that raises a corruption issue to the Integrity Commissioner under section 18; and
 - (b) the Integrity Commissioner refers the corruption issue to a law enforcement agency under paragraph 26(1)(b) or (c) for investigation;

the head of the agency must take such steps as the head of the agency considers reasonable to keep the Minister informed of the progress of the investigation of that corruption issue.

Person who referred issue under section 23

- (2) If:
 - (a) a person refers an allegation, or information, that raises a corruption issue to the Integrity Commissioner under section 23; and
 - (b) the Integrity Commissioner refers the corruption issue to a law enforcement agency under paragraph 26(1)(b) or (c) for investigation; and
 - (c) the person elects under section 25 to be kept informed of the action taken in relation to the corruption issue and has not revoked the election;

the head of the agency must take such steps as the head of the agency considers reasonable to keep the person informed of the progress of the investigation of that corruption issue.

Subdivision B—Reporting by Commonwealth government agencies at end of investigations

66 Final report on investigation

- (1) After a Commonwealth government agency completes:
 - (a) an investigation of a corruption issue; or
 - (b) a further investigation of a corruption issue recommended by the Integrity Commissioner under section 67;the head of the agency must cause a report on the investigation to be prepared.
- (2) The report:
 - (a) must set out:
 - (i) the agency's findings on the corruption issue; and
 - (ii) the evidence and other material on which those findings are based; and
 - (iii) what action (if any) the head of the agency has taken, or proposes to take, to address those findings; and
 - (iv) if action is to be taken—the reasons for the proposed action; and
 - (b) if the agency is the AFP and the corruption issue relates to another law enforcement agency—may also set out recommendations to the head of the other law enforcement agency.
- (3) The head of the agency must give a copy of the report to the Integrity Commissioner as soon as reasonably practicable after the investigation or further investigation is completed.
- (4) If the Commissioner of the AFP causes a report to be prepared on an investigation that relates to another law enforcement agency, the Commissioner of the AFP must also give a copy of the report to the head of that other law enforcement agency at the same time as a copy of the report is given to the Integrity Commissioner.

67 Integrity Commissioner may comment on final report

Integrity Commissioner may make comments or recommendations

- (1) The Integrity Commissioner may, if he or she thinks fit, make comments or recommendations on any matter relating to or arising out of:

- (a) a report given to the Integrity Commissioner by the head of a Commonwealth government agency under section 66; or
- (b) the investigation to which the report relates.

Note: Under section 42, the Integrity Commissioner could, after receiving the report, reconsider how the corruption issue should be dealt with.

- (2) The Integrity Commissioner must put any such comments or recommendations in writing and give them to the head of the Commonwealth government agency.

- (3) If:

- (a) the Commonwealth government agency that gives the report to the Integrity Commissioner is the AFP; and
- (b) the corruption issue relates to another law enforcement agency;

the Integrity Commissioner must also give the comments or recommendations to the head of that other law enforcement agency.

- (4) Without limiting subsection (1), the Integrity Commissioner may recommend that:

- (a) the head of a Commonwealth government agency take appropriate action with a view to having a person charged with a criminal offence; or
- (b) the head of a Commonwealth government agency take appropriate action:
 - (i) to initiate disciplinary proceedings against a person; or
 - (ii) to determine whether a person's employment or appointment should be terminated; or
- (c) the Commonwealth government agency that gave the report to the Integrity Commissioner investigate the corruption issue further.

Note: Under section 42, the Integrity Commissioner could, instead of recommending that the agency investigate the corruption issue further, decide that the corruption issue should be dealt with in another way.

Request for details of action to be taken

- (5) The Integrity Commissioner may request the head of the Commonwealth government agency to which the Integrity Commissioner's recommendations are directed to give the Integrity Commissioner, within a specified time, details of any action that the head of the agency proposes to take with respect to the recommendations.
- (6) The head of the agency must comply with the request.
- (7) If the Integrity Commissioner is not satisfied with the response of the head of the agency to the request, the Integrity Commissioner may refer to the responsible Minister for the agency:
 - (a) the Integrity Commissioner's recommendation and the reasons for that recommendation; and
 - (b) the response of the head of the agency to the recommendation; and
 - (c) the Integrity Commissioner's reasons for not being satisfied with that response.
- (8) If the Integrity Commissioner refers material to a Minister under subsection (7), the Integrity Commissioner may also send a copy of that material to:
 - (a) the President of the Senate for presentation to the Senate; and
 - (b) the Speaker of the House of Representatives for presentation to the House of Representatives.

Section 149 certified information and sensitive information

- (9) The Integrity Commissioner must exclude section 149 certified information from the copy of the material sent under subsection (8).
- (10) The Integrity Commissioner may exclude information from the copy of the material sent under subsection (8) if the Integrity Commissioner is satisfied that:

Section 68

- (a) the information is sensitive information; and
 - (b) it is desirable in the circumstances to exclude the information from the material sent.
- (11) In deciding whether to exclude information from the copy of the material sent under subsection (8), the Integrity Commissioner must seek to achieve an appropriate balance between:
- (a) the public interest that would be served by including the information in the material sent; and
 - (b) the prejudicial consequences that might result from including the information in the material sent.
- (12) After the material is presented to the Parliament, the Integrity Commissioner may discuss any matter to which the material relates with the head of the agency for the purpose of resolving the matter.

68 Advising person who referred corruption issue of outcome of the investigation

- (1) If a person:
- (a) refers an allegation, or information, that raises a corruption issue to the Integrity Commissioner under section 23; and
 - (b) elects under section 25 to be kept informed of the action taken in relation to the corruption issue and has not revoked the election; and
 - (c) the Integrity Commissioner:
 - (i) refers the corruption issue to a law enforcement agency under paragraph 26(1)(b) or (c) for investigation; or
 - (ii) refers the corruption issue to a Commonwealth government agency under paragraph 29(6)(a) for investigation;
- the head of the agency must advise the person of the outcome of the investigation of the corruption issue.
- (2) Without limiting subsection (1), the head of the agency may advise the person by giving the person a copy of the whole or a part of the report prepared in relation to the investigation under section 66.
- (3) However, the head of the agency need not advise the person if the head of the agency is satisfied that doing so is likely to prejudice:

- (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (4) If:
- (a) a person refers an allegation, or information, that raises the corruption issue to the Integrity Commissioner on behalf of:
 - (i) another person; or
 - (ii) a government agency (other than a law enforcement agency); or
 - (iii) a body or association of persons; and
 - (b) the other person, the agency, the body or the association nominates:
 - (i) another person; or
 - (ii) the holder of a particular office in the agency, body or association;
- by notice in writing to the Integrity Commissioner, to receive communications from the Integrity Commissioner;
- the head of the agency must give the advice required by subsection (1) to the person nominated or the person for the time being holding the office nominated.

69 Advising person whose conduct is investigated of outcome of the investigation

- (1) If a Commonwealth government agency investigates a corruption issue that relates to a person who is, or has been, a staff member of a law enforcement agency, the head of the Commonwealth government agency may advise the person of the outcome of the investigation.
- (2) Without limiting subsection (1), the head of the Commonwealth government agency may advise the person by giving the person a copy of the whole or a part of the report prepared in relation to the investigation under section 66.

Division 4—Integrity Commissioner to pass on information relevant to agency

70 Integrity Commissioner to pass on information relevant to agency investigation

- (1) If:
 - (a) a government agency is investigating a corruption issue; and
 - (b) either:
 - (i) the Integrity Commissioner referred the corruption issue to the agency for investigation; or
 - (ii) the head of the agency notified the Integrity Commissioner of the corruption issue under section 19; and
 - (c) the Integrity Commissioner becomes aware of information that is relevant to the corruption issue; and
 - (d) the head of the agency does not already have the information;the Integrity Commissioner must give the information to the head of the agency.
- (2) Subsection (1) has effect subject to section 152 (which deals with section 149 certified information).

Part 8—Public inquiries into corruption issues

Division 1—Conducting a public inquiry

71 Minister may request Integrity Commissioner to conduct public inquiry

The Minister may request the Integrity Commissioner to conduct a public inquiry into all or any of the following:

- (a) a corruption issue or issues;
- (b) an issue or issues about corruption generally in law enforcement agencies;
- (c) an issue or issues about the integrity of staff members of law enforcement agencies.

Note: Part 9 provides for particular powers that are available to the Integrity Commissioner for the purposes of the public inquiry.

72 Publicising inquiry

- (1) The Integrity Commissioner must invite submissions on the issues that are to be the subject of the public inquiry.

Note: Subsection 104A(1) provides certain protections for people who make submissions.

- (2) The invitation must specify the closing date for submissions.

Division 2—Reporting

73 Report on public inquiry

Report and its contents

- (1) After conducting a public inquiry, the Integrity Commissioner must prepare a report on the inquiry.
- (2) The report must set out:
 - (a) the Integrity Commissioner's findings as a result of the public inquiry; and
 - (b) the evidence and other material on which those findings are based; and
 - (c) any action that the Integrity Commissioner has taken, or proposes to take, under Part 10 in relation to the inquiry; and
 - (d) any recommendations that the Integrity Commissioner thinks fit to make and, if recommendations are made, the reasons for those recommendations.
- (3) The Integrity Commissioner must exclude section 149 certified information from the report.

Note: Under section 203, the report must be laid before each House of the Parliament.

Section 149 certified information and sensitive information

- (4) The Integrity Commissioner may exclude information from the report if the Integrity Commissioner is satisfied that:
 - (a) the information is sensitive information; and
 - (b) it is desirable in the circumstances to exclude the information from the report.
- (5) In deciding whether to exclude information from the report prepared under subsection (4), the Integrity Commissioner must seek to achieve an appropriate balance between:
 - (a) the public interest that would be served by including the information in the report; and

- (b) the prejudicial consequences that might result from including the information in the report.

Supplementary report

- (6) If, under subsection (4) or (5), the Integrity Commissioner excludes information from a report prepared under subsection (1), the Integrity Commissioner must prepare a supplementary report that sets out:
 - (a) the information; and
 - (b) the reasons for excluding the information from the report prepared under subsection (1).

74 Giving report to Minister

The Integrity Commissioner must give the Minister:

- (a) the report prepared under subsection 73(1); and
- (b) if a supplementary report is prepared under subsection 73(6)—the supplementary report.

Note: Section 203 provides that the Minister must lay a copy of the report prepared under subsection 73(1) before each House of the Parliament if a public hearing has been held in the course of the investigation to which the report relates. The Minister is not required, however, to lay a copy of a supplementary report under subsection 73(6) before each House of the Parliament.

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 1 Requiring people to give information and produce documents or things

Section 75

Part 9—Integrity Commissioner's powers in conducting investigations and public inquiries

Division 1—Requiring people to give information and produce documents or things

Subdivision A—Requests by Integrity Commissioner

75 Request to staff member of law enforcement agency

- (1) For the purposes of investigating a corruption issue, the Integrity Commissioner may request a staff member of a law enforcement agency:
 - (a) to give the Integrity Commissioner the information specified in the request; or
 - (b) to produce to the Integrity Commissioner the documents or things specified in the request.

The Integrity Commissioner may require that information to be provided under paragraph (a) is to be provided in writing.

- (2) The Integrity Commissioner's request must be:
 - (a) served on the staff member of the law enforcement agency; and
 - (b) in writing and signed by the Integrity Commissioner.
- (3) The Integrity Commissioner may make the request without holding a hearing.
- (4) The staff member must comply with the request as soon as is reasonably practicable.

Note 1: Failure to comply with a request is an offence: see section 78.

Note 2: See also subsection 150(2) in relation to section 149 certified information.

76 Request to person other than staff member of law enforcement agency

- (1) For the purposes of investigating a corruption issue, the Integrity Commissioner may request a person (other than a staff member of a law enforcement agency):
 - (a) to give the Integrity Commissioner the information specified in the request; or
 - (b) to produce to the Integrity Commissioner the documents or things specified in the request.
- (2) The Integrity Commissioner's request must:
 - (a) be served on the person; and
 - (b) be in writing and signed by the Integrity Commissioner; and
 - (c) specify the period within which the person must comply with the request.

The period specified under paragraph (c) must be at least 14 days starting on the day on which the request is served on the person.
- (3) The Integrity Commissioner may make the request without holding a hearing.
- (4) The person must:
 - (a) give the information in writing; or
 - (b) produce the documents or things;

within the time specified in the request, or within such further time as the Integrity Commissioner allows.

Note 1: Failure to comply with a request is an offence: see section 78.

Note 2: See also subsection 150(2) in relation to section 149 certified information.

77 Integrity Commissioner may retain documents and things

- (1) If a document or thing is produced to the Integrity Commissioner in accordance with a request under section 75 or 76, the Integrity Commissioner:
 - (a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 1 Requiring people to give information and produce documents or things

Section 78

- (b) may retain possession of the document or thing for such period as is necessary for the purposes of the investigation to which the document or thing relates.
- (2) While the Integrity Commissioner retains the document or thing, he or she must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

Subdivision B—Offence and related provisions

78 Failure to comply with Integrity Commissioner's request

A person commits an offence if:

- (a) the person is given a request under section 75 or 76; and
- (b) the person fails to comply with the request.

Penalty: Imprisonment for 2 years.

Note 1: A legal practitioner may refuse to produce a document or thing in certain circumstances: see section 79.

Note 2: This section is not subject to the privilege against self-incrimination but there are limits on the uses to which the evidence the person gives may be put: see section 80.

79 Legal practitioner not required to disclose privileged communications

- (1) A legal practitioner may refuse:
 - (a) to give information to the Integrity Commissioner; or
 - (b) to produce a document or thing to the Integrity Commissioner;when requested to do so under section 76 if the information would disclose, or the document contains, a privileged communication made by the legal practitioner (or to the legal practitioner) in his or her capacity as a legal practitioner.
- (2) Subsection (1) has effect subject to paragraph 80(5)(c).

- (3) Subsection (1) does not apply if the person to whom the communication was made (or by whom the communication was made) agrees to the legal practitioner:
 - (a) giving the information; or
 - (b) producing the document or thing.
- (4) If the legal practitioner refuses:
 - (a) to give the information; or
 - (b) to produce the document or thing;he or she must, if required by the Integrity Commissioner, give the Integrity Commissioner the name and address of the person to whom the communication was made (or by whom the communication was made).
- (5) This section does not affect the law relating to legal professional privilege.

80 Self-incrimination etc.

Self-incrimination

- (1) A person is not excused from:
 - (a) giving information; or
 - (b) producing a document or thing;when requested to do so under section 75 or 76 on the ground that doing so would tend to incriminate the person or expose the person to a penalty.

Use indemnity

- (2) Subsection (4) applies if:
 - (a) the person:
 - (i) gives the information (whether orally or in writing); or
 - (ii) produces the document or thing;and, before doing so, claims that giving the information or producing the document or thing, might tend to incriminate the person or expose the person to a penalty; or
 - (b) the person gives the information in writing and claims, in a written statement accompanying the information, that giving

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 1 Requiring people to give information and produce documents or things

Section 80

- the information might tend to incriminate the person or expose the person to a penalty; or
- (c) the person produces the document or thing and claims, in a written statement accompanying the document or thing, that producing the document or thing might tend to incriminate the person or expose the person to a penalty.
- (3) Subsection (4) does not apply to the production of a document that is, or forms part of, a record of an existing or past business.
- (4) None of the following:
- (a) the information given;
 - (b) the document or thing produced;
- is admissible in evidence against the person in criminal proceedings, or any other proceedings for the imposition or recovery of a penalty, other than:
- (c) proceedings for an offence against section 78; or
 - (d) confiscation proceedings; or
 - (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
 - (f) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act; or
 - (g) disciplinary proceedings against the person if the person is a staff member of a law enforcement agency.

Public interest grounds

- (5) A person is not excused from:
- (a) giving information; or
 - (b) producing a document or thing;
- when requested to do so under section 75 or 76 on the ground that doing so:
- (c) would disclose one of the following:
 - (i) legal advice given to a Minister or a Commonwealth government agency;

Section 81

- (ii) a communication between an officer of a Commonwealth government agency and another person or body, being a communication protected against disclosure by legal professional privilege; or
- (d) would breach a secrecy provision other than:
 - (i) a taxation secrecy provision; or
 - (ii) a law enforcement secrecy provision; or
- (e) would be otherwise contrary to the public interest.

Note: See also subsection 150(2) in relation to section 149 certified information.

- (6) The fact that a person is not excused under subsection (5) from:
 - (a) giving information; or
 - (b) producing a document or thing;does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or thing.
- (7) A person does not commit an offence, and is not liable to any penalty, under the provisions of any other enactment (other than a taxation secrecy provision or a law enforcement secrecy provision) because the person gives information, or produces a document or thing, when required to do so under section 75 or 76.

81 Protection of person required to give information and produce documents

- (1) A person who gives information, or produces a document or thing, to the Integrity Commissioner in response to a request under section 75 or 76 has the same protection as a witness in proceedings in the High Court.
- (2) Subsection (3) applies if it appears to the Integrity Commissioner that, because a person:
 - (a) is to give information, or produce a document or thing; or
 - (b) has given information, or produced a document or thing;to the Integrity Commissioner in response to a request under section 75 or 76, either:

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 1 Requiring people to give information and produce documents or things

Section 81

- (c) the safety of the person or any other person may be prejudiced; or
 - (d) the person or any other person may be subjected to intimidation or harassment.
- (3) The Integrity Commissioner may make such arrangements as are necessary:
- (a) to protect the safety of any person mentioned in paragraph (2)(c); or
 - (b) to protect any person mentioned in paragraph (2)(d) from intimidation or harassment.
- (4) For the purpose of subsection (3), the arrangements that the Integrity Commissioner may make include arrangements with:
- (a) the Minister; or
 - (b) members of the AFP; or
 - (c) members of the police force of a State or Territory.
- (5) This section does not affect the *Witness Protection Act 1994*.

Division 2—Conducting hearings

Subdivision A—General provisions

82 Integrity Commissioner may hold hearings

Commissioner may hold hearings for investigations or public inquiries

- (1) The Integrity Commissioner may hold a hearing for the purpose of:
 - (a) investigating a corruption issue; or
 - (b) conducting a public inquiry.
- (2) Subject to subsections (3), (4) and (5), a hearing may be conducted in such manner as the Integrity Commissioner thinks fit.

Hearing in relation to an investigation of a corruption issue

- (3) The Integrity Commissioner may decide to hold the whole (or a part) of a hearing in relation to an investigation of corruption issue either in public or in private.
- (4) In deciding under subsection (3) whether a hearing (or a part of a hearing) is to be held in public or in private, the Integrity Commissioner must have regard to the following:
 - (a) whether evidence that may be given, or a matter that may arise, during the hearing (or that part of the hearing) is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence;
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused if the hearing (or that part of the hearing) took place in public;
 - (c) whether it is in the public interest that the hearing (or that part of the hearing) take place in public;
 - (d) any other relevant matter.

Note: If the hearing is to be held in public, a witness may request that his or her evidence be taken in private: see section 89.

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 2 Conducting hearings

Section 83

Hearing in relation to a public inquiry

- (5) A hearing in relation to a public inquiry must be held in public. However, a part of a hearing in relation to a public inquiry may be held in private if the Integrity Commissioner so directs.

Note: Certain evidence must be given in private, and a witness may request that his or her evidence be taken in private: see section 89.

Record of hearing

- (6) The Integrity Commissioner must make a record of a hearing.
- (7) If the Integrity Commissioner is conducting a public inquiry, the record of the hearing must include:
- (a) any document produced to the Integrity Commissioner at the hearing; or
 - (b) a description of any thing (other than a document) produced to the Integrity Commissioner at the hearing;
- unless the Integrity Commissioner directs otherwise.

Direction is not a legislative instrument

- (8) A direction given under this section is not a legislative instrument.

83 Integrity Commissioner may summon person

- (1) The Integrity Commissioner may summon a person to attend a hearing at a time and place specified in the summons:
- (a) to give evidence; or
 - (b) to produce documents or things specified in the summons.

Note 1: In certain cases, disclosing the existence of a summons, or any information about it, is an offence: see section 92.

Note 2: Failure to comply with a summons is an offence: see section 93.

Note 3: See also subsection 150(3) in relation to section 149 certified information.

Note 4: A person may apply for legal and financial assistance in respect of his or her attendance: see section 103.

- (2) A summons must:
- (a) be in writing and signed by the Integrity Commissioner; and

- (b) be served on the person required to attend a hearing.
- (3) If the hearing is held for the purpose of investigating a corruption issue, a summons requiring a person to give evidence must set out, so far as is reasonably practicable, the general nature of the matters in relation to which the Integrity Commissioner intends to question the person.
- (4) Subsection (3) does not prevent the Integrity Commissioner from questioning the person in relation to:
 - (a) any aspect of the corruption issue to which the hearing relates; or
 - (b) another corruption issue.
- (5) Subsection (3) does not apply if the Integrity Commissioner is satisfied that complying with that subsection is likely to prejudice:
 - (a) the investigation to which the hearing relates or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (6) A person summoned to appear as a witness at a hearing is entitled to be paid by the Commonwealth any allowances for travelling and other expenses that are prescribed by the regulations.

84 Integrity Commissioner may take evidence outside Australia

If arrangements have been made between Australia and another country in relation to the taking of evidence in that country by the Integrity Commissioner for a hearing held under this Division, the Integrity Commissioner may:

- (a) take evidence on oath or by affirmation; and
- (b) use any evidence taken in that country in accordance with those arrangements;

for the purpose of performing any function, or exercising any power, under this Act.

Subdivision B—Procedure at hearing

85 Who may be represented at a hearing

- (1) A person giving evidence at a hearing may be represented by a legal practitioner.
- (2) A person who is not giving evidence may be represented at a hearing by a legal practitioner if:
 - (a) special circumstances exist; and
 - (b) the Integrity Commissioner consents to the person being so represented.

86 Who may be present at a hearing

Who may be present

- (1) The Integrity Commissioner may determine who may be present during all or part of a hearing held in private.
- (2) The Integrity Commissioner must allow the following persons to be present when evidence is being given:
 - (a) a legal practitioner representing the person giving evidence;
 - (b) a legal practitioner representing a person who:
 - (i) is not giving evidence; but
 - (ii) has the Integrity Commissioner's consent to being present at that time.

Opportunity to comment on a person's presence

- (3) If:
 - (a) a person (the *witness*) is giving evidence at a hearing; and
 - (b) another person is present at the hearing at that time; and
 - (c) the other person is not:
 - (i) a staff member of ACLEI; or
 - (ii) a legal practitioner representing a person at the hearing;the Integrity Commissioner must:
 - (d) inform the witness that the person is present; and

Section 87

- (e) give the witness an opportunity to comment on the person's presence.
- (4) To avoid doubt, a person is still entitled to be present during all or part of the hearing even if:
 - (a) the Integrity Commissioner fails to comply with subsection (3); or
 - (b) a witness comments adversely on the person's presence under paragraph (3)(e).

Offence

- (5) A person commits an offence if:
 - (a) the person is present while evidence is being given in private at a hearing; and
 - (b) the person is none of the following:
 - (i) the person giving evidence;
 - (ii) a person whom the Integrity Commissioner must, under subsection (2), allow to be present while the evidence is being given;
 - (iii) a person who may be present at the hearing in accordance with a determination under subsection (1).

Penalty: Imprisonment for 12 months.

Determination of who may be present not a legislative instrument

- (6) If the determination of who may be present at a hearing is made in writing, the determination is not a legislative instrument.

Subdivision C—Taking evidence at hearing

87 Evidence on oath or by affirmation

- (1) At a hearing, the Integrity Commissioner may:
 - (a) require a witness to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to the witness.

Note 1: Failure to take an oath or make an affirmation is an offence: see section 93.

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 2 Conducting hearings

Section 88

Note 2: This means that a hearing is a *judicial proceeding* for the purposes of Part III of the *Crimes Act 1914*, which creates various offences in relation to judicial proceedings.

- (2) The Integrity Commissioner may administer an oath or affirmation to a person appearing as a witness in another country, but must do so in accordance with:
 - (a) any provision of the arrangements made between Australia and that other country, as referred to in section 84; and
 - (b) the laws of that other country.
- (3) The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.
- (4) The Integrity Commissioner may allow a person attending a hearing who has been sworn, or who has made an affirmation, to give evidence by tendering a written statement and verifying it by oath or affirmation.

88 Examination and cross-examination of witnesses

At a hearing, the following persons may, so far as the Integrity Commissioner thinks appropriate, examine or cross-examine any witness on any matter that the Integrity Commissioner considers relevant:

- (a) counsel assisting the Integrity Commissioner generally or in relation to the investigation or public inquiry to which the hearing relates;
- (b) a person summoned, or otherwise authorised, to appear before the Integrity Commissioner;
- (c) any legal practitioner representing a person at the hearing.

89 Giving evidence in private

Certain evidence must be given in private

- (1) A person giving evidence at a hearing held in public must give particular evidence in private if the evidence:
 - (a) would disclose one of the following:

Section 90

- (i) legal advice given to a Minister or a Commonwealth government agency;
- (ii) a communication between an officer of a Commonwealth government agency and another person or body, being a communication protected against disclosure by legal professional privilege; or
- (b) would breach a secrecy provision other than:
 - (i) a taxation secrecy provision; or
 - (ii) a law enforcement secrecy provision.

Note: If the evidence involves section 149 certified information, the evidence may need to be given in private in order to comply with the terms of the certificate. In some circumstances the terms of the section 149 certificate may mean that the evidence may not be able to be given at all.

Person may request that certain evidence be given in private

- (2) A person giving evidence at a hearing held in public may request that he or she give particular evidence in private on the grounds that:
 - (a) the evidence relates to the profits or financial position of any person; and
 - (b) the taking of evidence in public would be unfairly prejudicial to the interests of the person referred to in paragraph (a).
- (3) The Integrity Commissioner may, if he or she considers it appropriate, allow the evidence to be given in private.

90 Directions in relation to confidentiality

Prohibition or limitation on publication

- (1) The Integrity Commissioner may direct that:
 - (a) particular evidence given at a hearing; or
 - (b) the contents of a particular document, or a description of any thing, produced to the Integrity Commissioner at the hearing; or
 - (c) particular information that might enable a person who has given evidence at the hearing to be identified; or
-

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 2 Conducting hearings

Section 90

(d) the fact that a particular person has given or may be about to give evidence at the hearing;

must not be published, or must not be published except in such manner, and to such persons, as the Integrity Commissioner specifies.

Note: Failure to comply with a direction is an offence: see subsection (6).

(2) If the hearing is held in private, the Integrity Commissioner must give a direction under subsection (1) if the Commissioner is satisfied that the failure to give a such a direction:

(a) might prejudice:

(i) a person's safety or reputation; or

(ii) the fair trial of a person who has been, or may be, charged with an offence; or

(b) might lead to the publication of section 149 certified information.

(3) The Integrity Commissioner may vary or revoke a direction in writing. However, the Integrity Commissioner must not vary or revoke a direction if the Integrity Commissioner is satisfied that doing so:

(a) might prejudice:

(i) a person's safety or reputation; or

(ii) the fair trial of a person who has been, or may be, charged with an offence; or

(b) might lead to the publication of section 149 certified information.

Court certificate in relation to evidence in respect of which a direction has been given

(4) If:

(a) a person has been charged with an offence before a federal court or a court of a State or Territory; and

(b) the court considers that it may be desirable in the interests of justice that particular evidence given at a hearing, in respect of which the Integrity Commissioner has given a direction under subsection (1), be made available to the person or to a legal practitioner representing the person;

Section 91

the court may give to the Integrity Commissioner a certificate to that effect. If the court does so, the Integrity Commissioner must make the evidence available to the court.

- (5) If:
- (a) the Integrity Commissioner makes evidence available to a court under subsection (4); and
 - (b) the court, after examining the evidence, is satisfied that the interests of justice so require;
- the court may make the evidence available to the person charged with the offence concerned or to a legal practitioner representing the person.

Offence

- (6) A person commits an offence if:
- (a) the person is given a direction by the Integrity Commissioner under subsection (1); and
 - (b) the person contravenes the direction.

Penalty: Imprisonment for 12 months.

Direction is not a legislative instrument

- (7) A direction given to a person under subsection (1) is not a legislative instrument.

Subdivision D—Prohibitions against disclosing information about a summons

91 Disclosure of summons may be prohibited

Application

- (1) This section applies if:
- (a) a summons is served on a person (the *person served*) under section 83 to attend a hearing; and
 - (b) the hearing is to be held in private.

Section 91

Notation prohibiting disclosure of information about summons

- (2) The Integrity Commissioner may include a notation in the summons to the effect that disclosure of information about:
 - (a) the summons; or
 - (b) any official matter connected with the summons;is prohibited except in the circumstances (if any) specified in the notation.
- (3) The Integrity Commissioner must include a notation in the summons if the Integrity Commissioner is satisfied that failure to do so would reasonably be expected to prejudice:
 - (a) a person's safety or reputation; or
 - (b) the fair trial of a person who has been, or may be, charged with an offence; or
 - (c) the investigation to which the hearing relates or another corruption investigation; or
 - (d) any action taken as a result of an investigation referred to in paragraph (c).
- (4) The Integrity Commissioner may include a notation in the summons if the Integrity Commissioner is satisfied that:
 - (a) failure to do so might prejudice:
 - (i) a person's safety or reputation; or
 - (ii) the fair trial of a person who has been, or may be, charged with an offence; or
 - (iii) the investigation to which the hearing relates or another corruption investigation; or
 - (iv) any action taken as a result of an investigation referred to in subparagraph (iii); or
 - (b) failure to do so might otherwise be contrary to the public interest.
- (5) The Integrity Commissioner must not include a notation in the summons in any other case.

Written statement to accompany notation

- (6) If a notation is included in the summons, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 92 on the person served.

Cancellation of notation

- (7) A notation included in the summons is cancelled by this subsection if:
- (a) the Integrity Commissioner concludes the investigation to which the hearing relates; and
 - (b) any criminal proceedings or civil penalty proceedings resulting from the investigation are commenced.
- (8) If a notation is cancelled by subsection (7), the Integrity Commissioner must advise the person served, in writing, of the cancellation.

Relationship of notation with Privacy Act 1988

- (9) If:
- (a) a notation has been included in the summons in relation to the disclosure of information about the summons or any official matter connected with the summons; and
 - (b) the notation has not been cancelled; and
 - (c) apart from this subsection, a credit reporting agency (within the meaning of section 11A of the *Privacy Act 1988*) would be required, under subsection 18K(5) of the *Privacy Act 1988*, to make a note about the disclosure of the information;
- such a note must not be made until the notation is cancelled.

92 Offences of disclosure

- (1) A person commits an offence if:
- (a) the person is served with a summons under section 83; and
 - (b) the summons includes a notation under section 91; and
 - (c) the person discloses the existence of, or any information about:
 - (i) the summons; or

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 2 Conducting hearings

Section 92

- (ii) any official matter connected with the summons; and
- (d) when the disclosure is made:
 - (i) the notation has not been cancelled by subsection 91(7); and
 - (ii) the period of 5 years after the summons is served under section 83 has not ended.

Penalty: Imprisonment for 12 months.

- (2) In proceedings for an offence against subsection (1), it is a defence if the person makes the disclosure:
 - (a) in the circumstances, if any, permitted by the terms of the notation; or
 - (b) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the summons; or
 - (c) to a legal aid officer for the purpose of obtaining assistance under section 103 in relation to the summons; or
 - (d) if the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons; or
 - (e) if the person is a legal practitioner—for the purpose of obtaining the agreement of another person under subsection 95(2) to the legal practitioner answering a question or producing a document or thing at the hearing.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) A person commits an offence if:
 - (a) a disclosure is made to a person about:
 - (i) a summons under section 83 that includes a notation under section 91; or
 - (ii) any official matter connected with a summons under section 83 that includes a notation under section 91; and
 - (b) the disclosure is permitted under subsection (2) or (4) because the person is a person of a particular kind; and
 - (c) while the person is a person of that kind, the person discloses the existence of, or any information about:
 - (i) the summons; or

Section 92

- (ii) any official matter connected with the summons; and
- (d) when the disclosure by the person is made:
 - (i) the notation has not been cancelled by subsection 91(7); and
 - (ii) the period of 5 years after the summons is served under section 83 has not ended.

Penalty: Imprisonment for 12 months.

- (4) In proceedings for an offence against subsection (3), it is a defence if the person discloses the information:
 - (a) if the person is an officer or agent of a body corporate referred to in paragraph (2)(d):
 - (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons; or
 - (ii) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the summons; or
 - (iii) to a legal aid officer for the purpose of obtaining assistance under section 103 in relation to the summons; or
 - (b) if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or obtaining assistance under section 103, in relation to the summons; or
 - (c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation in relation to the summons.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (5) A person commits an offence if:
 - (a) a disclosure is made to a person about:
 - (i) a summons under section 83 that includes a notation under section 91; or
 - (ii) any official matter connected with a summons under section 83 that includes a notation under section 91; and
 - (b) the disclosure is permitted under subsection (2) or (4) because the person is a person of a particular kind; and

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 2 Conducting hearings

Section 93

- (c) when the person is no longer a person of that kind, the person:
 - (i) makes a record of the summons; or
 - (ii) discloses the existence of the summons; or
 - (iii) discloses any information about the summons or the existence of it; and
- (d) when the record, or disclosure, is made by the person:
 - (i) the notation has not been cancelled by subsection 91(7); and
 - (ii) the period of 5 years after the summons is served under section 83 has not ended.

Penalty: Imprisonment for 12 months.

- (6) A reference in this section to disclosing something's existence includes disclosing information from which a person could reasonably be expected to infer its existence.

Subdivision E—Offences in relation to hearings

93 Offences

Failure to attend hearing

- (1) A person commits an offence if:
 - (a) the person is served with a summons to attend a hearing; and
 - (b) the person:
 - (i) fails to attend as required by the summons; or
 - (ii) fails to appear and report from day to day unless excused or released from further attendance by the Integrity Commissioner.

Penalty: Imprisonment for 12 months.

Note: A defendant bears an evidential burden in relation to the excuse or release from further attendance referred to in subparagraph (b)(ii): see subsection 13.3(3) of the *Criminal Code*.

Section 94

Failure to swear an oath, make an affirmation or answer a question

- (2) A person commits an offence if:
- (a) the person is served with a summons to attend a hearing; and
 - (b) the person fails:
 - (i) to be sworn or to make an affirmation at the hearing; or
 - (ii) to answer a question at the hearing that the Integrity Commissioner requires the person to answer.

Penalty: Imprisonment for 2 years.

Note 1: A legal practitioner may refuse to answer a question in certain circumstances: see section 95.

Note 2: This subsection is not subject to the privilege against self-incrimination but there are limits on the uses to which the evidence the person gives may be put: see section 96.

- (3) Subsection (2) has effect subject to section 150 (which deals with section 149 certified information).

Failure to produce a document or thing

- (4) A person commits an offence if:
- (a) the person is served with a summons to produce a document or thing specified in the summons; and
 - (b) the person fails to produce the document or thing that the person was required to produce.

Penalty: Imprisonment for 2 years.

Note 1: A legal practitioner may refuse to produce a document or thing in certain circumstances: see section 95.

Note 2: This subsection is not subject to the privilege against self-incrimination but there are limits on the uses to which the evidence the person gives may be put: see section 96.

- (5) Subsection (4) has effect subject to section 150 (which deals with section 149 certified information).

94 Contempt

- (1) A person commits an offence if:
-

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 2 Conducting hearings

Section 95

- (a) the person insults, disturbs or uses insulting language towards another person; and
- (b) the person knows that:
 - (i) the other person is the Integrity Commissioner; and
 - (ii) the other person is holding a hearing in the performance of his or her functions, or the exercise of his or her powers, as Integrity Commissioner.

Penalty: Imprisonment for 6 months.

- (2) A person commits an offence if:
 - (a) the person creates a disturbance, or takes part in creating or continuing a disturbance, in or near a place; and
 - (b) the person knows that the place is a place where a hearing is being held for the purpose of:
 - (i) investigating a corruption issue; or
 - (ii) conducting a public inquiry.

Penalty: Imprisonment for 6 months.

- (3) A person commits an offence if:
 - (a) the person interrupts a hearing that is being held for the purpose of:
 - (i) investigating a corruption issue; or
 - (ii) conducting a public inquiry; or
 - (b) the person does any other act or thing that would, if the hearing were held in a court of record, constitute a contempt of that court.

Penalty: Imprisonment for 6 months.

95 Legal practitioner not required to disclose privileged communications

- (1) A legal practitioner may refuse:
 - (a) to answer a question asked by the Integrity Commissioner at a hearing; or
 - (b) to produce a document or thing to the Integrity Commissioner at a hearing;

Section 96

if the answer to the question would disclose, or the document or thing contains, a privileged communication made by or to the legal practitioner in his or her capacity as a legal practitioner.

- (2) Subsection (1) has effect subject to paragraph 96(5)(d).
- (3) Subsection (1) does not apply if the person to whom or by whom the communication was made agrees to the legal practitioner:
 - (a) answering the question; or
 - (b) producing the document or thing.
- (4) If the legal practitioner refuses:
 - (a) to answer the question; or
 - (b) to produce the document or thing;he or she must, if required by the Integrity Commissioner, give the Integrity Commissioner the name and address of the person to whom or by whom the communication was made.
- (5) This section does not affect the law relating to legal professional privilege.

96 Self-incrimination etc.

Self-incrimination

- (1) A person is not excused from:
 - (a) answering a question; or
 - (b) producing a document or thing;when summoned, under section 83, to attend a hearing to do so on the ground that doing so would tend to incriminate the person or expose the person to a penalty.

Use indemnity

- (2) Subsection (4) applies if:
 - (a) the person:
 - (i) answers the question (whether orally or in writing); or
 - (ii) produces the document or thing;

Section 96

- and, before doing so, claims that answering the question, or producing the document or thing, might tend to incriminate the person or expose the person to a penalty; or
- (b) the person answers the question in writing and claims, in a written statement accompanying the answer, that answering the question might tend to incriminate the person or expose the person to a penalty; or
 - (c) the person produces the document or thing and claims, in a written statement accompanying the document or thing, that producing the document or thing might tend to incriminate the person or expose the person to a penalty.
- (3) Subsection (4) does not apply to the production of a document that is, or forms part of, a record of an existing or past business.
- (4) Neither of the following:
- (a) the answer given;
 - (b) the document or thing produced;
- is admissible in evidence against the person in criminal proceedings, or any other proceedings for the imposition or recovery of a penalty, other than:
- (c) proceedings for an offence against section 93; or
 - (d) confiscation proceedings; or
 - (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
 - (f) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act; or
 - (g) disciplinary proceedings against the person if the person is a staff member of a law enforcement agency.

Public interest grounds

- (5) A person is not excused from:
- (a) answering a question; or
 - (b) producing a document or thing;
- when summoned, under section 83, to attend a hearing to do so on the ground that doing so:

- (c) would disclose one of the following:
 - (i) legal advice given to a Minister or a Commonwealth government agency;
 - (ii) a communication between an officer of a Commonwealth government agency and another person or body, being a communication protected against disclosure by legal professional privilege; or
- (d) would breach a secrecy provision other than:
 - (i) a taxation secrecy provision; or
 - (ii) a law enforcement secrecy provision; or
- (e) would be otherwise contrary to the public interest.

Note: See also subsection 150(3) in relation to section 149 certified information.

- (6) The fact that a person is not excused under subsection (5) from:
 - (a) answering a question; or
 - (b) producing a document or thing;does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that answer, document or thing.
- (7) A person who is served with a summons under section 83 does not commit an offence, and is not liable to any penalty, under the provisions of any other enactment (other than a taxation secrecy provision or a law enforcement secrecy provision) because the person:
 - (a) answers a question at a hearing that the Integrity Commissioner requires the person to answer; or
 - (b) produces a document or thing that the person is required to produce in accordance with the summons.

Subdivision F—Court orders for delivery of witness's passport and witness's arrest

97 Integrity Commissioner may apply for order that witness deliver his or her passport

- (1) The Integrity Commissioner may apply to a Judge of the Federal Court for an order that a person deliver his or her passport to the Integrity Commissioner if:
 - (a) either of the following apply:
 - (i) a summons under section 83 has been issued requiring the person to attend a hearing (whether or not the summons has been served) in relation to a corruption investigation or public inquiry; or
 - (ii) the person has appeared at a hearing in relation to a corruption investigation or public inquiry to give evidence or to produce documents or things; and
 - (b) there are reasonable grounds for believing that the person may be able:
 - (i) to give evidence, or further evidence, that is relevant to the investigation or public inquiry; or
 - (ii) to produce documents or things, or further documents or things, that are relevant to the investigation or public inquiry; and
 - (c) there are reasonable grounds for suspecting that the person:
 - (i) intends to leave Australia; and
 - (ii) has in his or her possession, custody or control a passport issued to him or her.
- (2) The Integrity Commissioner must give the Judge information on oath, or by affirmation, in support of the grounds for the application.

98 Court orders

Court order for witness to appear before the Court

- (1) If a Judge of the Federal Court, sitting in Chambers, is satisfied, on the evidence, that the requirements of paragraphs 97(1)(a), (b) and (c) are met, the Judge may make an order:
 - (a) requiring the person to appear before the Federal Court on a date, and at a time and place, specified in the order; and
 - (b) requesting the person to show cause why he or she should not be ordered to deliver the passport to the Integrity Commissioner.

Offence

- (2) A person commits an offence if:
 - (a) the person leaves Australia; and
 - (b) an order has been made in relation to the person under subsection (1); and
 - (c) a copy of the order has been served on the person.

Penalty: Imprisonment for 2 years.

- (3) In proceedings for an offence against subsection (2), it is a defence if:
 - (a) the person has appeared before the Federal Court as required by the order referred to in paragraph (2)(b); and
 - (b) if the Court makes an order in relation to the person under paragraph (4)(a)—the person has complied with the terms of the order and any passport delivered to the Integrity Commissioner in accordance with the order has been returned to the person.

Court order that witness deliver passport to Integrity Commissioner

- (4) If the person appears before the Federal Court as required by the order made under subsection (1), the Court may, if it thinks fit, make an order:

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 2 Conducting hearings

Section 98

- (a) requiring the person to deliver to the Integrity Commissioner any passport:
 - (i) issued to him or her; and
 - (ii) in his or her possession, custody or control; and
- (b) authorising the Integrity Commissioner to retain the passport until the end of the period (not exceeding one month) that is specified in the order.

Extension of period that Integrity Commissioner may retain passport

- (5) The Federal Court may, upon application by the Integrity Commissioner, extend for a further period (of not more than one month), or further periods (of not more than one month in each case), the period for which the Integrity Commissioner is authorised to retain a passport. However, the total period for which the Integrity Commissioner is authorised to retain the passport must not exceed 3 months.

Revocation of court order

- (6) If the Federal Court makes an order authorising the Integrity Commissioner to retain a passport issued to a person, the person may apply to the Federal Court for the order to be revoked.
- (7) If the Federal Court revokes the order, the Integrity Commissioner must return the passport to the person immediately.

Jurisdiction of the Federal Court

- (8) The Federal Court has jurisdiction with respect to matters arising under this section.

Definition

- (9) In this section:
 - Australia** includes the external Territories.

99 Applying for a warrant to arrest witness

- (1) An authorised officer may apply to a Judge of the Federal Court of Australia, or of the Supreme Court of a State or Territory, for a warrant to arrest a person if the authorised officer has reasonable grounds to believe that:
 - (a) the person:
 - (i) has been ordered to deliver his or her passport to the Integrity Commissioner (whether or not the person has complied with the order); and
 - (ii) is likely to leave Australia for the purpose of avoiding giving evidence at a hearing before the Integrity Commissioner; or
 - (b) the person has been served with a summons under section 83 and:
 - (i) has absconded or is likely to abscond; or
 - (ii) is otherwise attempting, or likely to attempt, to evade service of the summons; or
 - (c) the person has committed an offence under subsection 93(1) or is likely to do so.
- (2) An authorised officer must give the Judge information on oath, or by affirmation, in support of the grounds for the application.

100 Warrant for arrest

Issue of warrant

- (1) If a Judge, sitting in Chambers, is satisfied, on the evidence, that there are reasonable grounds for believing that paragraph 99(1)(a), (b) or (c) is met, the Judge may issue a warrant authorising the authorised officer to arrest the person.

Execution of warrant

- (2) For the purpose of executing a warrant, if the authorised officer executing the warrant (or an assisting officer) believes on reasonable grounds that the person is on any premises, the authorised officer (or the assisting officer) may break into and enter those premises.

Section 100

- (3) However, the authorised officer executing the warrant (or an assisting officer) must not enter a dwelling house at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the authorised officer (or the assisting officer) believes on reasonable grounds that it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time.
- (4) The authorised officer executing the warrant (or an assisting officer) must not, in the course of arresting the person, use more force, or subject the other person to greater indignity, than is necessary and reasonable:
 - (a) to make the arrest; or
 - (b) to prevent the escape of the person after the arrest.
- (5) The warrant may be executed even if the authorised officer does not have a copy of the warrant in his or her possession at the time it is executed.
- (6) The authorised officer executing the warrant (or an assisting officer who arrests the person) must inform the person, at the time of the arrest, of the reason for which he or she is being arrested.
- (7) It is sufficient if the person is informed of the substance of the reason and it is not necessary that this be done in language of a precise or technical nature.
- (8) Subsection (6) does not apply to the arrest of the person if:
 - (a) the person should, in the circumstances, know the substance of the reason for which he or she is being arrested; or
 - (b) the person's actions make it impracticable for the authorised officer executing the warrant (or an assisting officer making the arrest) to inform the person of the reason for which he or she is being arrested.
- (9) Nothing in this section prevents the arrest of a person in accordance with any other law.

Definitions

- (10) In this section:
-

Section 101

dwelling house includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

Judge means:

- (a) a Judge of the Federal Court of Australia; or
- (b) a Judge of the Supreme Court of a State or Territory.

101 Powers of Judge in relation to person arrested

- (1) A person arrested under a warrant issued under section 100 must be brought, as soon as practicable, before a Judge.
- (2) The Judge may:
 - (a) grant the person bail:
 - (i) on such security as the Judge thinks fit; and
 - (ii) on such conditions as the Judge thinks are necessary to ensure that the person appears as a witness at a hearing before the Integrity Commissioner; or
 - (b) order that the person continue to be detained for the purpose of ensuring that the person appears as a witness at a hearing before the Integrity Commissioner; or
 - (c) order that the person be released.
- (3) A person who is detained under paragraph (2)(b) must be brought before a Judge:
 - (a) within 14 days after he or she was brought, or last brought, before a Judge; or
 - (b) within such shorter or longer time as a Judge fixed on the person's last previous appearance before a Judge;and the Judge may exercise any of the powers under subsection (2).
- (4) In this section:

Judge means:

- (a) a Judge of the Federal Court of Australia; or
- (b) a Judge of the Supreme Court of a State or Territory.

Subdivision G—Miscellaneous

102 Integrity Commissioner may retain documents or things

- (1) If a document or thing is produced to the Integrity Commissioner in accordance with a summons under section 83, the Integrity Commissioner:
 - (a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and
 - (b) may retain possession of the document or thing for such period as is necessary for the purposes of the investigation or public inquiry to which the document or thing relates.
- (2) While the Integrity Commissioner retains the document or thing, he or she must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

103 Person may apply for legal and financial assistance

- (1) A person who is summoned under section 83 to attend a hearing before the Integrity Commissioner may apply to the Attorney-General for assistance in respect of:
 - (a) his or her attendance at the hearing; or
 - (b) his or her representation at the hearing by a legal practitioner.

Note 1: A person summoned to appear as a witness at a hearing is entitled to be paid allowances for travelling and other expenses prescribed by regulations: see subsection 83(5).

Note 2: A person may also apply for assistance in respect of an application to the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act: see section 221.

- (2) A person who:
 - (a) is not giving evidence at a hearing before the Integrity Commissioner; and
 - (b) is being represented at the hearing by a legal practitioner with the consent of the Integrity Commissioner;may apply to the Attorney-General for assistance in respect of that representation.

Section 104

Note: A person may also apply for assistance in respect of an application to the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act: see section 221.

- (3) If a person applies under subsection (1) or (2), the Attorney-General may, if he or she is satisfied that:
- (a) it would involve substantial hardship to the person to refuse the application; or
 - (b) the circumstances of the case are of such a special nature that the application should be granted;
- authorise the Commonwealth to provide the person with legal or financial assistance, determined by the Attorney-General, in respect of:
- (c) the person's attendance at the hearing; or
 - (d) the person's representation at the hearing by a legal practitioner.
- (4) Legal or financial assistance may be given:
- (a) unconditionally; or
 - (b) subject to such conditions as the Attorney-General determines.
- (5) An instrument that determines the conditions on which legal or financial assistance may be given is not a legislative instrument.

104 Protection of Integrity Commissioner etc.

- (1) The Integrity Commissioner has, in exercising his or her power to hold a hearing, the same protection and immunity as a Justice of the High Court.
- (2) A legal practitioner assisting the Integrity Commissioner, or representing a person at a hearing, has the same protection and immunity as a barrister appearing for a party in proceedings in the High Court.
- (4) To avoid doubt, this section does not limit the powers of the Ombudsman under the *Ombudsman Act 1976* to investigate issues of administrative practice in relation to a hearing that been held under this Division.

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 2 Conducting hearings

Section 104A

- (5) A reference in this section to the Integrity Commissioner includes a reference to an Assistant Integrity Commissioner who exercises the power to hold a hearing under an authorisation under section 219.

104A Protection of witnesses etc.

- (1) A person who:
- (a) gives evidence at a hearing conducted under this Act; or
 - (b) produces a document or thing at a hearing conducted under this Act; or
 - (c) makes a submission to the Integrity Commissioner in relation to a public inquiry;
- has the same protection as a witness in proceedings in the High Court.
- (2) Subsection (3) applies if it appears to the Integrity Commissioner that, because a person:
- (a) is to give evidence, or produce a document or thing, at a hearing under this Act; or
 - (b) has given evidence, or produced a document or thing, at a hearing under this Act; or
 - (c) is to make, or has made, a submission to the Integrity Commissioner in relation to a public inquiry;
- either:
- (d) the safety of the person or any other person may be prejudiced; or
 - (e) the person or any other person may be subjected to intimidation or harassment.
- (3) The Integrity Commissioner may make such arrangements as are necessary:
- (a) to protect the safety of any person mentioned in paragraph (2)(d); or
 - (b) to protect any person mentioned in paragraph (2)(e) from intimidation or harassment.
- (4) For the purpose of subsection (3), the arrangements that the Integrity Commissioner may make include arrangements with:
- (a) the Minister; or

Section 104A

- (b) members of the AFP; or
 - (c) members of the police force of a State or Territory.
- (5) This section does not affect the *Witness Protection Act 1994*.

Division 3—Entering certain places during an investigation without a search warrant

105 Power to enter places occupied by law enforcement agencies

- (1) For the purposes of investigating a corruption issue, the Integrity Commissioner (or an authorised officer) may:
 - (a) enter any place occupied by a law enforcement agency at any reasonable time of the day; and
 - (b) carry on the investigation of the corruption issue at that place; and
 - (c) inspect any documents relevant to the investigation that are kept at that place; and
 - (d) make copies of, or take extracts from, any documents so inspected; and
 - (e) for the purpose of making a copy of, or taking an extract from, a document, remove the document from that place; and
 - (f) seize things found at that place if the Integrity Commissioner (or the authorised officer) believes on reasonable grounds that:
 - (i) the thing is relevant to an indictable offence; and
 - (ii) seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an indictable offence.
- (2) While the Integrity Commissioner (or authorised officer) retains a document or thing, he or she must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.
- (3) Subsection (1) does not authorise a person to enter, or carry on an investigation at:
 - (a) a place referred to in paragraph 80(c) of the *Crimes Act 1914*; or
 - (b) a place that is a prohibited place for the purposes of the *Defence (Special Undertakings) Act 1952* under section 7 of that Act; or

Section 106

- (c) an area of land or water, or an area of land and water, that is declared under section 14 of the *Defence (Special Undertakings) Act 1952* to be a restricted area for the purposes of that Act;
- unless:
- (d) the Minister administering that Act (or another Minister acting for and on behalf of that Minister) has approved the person entering the place or area; and
 - (e) the person complies with any conditions imposed by the Minister giving the approval in relation to:
 - (i) his or her entering that place or area; and
 - (ii) the manner in which his or her investigation is to be conducted at that place or area.
- (4) If the Attorney-General is satisfied that conducting an investigation at a place might prejudice the security or defence of the Commonwealth, the Attorney-General may, by written notice to the Integrity Commissioner, declare the place to be a place to which this subsection applies.
- (5) While the declaration is in force, subsection (1) does not authorise a person to do anything at the place unless:
- (a) a Minister specified in the declaration (or another Minister acting for and on behalf of that Minister) has approved the person entering the place; and
 - (b) the person complies with any conditions imposed by the Minister giving the approval in relation to:
 - (i) his or her entering that place; and
 - (ii) the manner in which his or her investigation is to be conducted at that place.
- (6) A declaration by the Attorney-General under this section is not a legislative instrument.

106 Receipts of things seized under warrant

- (1) If a thing is seized, or removed from a place, under section 105, the Integrity Commissioner (or an authorised officer) must provide a receipt for the thing.

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 3 Entering certain places during an investigation without a search warrant

Section 106

- (2) If 2 or more things are seized or moved, they may be covered by the one receipt.

Division 4—Search warrants

Subdivision A—Preliminary

107 Application to things under the control of a person

This Division applies to a person (the *possessor*) who has a thing under his or her control in any place (whether for the use or benefit of the possessor or another person), even if another person has the actual possession or custody of the thing, as if the possessor has possession of the thing.

Subdivision B—Applying for a search warrant

108 Authorised officer may apply for a search warrant

Application for warrant to search premises (investigation warrant)

- (1) An authorised officer may apply to an issuing officer for an investigation warrant to search premises if the authorised officer:
 - (a) has reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material on the premises; and
 - (b) has reasonable grounds for believing that, if a person was served with a summons to produce the evidential material, the material might be concealed, lost, mutilated or destroyed.

Note: In special circumstances and urgent cases, an application may be made by telephone, fax, email or other electronic means: see section 111.

Application for warrant to search premises (offence warrant)

- (2) An authorised officer may apply to an issuing officer for an offence warrant to search premises if the authorised officer has reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material on the premises.

Note: In special circumstances and urgent cases, an application may be made by telephone, fax, email or other electronic means: see section 111.

Section 108

Application for a warrant to search person (investigation warrant)

- (3) An authorised officer may apply to an issuing officer for an investigation warrant to carry out an ordinary search or a frisk search of a person if the authorised officer:
- (a) has reasonable grounds for suspecting that the person has in his or her possession, or will within the next 72 hours have in his or her possession, any evidential material; and
 - (b) has reasonable grounds for believing that, if the person was served with a summons to produce the evidential material, the material might be concealed, lost, mutilated or destroyed.

Note: In special circumstances and urgent cases, an application may be made by telephone, fax, email or other electronic means: see section 111.

Application for a warrant to search person (offence warrant)

- (4) An authorised officer may apply to an issuing officer for an offence warrant to carry out an ordinary search or a frisk search of a person if the authorised officer has reasonable grounds for suspecting that the person has in his or her possession, or will within the next 72 hours have in his or her possession, any evidential material.

Note: In special circumstances and urgent cases, an application may be made by telephone, fax, email or other electronic means: see section 111.

Information in support of application

- (5) An authorised officer must give the issuing officer information on oath or by affirmation to support the grounds for an application under subsection (1), (2), (3) or (4).
- (6) If an authorised officer applying for a search warrant suspects that, in executing the warrant, it will be necessary to use firearms, the authorised officer must state that suspicion, and the grounds for it, in the information given under subsection (5).
- (7) If the authorised officer applying for a search warrant (or another authorised officer who will be an assisting officer in relation to the search warrant) has, at any time previously, applied for a search

warrant under this Act or another Act in relation to the same person or premises, the authorised officer must state particulars of those applications, and their outcome, in the information given under subsection (5).

Subdivision C—Issue of a search warrant

109 When search warrants may be issued

Issue of a warrant to search premises (investigation warrant)

- (1) If:
- (a) an authorised officer makes an application to an issuing officer under subsection 108(1); and
 - (b) the issuing officer is satisfied, on the information given under subsection 108(5), that:
 - (i) there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, evidential material on the premises in relation to which the application is made; and
 - (ii) there are reasonable grounds for believing that, if a person was served with a summons to produce the evidential material, the material might be concealed, lost, mutilated or destroyed;

the issuing officer may issue an investigation warrant authorising the authorised officer to search the premises.

Issue of a warrant to search premises (offence warrant)

- (2) If:
- (a) an authorised officer makes an application to an issuing officer under subsection 108(2); and
 - (b) the issuing officer is satisfied, on the information given under subsection 108(5), that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, evidential material on the premises in relation to which the application is made;

the issuing officer may issue an offence warrant authorising the authorised officer to search the premises.

Section 109

Issue of a warrant to search a person (investigation warrant)

- (3) If:
- (a) an authorised officer makes an application to an issuing officer under subsection 108(3); and
 - (b) the issuing officer is satisfied, on the information given under subsection 108(5), that:
 - (i) there are reasonable grounds for suspecting that the person in relation to whom the application is made has in his or her possession, or will within the next 72 hours have in his or her possession, evidential material; and
 - (ii) there are reasonable grounds for believing that, if the person was served with a summons to produce the evidential material, the material might be concealed, lost, mutilated or destroyed;

the issuing officer may issue an investigation warrant authorising the authorised officer to carry out an ordinary search or a frisk search of the person.

Issue of a warrant to search a person (offence warrant)

- (4) If:
- (a) an authorised officer makes an application to an issuing officer under subsection 108(4); and
 - (b) the issuing officer is satisfied, on the information given under subsection 108(5), that there are reasonable grounds for suspecting that the person in relation to whom the application is made has in his or her possession, or will within the next 72 hours have in his or her possession, evidential material;

the issuing officer may issue an offence warrant authorising the authorised officer to carry out an ordinary search or a frisk search of the person.

Issue of a warrant by State/Territory issuing officers

- (5) An issuing officer in a State or internal Territory may:
- (a) issue a search warrant in relation to premises or a person in that State or Territory; or

Section 110

- (b) issue a search warrant in relation to premises or a person in an external Territory; or
 - (c) issue a search warrant in relation to premises or a person in another State or internal Territory (including the Jervis Bay Territory) if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate; or
 - (d) issue a search warrant in relation to a person wherever the person is in Australia or in an external Territory if he or she is satisfied that it is not possible to predict where the person may be.
- (6) An issuing officer in New South Wales or the Australian Capital Territory may issue a search warrant in relation to premises or a person in the Jervis Bay Territory.
- (7) Subsections (5) and (6) do not apply if the issuing officer is:
- (a) a Judge of the Federal Court of Australia; or
 - (b) a Federal Magistrate.

Issue of a warrant by issuing officers

- (8) The function of issuing a search warrant is conferred on an issuing officer in a personal capacity and not as a court or a member of a court. The issuing officer need not accept the function conferred.
- (9) An issuing officer performing a function of, or connected with, issuing a search warrant has the same protection and immunity as if he or she were performing that function as, or as a member of, the court of which the issuing officer is a member.

110 Content of warrants

General contents of warrant

- (1) If an issuing officer issues a search warrant under section 109, the issuing officer is to state in the warrant:
- (a) either:

Section 110

- (i) if the warrant is an investigation warrant—the corruption issue or public inquiry to which the warrant relates; or
 - (ii) if the warrant is an offence warrant—the offence to which the warrant relates; and
 - (b) a description of the premises to which the warrant relates or the name or a description of a person to whom it relates; and
 - (c) the kinds of evidential material that are to be searched for under the warrant; and
 - (d) the name of the authorised officer who, unless he or she inserts the name of another authorised officer in the warrant, is to be responsible for executing the warrant; and
 - (e) the time at which the warrant expires; and
 - (f) whether the warrant may be executed at any time or only during particular hours.
- (2) The time stated in the warrant as the time at which the warrant expires must be a time that is not later than the end of the seventh day after the day on which the warrant is issued.

Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified in the warrant must not be later than midnight on Monday in the following week.

Additional matters for warrant in relation to premises

- (3) If the search warrant relates to premises, the issuing officer is also to state:
- (a) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found at the premises in the course of the search that the authorised officer or an assisting officer believes on reasonable grounds to be:
 - (i) if the warrant is an investigation warrant—evidential material in relation to the corruption issue or public inquiry to which the warrant relates; or
 - (ii) if the warrant is an offence warrant—a thing relevant to the offence to which the warrant relates; or

Section 110

- (iii) in any case—evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); or
- (iv) in any case—a thing relevant to an indictable offence; if the authorised officer or the assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence; and
- (b) whether the warrant authorises an ordinary search or a frisk search of a person who is at or near the premises when the warrant is executed if the authorised officer or an assisting officer suspects on reasonable grounds that the person has in his or her possession:
 - (i) in the case of an investigation warrant—any evidential material in relation to the corruption issue or public inquiry to which the warrant relates; or
 - (ii) in the case of an offence warrant—a thing relevant to the offence to which the warrant relates; or
 - (iii) in any case—evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); or
 - (iv) in any case—a thing relevant to an indictable offence; or
 - (v) in any case—any eligible seizable items.

Additional matters for warrant in relation to person

- (4) If the search warrant relates to a person, the issuing officer is also to state:
 - (a) the kind of search (ordinary or frisk) of the person that the warrant authorises; and
 - (b) that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (1)(c)) found, in the course of the search, in the possession of the person or in, or on, an aircraft, vehicle or vessel that the person had operated or occupied at any time within 24 hours before the search began, being a thing that the authorised officer or an assisting officer believes on reasonable grounds to be:

Section 111

- (i) in the case of an investigation warrant—evidential material in relation to the corruption issue or public inquiry to which the warrant relates; or
- (ii) in the case of an offence warrant—a thing relevant to the offence to which the warrant relates; or
- (iii) in any case—evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); or
- (iv) in any case—a thing relevant to an indictable offence; if the authorised officer or the assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence.

Successive warrants

- (5) Paragraph (1)(e) does not prevent the issue of successive warrants in relation to the same premises or person.

111 Application by telephone etc. and issue of warrant

- (1) An authorised officer may apply to an issuing officer for a search warrant by telephone, fax, email or other electronic means:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The issuing officer:
 - (a) may require communication by voice to the extent that is practicable in the circumstances; and
 - (b) may make a recording of the whole or any part of any such communication by voice.
- (3) An application under this section must include all information that is required in an ordinary application for a search warrant, but the application may, if necessary, be made before the information is sworn or affirmed.
- (4) If an application is made under this section:

Section 111

- (a) sections 108 and 109 apply as if subsections 108(1), (2), (3) and (4) and 109(1), (2), (3) and (4) referred to 48 hours rather than 72 hours; and
 - (b) section 110 applies as if subsection 110(2) referred to the end of the 48th hour rather than the end of the seventh day.
- (5) If an application is made to an issuing officer under this section and the issuing officer, after considering the information and having received and considered such further information (if any) as the issuing officer required, is satisfied that:
- (a) a search warrant in the terms of the application should be issued urgently; or
 - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;
- the issuing officer may complete and sign the same form of search warrant that would be issued under section 109.
- (6) If the issuing officer decides to issue the search warrant, the issuing officer is to inform the applicant, by telephone, fax, email or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (7) The applicant must then complete a form of search warrant in terms substantially corresponding to those given by the issuing officer, stating on the form the name of the issuing officer and the day on which and the time at which the warrant was signed.
- (8) The applicant must give or transmit to the issuing officer:
- (a) the form of search warrant completed by the applicant; and
 - (b) if the information referred to in subsection (3) was not sworn or affirmed—that information duly sworn or affirmed.
- (9) The applicant must do so not later than the day after the warrant expires or the day after the day on which the search warrant was executed, whichever is the earlier.
- (10) The issuing officer is to attach to the documents provided under subsection (8) the form of search warrant he or she has completed.
- (11) If:
-

Section 112

- (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a search warrant issued under this section was duly authorised; and
- (b) the form of search warrant signed by the issuing officer is not produced in evidence;

the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

(12) In this section:

applicant means the authorised officer who applied for the search warrant.

112 The things authorised by a search warrant in relation to premises

A search warrant in force in relation to premises authorises the authorised officer executing the warrant or an assisting officer to do any of the following:

- (a) to enter the premises;
- (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes;
- (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found on the premises;
- (d) to seize other things found on the premises in the course of the search that the authorised officer or the assisting officer believes on reasonable grounds to be:
 - (i) in the case of an investigation warrant—evidential material in relation to the corruption issue or public inquiry to which the warrant relates; or
 - (ii) in the case of an offence warrant—a thing relevant to the offence to which the warrant relates; or
 - (iii) in any case—evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); or
 - (iv) in any case—a thing relevant to an indictable offence;

Section 113

if the authorised officer or the assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence;

- (e) to seize other things found at the premises in the course of the search that the authorised officer or the assisting officer believes on reasonable grounds to be eligible seizable items;
- (f) if the warrant so allows—to conduct an ordinary search or a frisk search of a person at or near the premises if the authorised officer or the assisting officer suspects on reasonable grounds that the person has in his or her possession:
 - (i) in the case of an investigation warrant—any evidential material in relation to the corruption issue or public inquiry to which the warrant relates; or
 - (ii) in the case of an offence warrant—a thing relevant to the offence to which the warrant relates; or
 - (iii) in any case—evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); or
 - (iv) in any case—a thing relevant to an indictable offence; or
 - (v) in any case—any eligible seizable items.

113 The things authorised by a search warrant in relation to a person

- (1) A search warrant in force in relation to a person authorises the authorised officer executing the warrant or an assisting officer to do any of the following:
 - (a) to search:
 - (i) the person as specified in the warrant and things found in the possession of the person; and
 - (ii) any aircraft, vehicle or vessel that the person had operated or occupied at any time within 24 hours before the search began, for things specified in the warrant;
 - (b) to:
 - (i) seize things of that kind; or

Section 114

- (ii) record fingerprints from things; or
 - (iii) take forensic samples from things; found in the course of the search;
 - (c) to seize other things found on, or in, the possession of the person or in the aircraft, vehicle or vessel referred to in subparagraph (a)(ii) in the course of the search that the authorised officer or the assisting officer believes on reasonable grounds to be:
 - (i) in the case of an investigation warrant—evidential material in relation to the corruption issue or public inquiry to which the warrant relates; or
 - (ii) in the case of an offence warrant—a thing relevant to the offence to which the warrant relates; or
 - (iii) in any case—evidential material (within the meaning of the *Proceeds of Crime Act 2002*) or tainted property (within the meaning of that Act); or
 - (iv) in any case—a thing relevant to an indictable offence; if the authorised officer or the assisting officer believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence;
 - (d) to seize other things found in the course of the search that the authorised officer or the assisting officer believes on reasonable grounds to be eligible seizable items.
- (2) If the search warrant authorises an ordinary search or a frisk search of a person, a search of the person different from that authorised by the warrant must not be done under the warrant.

114 Restrictions on personal searches

A search warrant may not authorise a strip search or a search of a person's body cavities.

115 When warrant may be executed etc.

- (1) If a search warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.

- (2) If things are seized under a search warrant, the warrant authorises the authorised officer executing the warrant to make the things available to officers of other government agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

Subdivision D—General provisions about executing a search warrant

116 Announcement before entry

- (1) An authorised officer executing the search warrant must, before any person enters premises under the warrant:
- (a) announce that he or she is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) An authorised officer is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required:
- (a) to ensure the safety of a person (including an authorised officer or assisting officer); or
 - (b) to ensure that the effective execution of the warrant is not frustrated.

117 Availability of assistance and use of force in executing a warrant

- (1) In executing a search warrant, the authorised officer executing the warrant may:
- (a) obtain the assistance that is necessary and reasonable in the circumstances; and
 - (b) use the force against persons and things that is necessary and reasonable in the circumstances.
- (2) In executing a search warrant:
- (a) if an assisting officer is also an authorised officer—the assisting officer may use the force against persons and things that is necessary and reasonable in the circumstances; and

Section 118

- (b) if an assisting officer is not an authorised officer—the assisting officer may use the force against things that is necessary and reasonable in the circumstances.
- (3) A person who is not an authorised officer must not take part in searching a person.

Subdivision E—Specific provisions about executing a warrant in relation to premises

118 Application

This Subdivision applies if a search warrant in relation to premises is being executed.

119 Copy of warrant to be shown to occupier etc.

- (1) If the occupier of the premises, or another person who apparently represents the occupier, is present at the premises, the authorised officer executing the search warrant or an assisting officer must make a copy of the warrant available to the person.
- (2) If a person is searched under a search warrant in relation to premises, the authorised officer executing the warrant or an assisting officer must show the person a copy of the warrant.
- (3) The authorised officer must identify himself or herself to the person at the premises.
- (4) The copy of the search warrant need not include the signature of the issuing officer who issued it.

120 Occupier entitled to watch search

- (1) The occupier of the premises, or another person who apparently represents the occupier, who is present at the premises, is entitled to watch the search.
- (2) Subsection (1) is subject to Part IC of the *Crimes Act 1914*.
- (3) The right to watch the search being conducted ceases if the person impedes the search.

Section 121

- (4) This section does not prevent 2 or more areas of the premises being searched at the same time.

121 Specific powers available to person executing a warrant

- (1) The authorised officer executing the search warrant or an assisting officer may take photographs or video recordings of the premises or things on the premises:
- (a) for a purpose incidental to the execution of the warrant; or
 - (b) with the written consent of the occupier of the premises.
- (2) The authorised officer executing the search warrant and all assisting officers may, if the warrant is still in force, finish executing the warrant after all of them temporarily stop executing it and leave the premises:
- (a) for not more than one hour; or
 - (b) for a longer period with the written consent of the occupier of the premises.
- (3) The execution of a search warrant that is stopped by an order of a court may be completed if:
- (a) the order is later revoked or reversed on appeal; and
 - (b) the warrant is still in force.

122 Use of equipment to examine or process things

- (1) The authorised officer executing the search warrant or an assisting officer may bring to the premises any equipment (including electronic equipment) reasonably necessary to examine or process things found at the premises in order to determine whether they are things that may be seized under the warrant.
- (2) A thing found at the premises may be moved to another place for examination or processing in order to determine whether it may be seized under a warrant if:
- (a) both of the following apply:
 - (i) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance;

Section 122

- (ii) there are reasonable grounds to believe that the thing contains or constitutes evidential material; or
 - (b) the occupier of the premises consents in writing.
- (3) If things are moved to another place for the purpose of examination or processing, the authorised officer must, if it is practicable to do so:
 - (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
 - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The thing may be moved to another place for examination or processing for no longer than 72 hours.
- (5) An authorised officer may apply to an issuing officer for one or more extensions of that time if the authorised officer believes on reasonable grounds that the thing cannot be examined or processed within 72 hours or that time as previously extended.
- (6) The authorised officer must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard in relation to the application.
- (7) The authorised officer executing the search warrant or an assisting officer may operate equipment (including electronic equipment) already on the premises to examine or process a thing found on the premises in order to determine whether it may be seized under the warrant, if the authorised officer or the assisting officer believes on reasonable grounds that:
 - (a) the equipment is suitable for the examination or processing; and
 - (b) the examination or processing can be carried out without damaging the equipment or thing.
- (8) A notice of the application given to the occupier of the premises is not a legislative instrument.

123 Use of electronic equipment at premises without expert assistance

- (1) The authorised officer executing the search warrant or an assisting officer may operate electronic equipment on the premises to access data (including data not held at the premises) if he or she believes on reasonable grounds that:

- (a) the data might constitute evidential material; and
- (b) the equipment can be operated without damaging it.

Note: An authorised officer can obtain an order requiring a person with knowledge of a computer or computer system to provide assistance: see section 125.

- (2) If the authorised officer or the assisting officer believes on reasonable grounds that any data accessed by operating the electronic equipment might constitute evidential material, he or she may:

- (a) copy the data to a disk, tape or other associated device brought to the premises; or
- (b) if the occupier of the premises agrees in writing—copy the data to a disk, tape or other associated device at the premises; and take the device from the premises.

- (3) If:

- (a) the authorised officer or the assisting officer takes the device from the premises; and
- (b) the Integrity Commissioner is satisfied that the data is not required (or is no longer required) for:
 - (i) investigating a corruption issue; or
 - (ii) conducting a public inquiry; or
 - (iii) judicial proceedings or administrative review proceedings; or
 - (iv) investigating or resolving AFP conduct or practices issues under Part V of the *Australian Federal Police Act 1979*;

the Integrity Commissioner must arrange for:

- (c) the removal of the data from any device in the control of ACLEI; and

Section 124

- (d) the destruction of any other reproduction of the data in the control of ACLEI.
- (4) However, the Integrity Commissioner must not do so if the data is evidence that he or she must deal with in accordance with Part 10.
- (5) If the authorised officer or the assisting officer, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
 - (a) seize the equipment and any disk, tape or other associated device; or
 - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documents so produced.
- (6) A person may seize equipment under paragraph (5)(a) only if:
 - (a) it is not practicable to put the material in documentary form as referred to in paragraph (5)(b); or
 - (b) possession of the equipment by the occupier could constitute an offence.

124 Use of electronic equipment at premises with expert assistance

- (1) If the authorised officer executing the search warrant or an assisting officer believes on reasonable grounds that:
 - (a) evidential material may be accessible by operating electronic equipment at the premises; and
 - (b) expert assistance is required to operate the equipment; and
 - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (2) The authorised officer or the assisting officer must notify the occupier of the premises, in writing, of:
 - (a) his or her intention to secure the equipment; and
 - (b) the fact that the equipment may be secured for up to 24 hours.

Section 125

- (3) The equipment may be secured for up to 24 hours to allow the equipment to be operated by an expert.
- (4) If the authorised officer or the assisting officer believes on reasonable grounds that expert assistance will not be available within 24 hours, he or she may apply to an issuing officer for an extension of that period.
- (5) The authorised officer or the assisting officer must notify the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (6) The provisions of this Division in relation to the issuing of search warrants apply, with such modifications as are necessary, to the issuing of an extension.
- (7) A notification given to the occupier of the premises under this section is not a legislative instrument.

125 Person with knowledge of a computer or a computer system to assist access etc.

- (1) The authorised officer executing the search warrant may apply to an issuing officer for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow the officer or an assisting officer or to do one or more of the following:
 - (a) access data held in a computer, or accessible from a computer, that is on premises in relation to which the warrant is in force;
 - (b) copy the data to a data storage device;
 - (c) convert the data into documentary form.
- (2) The issuing officer may grant the order if he or she is satisfied that:
 - (a) there are reasonable grounds for suspecting that evidential material is held in, or is accessible from, the computer; and
 - (b) the specified person is:
 - (i) in the case of an investigation warrant—reasonably suspected of having, or having access to, data that may

Section 126

- be relevant to the corruption issue or public inquiry to which the warrant relates; or
- (ii) in the case of an offence warrant—reasonably suspected of having committed the offence stated in the warrant; or
- (iii) the owner or lessee of the computer; or
- (iv) an employee of the owner or lessee of the computer; and
- (c) the specified person has relevant knowledge of:
 - (i) the computer or a computer network of which the computer forms a part; or
 - (ii) measures applied to protect data held in, or accessible from, the computer.
- (3) A person commits an offence if the person fails to comply with the order.

Penalty: Imprisonment for 6 months.

126 Accessing data held on other premises—notification to occupier of those premises

- (1) If:
 - (a) data that is held on premises (other than the premises in relation to which the warrant is in force) is accessed under subsection 123(1); and
 - (b) it is practicable to notify the occupier of the other premises that the data has been accessed under a warrant;the authorised officer executing the search warrant must:
 - (c) do so as soon as practicable; and
 - (d) if the authorised officer has arranged, or intends to arrange, for continued access to the data under subsection 123(2) or (5)—include that information in the notification.
- (2) A notification under subsection (1) must include sufficient information to allow the occupier of the other premises to contact the authorised officer.

127 Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of equipment being operated as mentioned in section 122, 123 or 124:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
 - (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
- (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, had provided any appropriate warning or guidance on the operation of the equipment.
- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purpose of subsection (1):

damage, in relation to data, includes damages by erasure of data or addition of other data.

Section 128

128 Copies of seized things to be provided

- (1) If the authorised officer executing the search warrant or an assisting officer seizes:
 - (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a device storing information that can be readily copied;the authorised officer or the assisting officer must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) However, subsection (1) does not apply if:
 - (a) the thing that has been seized was seized under subsection 123(2) or paragraph 123(5)(a); or
 - (b) possession of the document, film, computer file, thing or information by the occupier could constitute an offence.

129 Receipts of things seized under warrant

- (1) If a thing is seized under a search warrant or moved under subsection 122(2), the authorised officer executing the warrant or an assisting officer must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered by the one receipt.

Subdivision F—Specific provisions about executing a warrant in relation to a person

130 Copy of warrant to be shown to person

- (1) If a search warrant in relation to a person is being executed, the authorised officer executing the warrant or an assisting officer must make a copy of the warrant available to that person.
- (2) The authorised officer must identify himself or herself to the person being searched.

- (3) The copy of the warrant need not include the signature of the issuing officer who issued it.

131 Conduct of an ordinary search or a frisk search

An ordinary search or a frisk search of a person must, if practicable, be conducted by a person of the same sex as the person being searched.

Subdivision G—Offences

132 Making false statements in warrants

A person commits an offence if:

- (a) the person makes a statement in applying for a search warrant; and
- (b) the person knows that the statement is false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

133 Offence for stating incorrect names in telephone warrants

A person commits an offence if:

- (a) the person states a name of an issuing officer in a document; and
- (b) the document purports to be a form of search warrant under section 111; and
- (c) the name is not the name of the issuing officer who issued the search warrant.

Penalty: Imprisonment for 2 years.

134 Offence for unauthorised form of warrant

A person commits an offence if:

- (a) the person states a matter in a form of search warrant under section 111; and
- (b) the person knows that the matter departs in a material particular from the form authorised by the issuing officer.

Section 135

Penalty: Imprisonment for 2 years.

135 Offence for executing etc. an unauthorised form of warrant

A person commits an offence if:

- (a) the person executes or presents a document to another person; and
- (b) the document purports to be a form of search warrant under section 111; and
- (c) the person knows that the document:
 - (i) has not been approved by an issuing officer under that section; or
 - (ii) departs in a material particular from the terms authorised by an issuing officer under that section.

Penalty: Imprisonment for 2 years.

136 Offence for giving unexecuted form of warrant

A person commits an offence if:

- (a) the person gives an issuing officer a form of search warrant under section 111; and
- (b) the document is not the form of search warrant that the person executed.

Penalty: Imprisonment for 2 years.

Subdivision H—Miscellaneous

137 Other laws about search, arrest etc. not affected

- (1) This Division is not intended to limit or exclude the operation of another law of the Commonwealth relating to:
 - (a) the search of persons or premises; or
 - (b) arrest and related matters; or
 - (c) the seizure of things.
- (2) To avoid doubt, even though another law of the Commonwealth provides power to do one or more of the things referred to in

Section 138

subsection (1), a similar power conferred by this Division may be used despite the existence of the power under the other law.

138 Law relating to legal professional privilege not affected

This Division does not affect the law relating to legal professional privilege.

Part 9 Integrity Commissioner's powers in conducting investigations and public inquiries

Division 5 Powers of arrest

Section 139

Division 5—Powers of arrest

139 Authorised officers may exercise powers of arrest

For the purposes of investigating a corruption issue, an authorised officer who is not a constable (within the meaning of the *Crimes Act 1914*) has the same powers and duties under Divisions 4 and 5 of Part IAA of the *Crimes Act 1914* as a constable as if the authorised officer were a constable.

Division 6—Authorised officers

140 Appointment of authorised officers

- (1) The Integrity Commissioner may, in writing, authorise a person to be an authorised officer for the purposes of this Part.
- (2) The person must be:
 - (a) a staff member of ACLEI:
 - (i) who the Integrity Commissioner considers has suitable qualifications or experience; or
 - (ii) who is also a member of the Australian Federal Police; or
 - (iii) who is also a member of the police force of a State or Territory; or
 - (b) a member of the Australian Federal Police.
- (3) The Integrity Commissioner may authorise a person referred to in subparagraph (2)(a)(ii) or paragraph (2)(b) only if the Commissioner of the AFP agrees to the appointment.
- (4) The Integrity Commissioner may authorise a person referred to in subparagraph (2)(a)(iii) only if the head (however described) of the police force of the State or Territory concerned agrees to the appointment.
- (5) In exercising powers as an authorised officer, an authorised officer must comply with any directions given by the Integrity Commissioner.
- (6) If the Integrity Commissioner gives a direction under subsection (5) in writing, the direction is not a legislative instrument.

Section 141

141 Identity cards

Issue of identity card

- (1) The Integrity Commissioner must issue an identity card to a person who is an authorised officer for the purposes of this Part.

Form of identity card

- (2) An identity card:
 - (a) must be in the form prescribed by the regulations; and
 - (b) must contain a recent photograph of the authorised officer.

Identity card to be carried and produced on request

- (3) An authorised officer must carry the identity card at all times when exercising powers as an authorised officer in accordance with this Part.
- (4) An authorised officer is not entitled to exercise any powers under this Part in relation to premises if:
 - (a) the occupier of the premises requires the authorised officer to produce his or her identity card for inspection by the occupier; and
 - (b) the authorised officer fails to comply with the requirement.
- (5) An authorised officer is not entitled to exercise any powers under this Part in relation to a person if:
 - (a) the person requires the authorised officer to produce his or her identity card for inspection by the person; and
 - (b) the authorised officer fails to comply with the requirement.

Offence

- (6) A person commits an offence if:
 - (a) the person has been issued with an identity card; and
 - (b) the person ceases to be an authorised officer; and
 - (c) the person does not return the identity card to the Integrity Commissioner immediately after ceasing to be an authorised officer.

Penalty: 1 penalty unit.

Part 10—Dealing with evidence and information obtained in investigation or public inquiry

142 Evidence of offence or liability to civil penalty

Commonwealth offence or civil penalty

- (1) If, in investigating a corruption issue or conducting a public inquiry, the Integrity Commissioner obtains:
 - (a) evidence of an offence against a law of the Commonwealth that would be admissible in a prosecution for the offence; or
 - (b) evidence of the contravention of a law of the Commonwealth:
 - (i) in relation to which civil penalty proceedings may be brought; and
 - (ii) that would be admissible in civil penalty proceedings for the contravention;the Integrity Commissioner must:
 - (c) assemble the evidence; and
 - (d) give the evidence to:
 - (i) the Commissioner of the AFP; or
 - (ii) another person or authority who is authorised by or under a law of the Commonwealth to prosecute the offence or bring the civil penalty proceedings.

State or Territory offence or civil penalty

- (2) If, in investigating a corruption issue or conducting a public inquiry, the Integrity Commissioner obtains:
 - (a) evidence of an offence against a law of a State or Territory that would be admissible in a prosecution for the offence; or
 - (b) evidence of the contravention of a law of a State or Territory:
 - (i) in relation to which civil penalty proceedings may be brought; and

Section 143

- (ii) that would be admissible in civil penalty proceedings for the contravention;
- the Integrity Commissioner must:
- (c) assemble the evidence; and
 - (d) give the evidence to:
 - (i) the head (however described) of the police force of the State or Territory; or
 - (ii) another person or authority who is authorised by or under a law of the State or Territory to prosecute the offence or bring the civil penalty proceedings.

143 Evidence that could be used in confiscation proceedings

Commonwealth proceedings

- (1) If, in investigating a corruption issue or conducting a public inquiry, the Integrity Commissioner obtains evidence that would be admissible in a proceeding under the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002* (other than a criminal prosecution for an offence under that Act), the Integrity Commissioner must:
 - (a) assemble the evidence; and
 - (b) give the evidence to:
 - (i) the Commissioner of the AFP; or
 - (ii) another person or authority who is authorised by or under a law of the Commonwealth to bring the proceeding.

State or Territory proceedings

- (2) If, in investigating a corruption issue or conducting a public inquiry, the Integrity Commissioner obtains evidence that would be admissible in a proceeding under a corresponding law within the meaning of the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002* (other than a criminal prosecution for an offence under the corresponding law), the Integrity Commissioner must:
 - (a) assemble the evidence; and
 - (b) give the evidence to:

Section 144

- (i) the head (however described) of the police force of the State or Territory; or
- (ii) another person or authority who is authorised by or under a law of the State or Territory to bring the proceeding.

144 Consultation with law enforcement agency head before taking action under section 142 or 143

- (1) This section applies if the Integrity Commissioner proposes to take action under section 142 or 143 in relation to an investigation of a corruption issue that relates to a law enforcement agency.
- (2) The Integrity Commissioner must take reasonable steps to consult the head of the law enforcement agency before taking the action.
- (3) If:
 - (a) the corruption issue relates to the conduct of a secondee to the law enforcement agency; and
 - (b) the secondee is an employee of a government agency (the *home agency*);the Integrity Commissioner must also take reasonable steps to consult the head of the home agency before taking the action.
- (4) If:
 - (a) the corruption issue relates to the conduct of a secondee to the law enforcement agency; and
 - (b) the secondee is an employee of a State or Territory government agency;the Integrity Commissioner must also take reasonable steps to consult the head of the integrity agency (if any) for that State or Territory before taking the action.
- (5) However, the Integrity Commissioner need not consult a person under subsection (2), (3) or (4) if doing so is likely to prejudice:
 - (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).

Section 145

- (6) If the Integrity Commissioner does not consult a person because of subsection (5), the Integrity Commissioner must:
- (a) inform the Minister that the person has not been consulted; and
 - (b) give the Minister the Integrity Commissioner's reasons for not consulting the person.

145 Notification of action taken under section 142 or 143

- (1) This section applies if the Integrity Commissioner takes action under section 142 or 143 in relation to the investigation of a corruption issue that relates to a law enforcement agency.
- (2) The Integrity Commissioner must inform the head of the law enforcement agency that the action has been taken.
- (3) If:
- (a) the corruption issue relates to the conduct of a secondee to the law enforcement agency; and
 - (b) the secondee is an employee of a government agency (the *home agency*);
- the Integrity Commissioner must inform the head of the home agency that the action has been taken.
- (4) If:
- (a) the corruption issue relates to the conduct of a secondee to the law enforcement agency; and
 - (b) the secondee is an employee of a State or Territory government agency;
- the Integrity Commissioner must also inform the head of the integrity agency (if any) for that State or Territory that the action has been taken.
- (5) However, the Integrity Commissioner need not inform a person under subsection (2), (3) or (4) if doing so is likely to prejudice:
- (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).

Section 146

- (6) If the Integrity Commissioner does not inform a person because of subsection (5), the Integrity Commissioner must:
- (a) inform the Minister that the person has not been informed; and
 - (b) give the Minister the Integrity Commissioner's reasons for not informing the person.

146 Evidence of breach of duty or misconduct by staff member

Passing evidence on to head of law enforcement agency

- (1) If:
- (a) the Integrity Commissioner, in investigating a corruption issue or conducting a public inquiry, obtains evidence of a breach of duty or misconduct by a staff member of a law enforcement agency; and
 - (b) the Integrity Commissioner is satisfied that the evidence may justify:
 - (i) terminating the staff member's employment or, if the staff member is a secondee to the law enforcement agency, the staff member's secondment; or
 - (ii) initiating disciplinary proceedings against the staff member; and
 - (c) the Integrity Commissioner is satisfied that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so;

the Integrity Commissioner must bring the evidence to the notice of the head of the law enforcement agency.

Passing evidence on to head of secondee's home agency

- (2) If:
- (a) the Integrity Commissioner, in investigating a corruption issue or conducting a public inquiry, obtains evidence of a breach of duty or misconduct by a staff member of a law enforcement agency; and
 - (b) the staff member is a secondee to the law enforcement agency; and

Section 147

-
- (c) the secondee is an employee of a government agency (the *home agency*); and
 - (d) the Integrity Commissioner is satisfied that the evidence may justify:
 - (i) terminating the secondee's employment; or
 - (ii) initiating disciplinary proceedings against the secondee; and
 - (e) the Integrity Commissioner is satisfied that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so;
- the Integrity Commissioner must bring the evidence to the notice of:
- (f) the head of the home agency; and
 - (g) if the home agency is a State or Territory government agency—the integrity agency (if any) for that State or Territory.

147 Evidence of, or information suggesting, wrongful conviction

Commonwealth offence

- (1) If the Integrity Commissioner:
 - (a) in investigating a corruption issue or conducting a public inquiry, obtains evidence that a person was wrongly convicted of an offence against a law of the Commonwealth; and
 - (b) is satisfied that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so;
- the Integrity Commissioner must:
- (c) bring the evidence to the notice of the Minister; and
 - (d) advise the person that the Integrity Commissioner has must brought the evidence to the notice of the Minister.

State or Territory offence

- (2) If the Integrity Commissioner:
 - (a) in investigating a corruption issue or conducting a public inquiry, obtains evidence that a person was wrongly

Section 147

convicted of an offence against a law of a State or Territory;
and

(b) is satisfied that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so;

the Integrity Commissioner must:

(c) bring the evidence to the notice of the Minister; and

(d) advise the person that the Integrity Commissioner has brought the evidence to the notice of the Minister.

Part 11—Attorney-General's certificates about release of information

149 Attorney-General's certificate in relation to particular information

- (1) The Attorney-General may certify that disclosure of:
 - (a) information about a matter specified in the certificate; or
 - (b) the contents of a document specified in the certificate;would be contrary to the public interest on one or more of the grounds set out in subsection (2).
- (2) The grounds for making a certificate under subsection (1) are that the disclosure would:
 - (a) prejudice the security, defence or international relations of the Commonwealth; or
 - (b) involve the disclosure of:
 - (i) communications between a Minister and a Minister of a State or Territory and would prejudice relations between the Commonwealth Government and the Government of a State or Territory; or
 - (ii) deliberations or decisions of the Cabinet or of a Committee of the Cabinet; or
 - (iii) deliberations or advice of the Executive Council; or
 - (c) prejudice the conduct of an investigation of or inquiry into:
 - (i) crime or criminal activity; or
 - (ii) a contravention of a civil penalty provision; that is currently being pursued; or
 - (d) prejudice the fair trial of any person or the impartial adjudication of a matter; or
 - (e) reveal, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to the enforcement of:
 - (i) the criminal law of the Commonwealth, a State or Territory or a foreign country; or

Section 149

- (ii) a civil penalty provision; or
 - (f) prejudice the effectiveness of the operational methods, or investigative practices or techniques, of agencies responsible for the enforcement of:
 - (i) the criminal law of the Commonwealth, a State or Territory or a foreign country; or
 - (ii) a civil penalty provision; or
 - (g) prejudice the proper performance of the functions of the ACC; or
 - (h) endanger a person's life or physical safety.
- (3) The certificate must specify the kind of disclosure that would be contrary to the public interest.
- (4) Without limiting subsection (3), the kind of disclosure that may be specified in the certificate includes:
- (a) disclosure generally; or
 - (b) disclosure to a specified person or group of persons; or
 - (c) disclosure otherwise than to a specified person or group of persons.
- (5) Without limiting subsection (1), a certificate under that subsection may provide that the disclosure of information about the existence or non-existence of:
- (a) information about a specified matter; or
 - (b) a document or thing;
- would be contrary to the public interest because it would:
- (c) prejudice the security, defence or international relations of the Commonwealth; or
 - (d) prejudice the proper performance of the functions of the ACC.
- (6) The Attorney-General must give a copy of the certificate to:
- (a) the Integrity Commissioner; and
 - (b) either:
 - (i) if the information or the document referred to in subsection (1) is in the possession of a law enforcement agency—the head of the law enforcement agency; or

- (ii) if the information or the document referred to in subsection (1) is in the possession of a person—the person.

150 Integrity Commissioner's access to section 149 certified information

- (1) If:
 - (a) the head of a law enforcement agency would, but for this subsection, be required under section 20, 21, 32 or 46 to give the Integrity Commissioner information or a document; and
 - (b) the information is, or the document contains, section 149 certified information;

the head of the agency must not give the Integrity Commissioner the information or document if doing so would contravene the certificate issued under section 149.

- (2) If:
 - (a) a person is requested under Division 1 of Part 9:
 - (i) to give Integrity Commissioner information; or
 - (ii) to produce a document to the Integrity Commissioner; and
 - (b) the information is, or the document contains, section 149 certified information;

the person must not comply with the request if doing so would contravene the certificate issued under section 149.

- (3) If:
 - (a) a person is served with a summons to attend a hearing under Division 2 of Part 9; and
 - (b) at the hearing the person is required to:
 - (i) give information; or
 - (ii) produce a document; and
 - (c) the information is, or the document contains, section 149 certified information;

the person must not comply with the requirement if doing so would contravene the certificate issued under section 149.

Section 151

151 Giving another agency section 149 certified information

If:

- (a) the head of a law enforcement agency (the *first agency*) would, but for this subsection, be required under section 46 to give the head of another government agency (the *second agency*) information or a document; and
- (b) the information is, or the document contains, section 149 certified information;

the head of the first agency must not give the information or document to the head of the second agency if doing so would contravene the certificate issued under section 149.

152 Integrity Commissioner giving section 149 certified information to agency head or special investigator

If:

- (a) either:
 - (i) the Integrity Commissioner would, but for this section, be required or allowed under subsection 29(2) or section 44, 50 or 70 to give information or a document to the head of a government agency; or
 - (ii) the Integrity Commissioner would, but for this section, be required under subsection 156(6) or (9) to give information or a document to a special investigator; and
- (b) the information is, or the document contains, section 149 certified information;

the Integrity Commissioner must not give the information or document to the head of the agency, or to the special investigator, if doing so would contravene the certificate issued under section 149.

Part 12—Dealing with ACLEI corruption issues

Division 1—Referring ACLEI corruption issues to Minister

153 Integrity Commissioner and ACLEI staff notifying Minister of ACLEI corruption issues

- (1) If the Integrity Commissioner becomes aware of an ACLEI corruption issue that relates to the conduct of another person who is, or has been, a staff member of ACLEI, the Integrity Commissioner must, as soon as practicable after becoming aware of the issue notify the Minister of the issue in writing.

Note 1: Failure to notify the Minister is an offence under subsection 174(1).

Note 2: Staff members of ACLEI have an obligation to notify the Integrity Commissioner of ACLEI corruption issues: see subsection 174(5).

- (2) If a staff member of ACLEI (other than the Integrity Commissioner) becomes aware of an ACLEI corruption issue that relates to the conduct of the person who is the Integrity Commissioner, the staff member must, as soon as practicable after becoming aware of the issue, notify the Minister of the issue in writing.

Note: Failure to notify the Minister is an offence under subsection 174(3).

- (3) A notification given under this section is not a legislative instrument.

154 Referral of ACLEI corruption issues by other persons

- (1) A person (other than a staff member of ACLEI) may refer to the Minister an allegation, or information, that raises an ACLEI corruption issue.
- (2) Without limiting subsection (1):
 - (a) the person may refer the allegation or information anonymously; and

Section 155

- (b) the person may refer the allegation or information either orally or in writing.
- (3) If the person refers the allegation or information orally, the Minister may require the person to put the allegation or information in writing.
- (4) If the person is asked to put the allegation or information in writing, the Minister may refuse to deal with the ACLEI corruption issue raised by the allegation or information until the allegation or the information is put in writing.
- (5) Nothing in this section limits a person's right to make a complaint to the Ombudsman in relation to action taken by the Integrity Commissioner or a staff member of ACLEI.

155 Person may elect to be kept informed

- (1) If a person refers an allegation or information to the Minister under section 154, the Minister must ask the person to elect whether or not to be kept informed of the action taken in relation to the ACLEI corruption issue raised by the allegation or information.
- (2) Subsection (1) does not apply if the person refers the allegation or information anonymously.
- (3) If the person fails to make an election when asked to do so, the person is taken to have elected not to be kept informed of the action taken in relation to the ACLEI corruption issue.
- (4) If the person elects to be kept informed of the action taken in relation to the ACLEI corruption issue, the person may revoke the election at any time by notice to:
 - (a) the Minister; or
 - (b) the person conducting the investigation of the issue.

Division 2—How Minister deals with ACLEI corruption issues

156 How Minister may deal with ACLEI corruption issues

Application of section

- (1) This section applies if:
 - (a) the Integrity Commissioner, or another staff member of ACLEI, notifies the Minister of an ACLEI corruption issue under section 153; or
 - (b) a person refers an allegation, or information, that raises an ACLEI corruption issue to the Minister under section 154; or
 - (c) the Minister otherwise becomes aware of an ACLEI corruption issue.

How Minister may deal with ACLEI corruption issue

- (2) The Minister may:
 - (a) refer the ACLEI corruption issue to the Integrity Commissioner for investigation under Division 3; or
 - (b) authorise a person to conduct a special investigation of the ACLEI corruption issue under Division 4; or
 - (c) decide to take no further action in relation to the ACLEI corruption issue.
- (3) The Minister must not refer the ACLEI corruption issue to the Integrity Commissioner for investigation under Division 3 if the ACLEI corruption issue relates to the conduct of a person who is a member of the staff referred to in section 197 (persons appointed or employed under the *Public Service Act 1999*).
- (4) The Minister may, at any time, reconsider how the ACLEI corruption issue should be dealt with.
- (5) If the Minister decides:

Part 12 Dealing with ACLEI corruption issues

Division 2 How Minister deals with ACLEI corruption issues

Section 156

- (a) to authorises a person under paragraph (2)(b) to conduct a special investigation of the ACLEI corruption issue under Division 4; or
- (b) to take no further action in relation to the ACLEI corruption issue;

the Minister must notify the Integrity Commissioner of the decision.

Integrity Commissioner to pass on information and documents to special investigator

- (6) The Integrity Commissioner must, as soon as practicable after being notified of an authorisation under paragraph (2)(b), give the person authorised to conduct the special investigation any information or document that:
 - (a) relates to the ACLEI corruption issue; and
 - (b) is in the possession, or under the control, of the Integrity Commissioner.

Note: Under subsection (9), the Integrity Commissioner has a continuing obligation to pass on information that the Integrity Commissioner becomes aware of and that relates to the ACLEI corruption issue.

- (7) Subsection (6) has effect subject to section 152 (which deals with section 149 certified information).
- (8) The Integrity Commissioner may give the original or a copy of a document.
- (9) If:
 - (a) the Minister notifies the Integrity Commissioner that the Minister has authorised a person under paragraph (2)(b) to conduct a special investigation of an ACLEI corruption issue; and
 - (b) the Integrity Commissioner becomes aware of information that is relevant to the issue; and
 - (c) the person conducting the investigation does not already have the information;

the Integrity Commissioner must give the information to the person.

- (10) Subsection (9) has effect subject to section 152 (which deals with section 149 certified information).

157 Qualification to conduct special investigation

The Minister must not authorise a person under paragraph 156(2)(b) to conduct a special investigation under Division 4 unless the person:

- (a) is enrolled as a legal practitioner; and
- (b) has been enrolled as a legal practitioner for at least 5 years.

158 Counsel assisting special investigator

The Minister may appoint a legal practitioner to assist a special investigator as counsel in relation to a special investigation.

Division 3—Investigation by Integrity Commissioner

159 Application of Division

This Division applies if the Minister refers an ACLEI corruption issue to the Integrity Commissioner for investigation under this Division.

160 Investigation and investigative powers

- (1) Subject to subsections (2), (3) and (4), Division 1 of Part 6 (other than section 49) and Parts 9 and 10 apply in relation to the investigation of the ACLEI corruption issue by the Integrity Commissioner as if the following substitutions were made:

Substitutions to be made		
Item	For a reference to...	substitute a reference to...
1	a corruption issue	an ACLEI corruption issue
2	a staff member of a law enforcement agency	a staff member of ACLEI
3	a law enforcement agency	ACLEI
4	a report under section 54	a report under section 162

- (2) The provisions referred to in subsection (1) apply in relation to the investigation with such further modifications as are specified in the regulations.
- (3) For the purposes of applying section 86 in relation to the investigation of the ACLEI corruption issue by the Integrity Commissioner, subsection 86(3) applies as if subparagraph 86(3)(c)(i) were omitted.
- (4) Subsections 144(2), (5) and (6) and 145(2), (5) and (6) do not apply in relation to the investigation of the ACLEI corruption issue.
- (5) If the Integrity Commissioner proposes to take action under section 142 or 143 in relation to the investigation of the ACLEI

corruption issue, the Integrity Commissioner need not consult a person under subsection 144(3) or (4), or inform a person under subsection 145(3) or (4), if doing so would be likely to prejudice:

- (a) the investigation of the issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (6) If the Integrity Commissioner does not consult or inform a person because of subsection (5), the Integrity Commissioner must:
- (a) inform the Minister that the person has not been consulted or informed; and
 - (b) give the Minister the Integrity Commissioner's reasons for not consulting or informing the person.

161 Keeping Minister, and person who referred ACLEI corruption issue, informed of progress of the investigation

- (1) The Integrity Commissioner must take such steps as the Integrity Commissioner considers reasonable to keep the Minister informed of the progress of the investigation of the ACLEI corruption issue.
- (2) If:
 - (a) a person refers the allegation, or information, that raises the ACLEI corruption issue to the Minister under section 154; and
 - (b) the Integrity Commissioner investigates the issue; and
 - (c) the person elects under section 155 to be kept informed of the action taken in relation to the issue and has not revoked the election;

the Integrity Commissioner must take such steps as the Integrity Commissioner considers reasonable to keep the person informed of the progress of the investigation of the issue.

Section 162

162 Report on investigation

Report and its contents

- (1) After completing the investigation of the ACLEI corruption issue, the Integrity Commissioner must prepare a report on the investigation.
- (2) The report must set out:
 - (a) the Integrity Commissioner's findings on the ACLEI corruption issue; and
 - (b) the evidence and other material on which those findings are based; and
 - (c) any action that the Integrity Commissioner has taken, or proposes to take, in relation to the issue.

This subsection has effect subject to subsections (4), (5) and (6).

Note: See section 51 (as applied by section 160) for the need for the Integrity Commissioner to give certain people an opportunity to be heard before including critical statements in a report.

- (3) Without limiting paragraph (2)(c), the action that the Integrity Commissioner may take in relation to the ACLEI corruption issue includes:
 - (a) taking action in relation to a staff member of ACLEI with a view to the staff member improving his or her performance; or
 - (b) terminating:
 - (i) the secondment to ACLEI; or
 - (ii) the engagement as consultant to ACLEI; orof a staff member of ACLEI; or
 - (c) taking action to rectify or mitigate the effects of the conduct of a staff member of ACLEI; or
 - (d) adopting measures to remedy deficiencies in policy or practice that facilitated:
 - (i) an unsuitable person becoming a staff member of ACLEI; or
 - (ii) a staff member of ACLEI engaging in corrupt conduct; or

- (iii) the failure to detect corrupt conduct engaged in by a staff member of ACLEI.

Section 149 certified information and sensitive information

- (4) The Integrity Commissioner must exclude section 149 certified information from the report if one or more public hearings were held in the investigation to which the report relates.

Note: Under section 203, the report must be laid before each House of the Parliament.

- (5) The Integrity Commissioner may exclude information from the report if the Integrity Commissioner is satisfied that:
 - (a) the information is sensitive information or section 149 certified information; and
 - (b) it is desirable in the circumstances to exclude the information from the report.
- (6) In deciding whether to exclude information from the report prepared under subsection (5), the Integrity Commissioner must seek to achieve an appropriate balance between:
 - (a) the public interest that would be served by including the information in the report; and
 - (b) the prejudicial consequences that might result from including the information in the report.

Supplementary report

- (7) If the Integrity Commissioner excludes information from a report prepared under subsection (4) or (5), the Integrity Commissioner must prepare a supplementary report that sets out:
 - (a) the information; and
 - (b) the reasons for excluding the information from the report prepared under subsection (4) or (5).

163 Integrity Commissioner to give report to Minister

The Integrity Commissioner must give the Minister:

- (a) the report prepared under subsection 162(1); and

Section 164

- (b) if a supplementary report is prepared under subsection 162(7) in relation to the investigation—the supplementary report.

Note: Section 203 provides that the Minister must lay a copy of the report prepared under subsection 162(1) before each House of the Parliament if a public hearing has been held in the course of the investigation to which the report relates. The Minister is not required, however, to lay a copy of a supplementary report under subsection 162(7) before each House of the Parliament.

164 Advising person who referred allegation or information about the outcome of the investigation

- (1) If a person:
- (a) refers an allegation, or information, that raises an ACLEI corruption issue under section 154; and
 - (b) elects under section 155 to be kept informed of the action taken in relation to the ACLEI corruption issue and has not revoked the election;
- the Integrity Commissioner must advise the person who referred the allegation or information of the outcome of the investigation of the ACLEI corruption issue.
- (2) However, the Integrity Commissioner need not advise the person if the Integrity Commissioner is satisfied that doing so is likely to prejudice:
- (a) the investigation of the ACLEI corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (3) If the Integrity Commissioner advises the person who referred the allegation or information that raises the ACLEI corruption issue, the Integrity Commissioner may do so by giving the person a copy of the whole or a part of the report prepared in relation to the investigation under subsection 162(1).
- (4) The Integrity Commissioner:
- (a) must not disclose section 149 certified information to the person if the disclosure of the information to the person would be contravene the certificate issued under section 149; and

- (b) may exclude information from the advice if the Integrity Commissioner is satisfied that:
 - (i) the information is sensitive information; and
 - (ii) it is desirable in the circumstances to exclude the information from the advice.
- (5) In deciding whether to exclude information from the advice under paragraph (4)(b), the Integrity Commissioner must seek to achieve an appropriate balance between:
 - (a) the person's interest in having the information included in the advice; and
 - (b) the prejudicial consequences that might result from including the information in the advice.

165 Advising person whose conduct is investigated of outcome of the investigation

- (1) If the Integrity Commissioner investigates an ACLEI corruption issue that relates to a person who is, or has been, a staff member of ACLEI, the Integrity Commissioner may advise the person of the outcome of the investigation.
- (2) Without limiting subsection (1), the Integrity Commissioner may advise the person by giving the person a copy of the whole or a part of the report prepared in relation to the investigation under subsection 162(1).
- (3) If the Integrity Commissioner advises the person, the Integrity Commissioner:
 - (a) must not disclose section 149 certified information to the person if the disclosure of the information to the person would contravene the certificate issued under section 149; and
 - (b) may exclude information from the advice if the Integrity Commissioner is satisfied that:
 - (i) the information is sensitive information; and
 - (ii) it is desirable in the circumstances to exclude the information from the advice.

Section 165

- (4) In deciding whether to exclude information from the advice under paragraph (3)(b), the Integrity Commissioner must seek to achieve an appropriate balance between:
 - (a) the person's interest in having the information included in the advice; and
 - (b) the prejudicial consequences that might result from including the information in the advice.

Division 4—Special investigations

166 Application of Part

This Part applies if the Minister authorises a person (the *special investigator*) to conduct a special investigation of an ACLEI corruption issue under this Division.

167 Investigation and investigative powers

- (1) Subject to subsections (2), (3) and (4), Division 1 of Part 6 (other than section 49) and Parts 9 and 10 apply in relation to the investigation of the ACLEI corruption issue by the special investigator as if the following substitutions were made:

Substitutions to be made		
Item	For a reference to...	substitute a reference to...
1	the Integrity Commissioner	a special investigator
2	a corruption issue	an ACLEI corruption issue
3	a staff member of a law enforcement agency	a staff member of ACLEI
4	a law enforcement agency	ACLEI
5	a report under section 54	a report under section 169

- (2) The provisions referred to in subsection (1) apply in relation to the investigation with such further modifications as are specified in the regulations.
- (3) For the purposes of applying section 86 in relation to the investigation of the ACLEI corruption issue by the special investigator, subsection 86(3) applies as if subparagraph 86(3)(c)(i) were omitted.
- (4) Subsections 144(2), (5) and (6) and 145(2), (5) and (6) do not apply to the investigation of the ACLEI corruption issue by the special investigator.

Section 168

- (5) If the special investigator proposes to take action under section 142 or 143 in relation to the investigation of the ACLEI corruption issue, the special investigator need not consult a person under subsection 142(3) or (4), or inform a person under subsection 145(3) or (4), if doing so would be likely to prejudice:
 - (a) the investigation of the ACLEI corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (6) If a special investigator does not consult or inform a person because of subsection (5), the special investigator must:
 - (a) inform the Minister that the person has not been consulted or informed; and
 - (b) give the Minister the Integrity Commissioner's reasons for not consulting or informing the person.

168 Keeping Minister, and person who referred ACLEI corruption issue, informed of progress of the investigation

- (1) The special investigator must take such steps as the special investigator considers reasonable to keep the Minister informed of the progress of the special investigation of the ACLEI corruption issue.
- (2) If:
 - (a) a person refers to the Minister an allegation, or information, that raises an ACLEI corruption issue under section 154; and
 - (b) a special investigator investigates the issue; and
 - (c) the person elects under section 155 to be kept informed of the action taken in relation to the issue and has not revoked the election;the special investigator must take such steps as the special investigator considers reasonable to keep the person informed of the progress of the investigation of the issue.

169 Report on investigation

Report and its contents

- (1) After completing the special investigation of the ACLEI corruption issue, the special investigator must prepare a report on the special investigation.
- (2) The report must set out:
 - (a) the special investigator's findings on the ACLEI corruption issue; and
 - (b) the evidence and other material on which those findings are based; and
 - (c) any recommendations to the Minister or Integrity Commissioner that the special investigator thinks fit to make and, if recommendations are made, the reasons for those recommendations.

This subsection has effect subject to subsections (4), (5) and (6).

Note: See section 51 (as applied by section 167) for the need for the special investigator to give certain people an opportunity to be heard before including critical statements in a report.

- (3) Without limiting paragraph (2)(c), the special investigator may recommend that the Integrity Commissioner consider:
 - (a) taking action in relation to a staff member of ACLEI with a view to the staff member improving his or her performance; or
 - (b) terminating the employment, or the secondment to ACLEI, of a staff member of ACLEI; or
 - (c) taking action to rectify or mitigate the effects of the conduct of a staff member of ACLEI; or
 - (d) adopting measures to remedy deficiencies in policy or practice that facilitated:
 - (i) an unsuitable person becoming a staff member of ACLEI; or
 - (ii) a staff member of ACLEI engaging in corrupt conduct; or
 - (iii) the failure to detect corrupt conduct engaged in by a staff member of ACLEI.

Section 170

Section 149 certified information and sensitive information

- (4) The special investigator must exclude section 149 certified information from the report if one or more public hearings were held in relation to the investigation to which the report relates.

Note: Under section 203, the report must be laid before each House of the Parliament.

- (5) The special investigator may exclude information from the report if the special investigator is satisfied that:
- (a) the information is sensitive information or section 149 certified information; and
 - (b) it is desirable in the circumstances to exclude the information from the report.
- (6) In deciding whether to exclude information from the report prepared under subsection (5), the special investigator must seek to achieve an appropriate balance between:
- (a) the public interest that would be served by including the information in the report; and
 - (b) the prejudicial consequences that might result from including the information in the report.

Supplementary report

- (7) If the special investigator excludes information from a report prepared under subsection (4) or (5), the special investigator must prepare a supplementary report that sets out:
- (a) the information; or
 - (b) the reasons for excluding the information from the report prepared under subsection (4) or (5).

170 Special investigator to give report to Minister

- (1) The special investigator must give the Minister:
- (a) the report prepared under subsection 169(1); and
 - (b) if a supplementary report is prepared under subsection 169(7) in relation to the investigation—the supplementary report.

Note: Section 203 provides that the Minister must lay a copy of the report prepared under subsection 169(1) before each House of the Parliament

if a public hearing has been held in the course of the investigation to which the report relates. The Minister is not required, however, to lay a copy of a supplementary report under subsection 169(7) before each House of the Parliament.

- (2) The Minister must give a copy of the report, and the supplementary report (if any), to the Integrity Commissioner.

171 Minister may direct Integrity Commissioner to consider taking action

Minister may give direction to Integrity Commissioner

- (1) If:
- (a) the Minister authorises a person under paragraph 156(2)(b) to conduct a special investigation of the ACLEI corruption issue under Division 4; and
 - (b) the person gives the Minister the report prepared under section 169 in relation to the special investigation;
- the Minister may direct the Integrity Commissioner:
- (c) to consider whether action should be taken to terminate the appointment, or the secondment to ACLEI, of a person referred to in the report; or
 - (d) to consider whether disciplinary proceedings should be taken against a person referred to in the report.
- (2) The Integrity Commissioner must comply with a direction under subsection (1).
- (3) If the direction under subsection (1) relates to a member of the staff referred to in section 197 (persons appointed or employed under the *Public Service Act 1999*), the Integrity Commissioner must, in giving effect to the direction, also comply with:
- (a) section 15 of the *Public Service Act 1999*; and
 - (b) regulations made for the purposes of that section; and
 - (c) procedures established and directions given under that section.

Section 172

Direction is not a legislative instrument

- (4) A direction given to the Integrity Commissioner under subsection (1) is not a legislative instrument.

172 Advising person who referred allegation or information about the outcome of the investigation

- (1) If a person:
- (a) refers an allegation, or information, that raises an ACLEI corruption issue under section 154; and
 - (b) the person elects under section 155 to be kept informed of the action taken in relation to the ACLEI corruption issue and has not revoked the election;
- the special investigator must advise the person of the outcome of the special investigation.
- (2) However, the special investigator need not advise the person if the special investigator is satisfied that doing so is likely to prejudice:
- (a) the investigation of the ACLEI corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (3) If the special investigator advises the person, the special investigator may do so by giving the person a copy of the whole or a part of the report prepared in relation to the special investigation under subsection 169(1).
- (4) The special investigator:
- (a) must not disclose section 149 certified information to the person if the disclosure of the information to the person would contravene the certificate issued under section 149; and
 - (b) may exclude information from the advice if the special investigator is satisfied that:
 - (i) the information is sensitive information; and
 - (ii) it is desirable in the circumstances to exclude the information from the advice.

- (5) In deciding whether to exclude information from the advice under paragraph (4)(b), the special investigator must seek to achieve an appropriate balance between:
 - (a) the person's interest in having the information included in the advice; and
 - (b) the prejudicial consequences that might result from including the information in the advice.

173 Advising person whose conduct is investigated of outcome of the investigation

- (1) If a special investigator investigates an ACLEI corruption issue that relates to a person who is, or has been, a staff member of ACLEI, the special investigator may advise the person of the outcome of the special investigation.
- (2) Without limiting subsection (1), a special investigator may advise the person by giving the person a copy of the whole or a part of the report prepared in relation to the special investigation under subsection 169(1).
- (3) If a special investigator advises the person, the special investigator:
 - (a) must not disclose section 149 certified information to the person if the disclosure of the information to the person would contravene the certificate issued under section 149; and
 - (b) may exclude information from the advice if the special investigator is satisfied that:
 - (i) the information is sensitive information; and
 - (ii) it is desirable in the circumstances to exclude the information from the advice.
- (4) In deciding whether to exclude information from the advice under paragraph (3)(b), the special investigator must seek to achieve an appropriate balance between:
 - (a) the person's interest in having the information included in the advice; and
 - (b) the prejudicial consequences that might result from including the information in the advice.

Division 5—Staff members of ACLEI to report corrupt conduct

174 Staff members of ACLEI to report corrupt conduct

- (1) The Integrity Commissioner commits an offence if the Integrity Commissioner:
 - (a) becomes aware of an ACLEI corruption issue that relates to the conduct of a person who is, or has been, a staff member of ACLEI (other than the Integrity Commissioner himself or herself); and
 - (b) does not, as soon as practicable after becoming aware of the ACLEI corruption issue, notify the Minister of the issue in writing.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the Integrity Commissioner has reasonable grounds to believe that the Minister has already been notified of the ACLEI corruption issue.

Note: A defendant bears an evidential burden in relation to the matters in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) A person commits an offence if the person:
 - (a) is a staff member of ACLEI (other than the Integrity Commissioner); and
 - (b) becomes aware of an ACLEI corruption issue that relates to the conduct of the person who is the Integrity Commissioner; and
 - (c) does not, as soon as practicable after becoming aware of the ACLEI corruption issue, notify the Minister of the issue in writing.

Penalty: Imprisonment for 6 months.

- (4) Subsection (3) does not apply if the person has reasonable grounds to believe that the Minister has already been notified of the ACLEI corruption issue.

Section 174

Note: A defendant bears an evidential burden in relation to the matters in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

- (5) A person (the ***first person***) commits an offence if the first person:
- (a) is a staff member of ACLEI (other than the Integrity Commissioner); and
 - (b) becomes aware of an ACLEI corruption issue that relates to the conduct of another person who is, or has been, a staff member of ACLEI (other than the person who is the Integrity Commissioner); and
 - (c) does not, as soon as practicable after becoming aware of the ACLEI corruption issue, notify the Integrity Commissioner of the issue in writing.

Penalty: Imprisonment for 6 months.

- (6) Subsection (5) does not apply if the person has reasonable grounds to believe that the Integrity Commissioner, has already been notified of the ACLEI corruption issue.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

- (7) A notification given under this section is not a legislative instrument.

Part 13—Administrative provisions

Division 1—Appointment etc. of Integrity Commissioner

175 Appointment of Integrity Commissioner

Appointment by Governor-General

- (1) The Integrity Commissioner is to be appointed by the Governor-General by written instrument.

Integrity Commissioner to be judge or legal practitioner

- (2) A person must not be appointed as the Integrity Commissioner unless he or she:
 - (a) is a Judge; or
 - (b) is enrolled as a legal practitioner and has been enrolled as a legal practitioner for at least 5 years.

Note: The Integrity Commissioner can be re-appointed under this section: see subsection 33(4A) of the *Acts Interpretation Act 1901*.

Period of appointment

- (3) The Integrity Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years. The sum of the periods for which the Integrity Commissioner holds office must not exceed 5 years.

Full-time appointment

- (4) The Integrity Commissioner is to be appointed on a full-time basis.

Arrangement with Governor of State or Administrator of Territory

- (5) The Governor-General may, for the purpose of appointing to the office of the Integrity Commissioner a person who is the holder of a judicial office of a State or Territory, enter into such arrangement with the Governor of that State or the Administrator of that

Territory, as the case may be, as is necessary to secure that person's services.

- (6) An arrangement under subsection (5) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of the person to whom the arrangement relates.

Definition of Judge

- (7) In this section:

Judge means:

- (a) a Judge of the Federal Court of Australia; or
(b) a Judge of the Supreme Court of a State or Territory.

176 Judge may be appointed as Integrity Commissioner

Application of section

- (1) This section applies if a person appointed as the Integrity Commissioner is a Judge.

Effect of ceasing to be Judge

- (2) The person ceases to hold office as the Integrity Commissioner if he or she is no longer a Judge.

Judge's privileges as holder of a judicial office unaffected

- (3) The appointment of the Judge as the Integrity Commissioner and the Judge's service as the Integrity Commissioner does not affect:
- (a) his or her tenure of judicial office; or
(b) the Judge's rank, title, status, precedence, salary or annual allowances or other judicial privileges as the holder of that judicial office.
- (4) For all purposes, the Judge's service as the Integrity Commissioner is taken to be service as the holder of his or her judicial office.

Definition of Judge

- (5) In this section:
-

Section 177

Judge means:

- (a) a Judge of the Federal Court of Australia; or
- (b) a Judge of the Supreme Court of a State or Territory.

177 Acting appointment

- (1) The Minister may appoint a person to act as the Integrity Commissioner:
 - (a) during a vacancy in the office of Integrity Commissioner (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Integrity Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (2) A person may only be appointed as the acting Integrity Commissioner if he or she:
 - (a) is enrolled as a legal practitioner; and
 - (b) has been enrolled as a legal practitioner for at least 5 years.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

178 Remuneration

- (1) The Integrity Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Integrity Commissioner is to be paid the remuneration that is prescribed by the regulations.

- (2) The Integrity Commissioner is to be paid the allowances that are prescribed by the regulations.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.
- (4) If a person who is a Judge is appointed as Integrity Commissioner, the person is not, while receiving salary or annual allowance as a Judge, entitled to remuneration under this Act.

179 Leave

- (1) The Integrity Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Integrity Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

180 Outside employment

The Integrity Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's consent.

181 Other terms and conditions

A person holding office as Integrity Commissioner, other than a person who is a Judge, holds office on the terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the Governor-General.

182 Resignation

The Integrity Commissioner may resign his or her appointment by giving the Governor-General a written resignation.

Section 183

183 Termination of employment

- (1) The Governor-General may terminate the appointment of the Integrity Commissioner by reason of misbehaviour or physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the Integrity Commissioner if:
 - (a) the Integrity Commissioner becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) the Integrity Commissioner is absent from duty, except on leave, for 14 consecutive days or for 28 days in any period of 12 months; or
 - (c) the Integrity Commissioner engages, except with the Minister's consent, in paid employment outside the duties of his or her office; or
 - (d) the Integrity Commissioner fails to comply with section 184.
- (3) A reference in subsections (1) and (2) to a person holding office as Integrity Commissioner does not include a reference to a person who is a Judge.

184 Disclosure of interests

The Integrity Commissioner must give written notice to the Minister of all interests (financial or otherwise) that the Integrity Commissioner has or acquires and that could conflict with the proper performance of the Integrity Commissioner's functions.

Division 2—Appointment etc. of Assistant Integrity Commissioners

185 Appointment of Assistant Integrity Commissioners

Appointment by Governor-General

- (1) An Assistant Integrity Commissioner is to be appointed by the Governor-General by written instrument.

Assistant Integrity Commissioner to be judge or legal practitioner

- (2) A person must not be appointed as an Assistant Integrity Commissioner unless he or she:
 - (a) is a Judge; or
 - (b) is enrolled as a legal practitioner and has been enrolled as a legal practitioner for at least 5 years.

Period of appointment

- (3) An Assistant Integrity Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years. The sum of the periods for which a person holds office as an Assistant Integrity Commissioner must not exceed 5 years.

Full-time or part-time appointment

- (4) An Assistant Integrity Commissioner may be appointed on either a full-time or part-time basis.
- (5) However, a Judge may only be appointed as an Assistant Integrity Commissioner on a full-time basis.

Arrangement with Governor of State or Administrator of Territory

- (6) The Governor-General may, for the purpose of appointing to the office of an Assistant Integrity Commissioner a person who is the holder of a judicial office of a State or Territory, enter into such

Section 186

arrangement with the Governor of that State or the Administrator of that Territory, as the case may be, as is necessary to secure that person's services.

- (7) An arrangement under subsection (6) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of the person to whom the arrangement relates.

Definition of Judge

- (8) In this section:

Judge means:

- (a) a Judge of the Federal Court of Australia; or
(b) a Judge of the Supreme Court of a State or Territory.

186 Judge may be appointed as an Assistant Integrity Commissioner

Application of section

- (1) This section applies if a person appointed as an Assistant Integrity Commissioner is a Judge.

Effect of ceasing to be Judge

- (2) The person ceases to hold office as an Assistant Integrity Commissioner if he or she is no longer a Judge.

Judge's privileges as holder of a judicial office unaffected

- (3) The appointment of the Judge as an Assistant Integrity Commissioner and the Judge's service as an Assistant Integrity Commissioner does not affect:
- (a) his or her tenure of judicial office; or
(b) the Judge's rank, title, status, precedence, salary or annual allowances or other judicial privileges as the holder of that judicial office.
- (4) For all purposes, the Judge's service as an Assistant Integrity Commissioner is taken to be service as the holder of his or her judicial office.

Definition of Judge

(5) In this section:

Judge means:

- (a) a Judge of the Federal Court of Australia; or
- (b) a Judge of the Supreme Court of a State or Territory.

187 Acting appointments

- (1) The Minister may appoint a person to act as an Assistant Integrity Commissioner:
 - (a) during a vacancy in the office of the Assistant Integrity Commissioner (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Assistant Integrity Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (2) A person may only be appointed as the acting Integrity Commissioner if he or she:
 - (a) is enrolled as a legal practitioner; and
 - (b) has been enrolled as a legal practitioner for at least 5 years.
- (3) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

188 Remuneration

- (1) An Assistant Integrity Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in

Part 13 Administrative provisions

Division 2 Appointment etc. of Assistant Integrity Commissioners

Section 189

operation, an Assistant Integrity Commissioner is to be paid the remuneration that is prescribed by the regulations.

- (2) An Assistant Integrity Commissioner is to be paid the allowances that are prescribed by the regulations.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.
- (4) If a person who is a Judge is appointed as an Assistant Integrity Commissioner, the person is not, while receiving salary or annual allowance as a Judge, entitled to remuneration under this Act.

189 Leave

- (1) A full-time Assistant Integrity Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time Assistant Integrity Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Integrity Commissioner may grant leave of absence to any part-time Assistant Integrity Commissioner on the terms and conditions that the Integrity Commissioner determines.

190 Outside employment

- (1) A full-time Assistant Integrity Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's consent.
- (2) A part-time Assistant Integrity Commissioner must not engage in paid employment that, in the Minister's opinion, conflicts or could conflict with the proper performance of the Assistant Integrity Commissioner's duties.

191 Other terms and conditions

A person holding office as an Assistant Integrity Commissioner, other than a person who is a Judge, holds office on the terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the Governor-General.

192 Resignation

An Assistant Integrity Commissioner may resign his or her appointment by giving the Governor-General a written resignation.

193 Termination of employment

All Assistant Integrity Commissioners

- (1) The Governor-General may terminate the appointment of an Assistant Integrity Commissioner:
 - (a) for misbehaviour or physical or mental incapacity; or
 - (b) if the Assistant Integrity Commissioner:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with creditors; or
 - (iv) makes an assignment of remuneration for their benefit; or
 - (c) if the Assistant Integrity Commissioner fails to comply with section 194.

Additional grounds (full-time Assistant Integrity Commissioners)

- (2) The Governor-General may terminate the appointment of a full-time Assistant Integrity Commissioner, if:
 - (a) the Assistant Integrity Commissioner is absent from duty, except on leave, for 14 consecutive days or for 28 days in any period of 12 months; or
 - (b) the Assistant Integrity Commissioner engages, except with the Minister's consent, in paid employment outside the duties of his or her office.

Part 13 Administrative provisions

Division 2 Appointment etc. of Assistant Integrity Commissioners

Section 194

Additional grounds (part-time Assistant Integrity Commissioners)

- (3) The Governor-General may terminate the appointment of a part-time Assistant Integrity Commissioner, if the Assistant Integrity Commissioner engages, except with the Minister's approval, in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office.
- (4) A reference in subsections (1) and (2) to a person holding office as an Assistant Integrity Commissioner does not include a reference to a person who is a Judge.

194 Disclosure of interests

An Assistant Integrity Commissioner must give written notice to the Minister of all interests (financial or otherwise) that the Assistant Integrity Commissioner has or acquires and that could conflict with the proper performance of the Assistant Integrity Commissioner's duties.

Division 3—The Australian Commission for Law Enforcement Integrity

195 Establishment

- (1) The Australian Commission for Law Enforcement Integrity (ACLEI) is established by this section.
- (2) ACLEI consists of the Integrity Commissioner, any Assistant Integrity Commissioner and the staff referred to in section 197.

196 Function

The function of ACLEI is to assist the Integrity Commissioner in performing the Integrity Commissioner's functions.

Note: See section 15 for the functions of the Integrity Commissioner.

197 Staff

- (1) The staff of ACLEI are to be persons appointed or employed under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Integrity Commissioner and the APS employees assisting the Integrity Commissioner together constitute a Statutory Agency; and
 - (b) the Integrity Commissioner is the Head of that Statutory Agency.

198 Engagement of consultants

- (1) The Integrity Commissioner may engage persons having suitable qualifications and experience as consultants to ACLEI.
- (2) A person may only be engaged for a period of up to 2 years. However, a person's contract may be extended beyond 2 years for the sole purpose of completing a particular task or project begun in the initial 2 year period.

Section 199

- (3) Other terms and conditions of appointment are to be determined by the Integrity Commissioner.

199 Secondment of persons to assist Integrity Commissioner

Police officers

- (1) The Integrity Commissioner may make an arrangement with:
- (a) the Commissioner of the AFP; or
 - (b) the head (however described) of the police force of:
 - (i) a State or Territory; or
 - (ii) a foreign country;

under which the AFP or the police force may make its members available to the Integrity Commissioner to perform services in connection with the performance or exercise of any of the Integrity Commissioner's functions or powers.

Officers and employees

- (2) The Integrity Commissioner may make an arrangement with:
- (a) the Agency Head (within the meaning of the *Public Service Act 1999*) of a Commonwealth government agency (other than the AFP); or
 - (b) the head of an integrity agency for a State or Territory; or
 - (c) the head of an overseas government agency that has similar functions to an integrity agency for a State or Territory;

under which the agency concerned may make its officers or employees available to the Integrity Commissioner to perform services in connection with the performance or exercise of any of the Integrity Commissioner's functions or powers.

- (3) A person made available under an arrangement under subsection (1) or (2) may only be engaged for a period of up to 2 years. However, a person's engagement may be extended beyond 2 years for the sole purpose of completing a particular task or project begun in the initial 2 year period.
- (4) An arrangement under subsection (1) or (2) may provide for the Commonwealth to reimburse a State or Territory, or the

government of a foreign country, with respect to the services of a person or persons to whom the arrangement relates.

200 Counsel assisting Integrity Commissioner

The Integrity Commissioner may appoint a legal practitioner to assist the Integrity Commissioner as counsel:

- (a) generally; or
- (b) in relation to a particular investigation of a corruption issue or ACLEI corruption issue; or
- (c) in relation to a public inquiry.

Division 4—Public reporting

201 Annual report

- (1) The Integrity Commissioner must give the Minister, for presentation to the Parliament, a report (the *annual report*) on the performance of the Integrity Commissioner's functions during each financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) The annual report for the financial year must include the following:
- (a) the prescribed particulars of:
 - (i) corruption issues notified to the Integrity Commissioner under section 19 during the financial year; and
 - (ii) corruption issues raised by allegations or information referred to the Integrity Commissioner under sections 18 and 23 during that year; and
 - (iii) corruption issues dealt with by the Integrity Commissioner on his or her own initiative during that year; and
 - (iv) corruption issues investigated by the Integrity Commissioner during that year; and
 - (v) corruption issues that the Integrity Commissioner referred to a government agency for investigation during that year; and
 - (vi) ACLEI corruption issues investigated during that year; and
 - (vii) certificates issued under section 149 during that year;
 - (b) a description of investigations conducted by the Integrity Commissioner during the financial year that the Integrity Commissioner considers raise significant issues or developments in law enforcement;
 - (c) a description, which may include statistics, of any patterns or trends, and the nature and scope, of corruption in:
 - (i) law enforcement agencies; and

Section 202

- (ii) other Commonwealth government agencies that have law enforcement functions;
that have come to the Integrity Commissioner's attention during that year in the performance of his or her functions;
- (d) any recommendations for changes to:
 - (i) the laws of the Commonwealth; or
 - (ii) administrative practices of Commonwealth government agencies;that the Integrity Commissioner, as a result of performing his or her functions during that year, considers should be made;
- (e) the extent to which investigations by the Integrity Commissioner have resulted in the prosecution in that year of persons for offences;
- (f) the extent to which investigations by the Integrity Commissioner have resulted in confiscation proceedings in that year;
- (g) details of the number and results of:
 - (i) applications made to the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for orders of review in respect of matters arising under this Act; and
 - (ii) other court proceedings involving the Integrity Commissioner;being applications and proceedings that were determined, or otherwise disposed of, during that year.

202 Inter-Governmental Committee comments on annual report

If an annual report under section 201 mentions the ACC, the Minister must:

- (a) give a copy of the annual report to the Inter-Governmental Committee; and
- (b) if the Inter-Governmental Committee gives the Minister comments in writing in relation to the annual report—cause a copy of those comments to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives those comments.

Section 203

203 Reports on investigations and public inquiries

- (1) If:
 - (a) both:
 - (i) the Integrity Commissioner gives the Minister a report prepared under subsection 54(1) or 162(1); and
 - (ii) one or more public hearings were held in the course of the investigation to which the report relates; or
 - (b) the Integrity Commissioner gives the Minister a report prepared under subsection 73(1); or
 - (c) both:
 - (i) a special investigator gives the Minister a report prepared under subsection 169(1); and
 - (ii) one or more public hearings were held in the course of the special investigation to which the report relates;

the Minister must cause the report to be laid before each House of Parliament within 15 sitting days of that House after its receipt by the Minister.
- (2) Before the report is laid before each House of Parliament, the Minister must remove information from the report if the Minister is of the view that its inclusion may:
 - (a) endanger a person's life or physical safety; or
 - (b) prejudice proceedings brought as a result of:
 - (i) a corruption investigation or public inquiry; or
 - (ii) an investigation of a corruption issue that the Integrity Commissioner manages or oversees; or
 - (c) compromise operational activities, or methodologies, of ACLEI or a law enforcement agency.
- (3) To avoid doubt, the Minister is not required by subsection (1) to cause a supplementary report prepared under subsection 54(7), 73(6), 162(7) or 169(7) to be laid before each House of Parliament.

204 Special reports

Integrity Commissioner may give Minister special reports

- (1) The Integrity Commissioner may, from time to time, give the Minister, for presentation to the Parliament, a special report on:
 - (a) the operations of the Integrity Commissioner for a part of a financial year; or
 - (b) any matter relating to, or arising in connection with, the performance of the Integrity Commissioner's functions, or the exercise of the Integrity Commissioner's powers, under this Act.
- (2) If the Integrity Commissioner gives a special report to the Minister under subsection (1), the Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

Opinion or finding critical of a government agency or person

- (3) The Integrity Commissioner must not disclose information in a special report prepared under subsection (1) that includes an opinion or finding that is critical of a government agency or person (either expressly or impliedly) unless the Integrity Commissioner has taken the action required by subsection (4) or (5) before disclosing the information.
- (4) If the opinion or finding is critical of a government agency, the Integrity Commissioner must give the head of the agency:
 - (a) a statement setting out the opinion or finding; and
 - (b) a reasonable opportunity to appear before him or her and to make submissions in relation to the opinion or finding.
- (5) If the opinion or finding is critical of a person, the Integrity Commissioner must give the person:
 - (a) a statement setting out the opinion or finding; and
 - (b) a reasonable opportunity to appear before him or her and to make submissions in relation to the opinion or finding.
- (6) The submissions may be made orally or in writing.

Section 205

- (7) The head of a government agency may:
 - (a) appear before the Integrity Commissioner personally; or
 - (b) authorise another person to appear before the Integrity Commissioner on his or her behalf.
- (8) A person referred to in subsection (5):
 - (a) may appear before the Integrity Commissioner personally; or
 - (b) may, with the Integrity Commissioner's approval, be represented by another person.

205 Inter-Governmental Committee comments on special report in relation to ACC

If a special report under section 204 relates to the ACC, the Minister must:

- (a) give a copy of the report to the Inter-Governmental Committee; and
- (b) if the Inter-Governmental Committee gives the Minister comments, in writing, in relation to the report—cause a copy of those comments to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

206 Contents of annual or special report

- (1) An annual report under section 201, or a special report under section 204, must not include section 149 certified information.
- (2) The Integrity Commissioner may exclude information from an annual report under section 201, or a special report under section 204, if the Integrity Commissioner is satisfied that:
 - (a) the information is sensitive information; and
 - (b) it is desirable in the circumstances to exclude the information from the report.
- (3) In deciding whether to exclude information under subsection (2), the Integrity Commissioner must seek to achieve an appropriate balance between:

Section 206

- (a) the public interest that would be served by including the information in the report; and
- (b) the prejudicial consequences that might result from including the information in the report.

Division 5—Confidentiality requirements

207 Confidentiality requirements for ACLEI staff

- (1) A person who is, or has been, a staff member of ACLEI commits an offence if:
 - (a) the person (either directly or indirectly and either while he or she is, or after he or she ceases to be, a staff member of ACLEI):
 - (i) makes a record of any information; or
 - (ii) divulges or communicates any information; and
 - (b) the person acquired the information:
 - (i) because of his or her being a staff member of ACLEI; or
 - (ii) in the course of the carrying out his or her duties as a staff member of ACLEI; and
 - (c) the information was disclosed or obtained under the provisions of, or for the purposes of, this Act.

Penalty: Imprisonment for 12 months or 60 penalty units, or both.

- (2) Subsection (1) has effect subject to sections 208 and 209.
- (3) To avoid doubt, if a corruption issue is investigated jointly by the Integrity Commissioner and a government agency, any information that a staff member of ACLEI acquires in the course of participating the joint investigation is taken:
 - (a) to have been acquired by the staff member because of his or her being a staff member of ACLEI; and
 - (b) to have been disclosed or obtained under the provisions of, or for the purposes of, this Act.

208 Exceptions to confidentiality requirements

Purposes connected with Integrity Commissioner's functions and powers

- (1) Subsection 207(1) does not prevent a person from making a record of information, or divulging or communicating information, if the person:
- (a) acquired the information in the performance of his or her duties as a staff member of ACLEI; and
 - (b) makes the record, or divulges or communicates the information:
 - (i) for the purposes of a corruption investigation; or
 - (ii) for purposes otherwise connected with the exercise of the powers, or the performance of the functions, of the Integrity Commissioner under this Act.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

- (2) Without limiting subsection (1), subsection 207(1) does not prevent a person from communicating information to another person if:
- (a) the person acquired the information in the performance of his or her duties as a staff member of ACLEI; and
 - (b) a provision of this Act requires or permits the Integrity Commissioner to communicate that information to the other person.

Note 1: Various provisions in this Act require information sharing in relation to a corruption issue: see, for example, sections 44, 50 and 70.

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

Giving information to relevant agency

- (3) Subsection 207(1) does not prevent the Integrity Commissioner from disclosing information to the following heads of agencies:
- (a) the Commonwealth Ombudsman;
 - (b) an Ombudsman of a State or Territory;
 - (c) the head of a law enforcement agency;

Section 208

- (d) the head of a police force of a State or Territory;
- (e) the head of an integrity agency for a State or Territory;
- (f) the head of another government agency;

if the Integrity Commissioner is satisfied that, having regard to the functions of the agency concerned, it is appropriate to do so.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

Integrity Commissioner to be satisfied that confidentiality regime in place

- (4) If the Integrity Commissioner proposes to disclose information to a person under subsection (3), the Integrity Commissioner must satisfy himself or herself that a law of the Commonwealth, a State or Territory makes provision corresponding to the provision made by section 207 and this section with respect to the confidentiality of information acquired by that person.

Disclosure required by another Commonwealth law

- (5) Subsection 207(1) does not prevent a person from disclosing information if the disclosure is required under another law of the Commonwealth.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5): see subsection 13.3(3) of the *Criminal Code*.

Disclosure to particular person

- (6) The Integrity Commissioner may disclose information to a particular person if the Integrity Commissioner is satisfied that it is necessary to do so in order to protect the person's life or physical safety.

Section 149 certified information

- (7) The Integrity Commissioner must not disclose information to a person under subsection (3) or (6) if:
 - (a) the information is section 149 certified information; and
 - (b) the disclosure of the information to the person would contravene the certificate issued under section 149.

209 Disclosure by Integrity Commissioner in public interest etc.

- (1) If the Integrity Commissioner is satisfied that it is in the public interest to do so, the Integrity Commissioner may disclose information to the public, or a section of the public, about:
 - (a) the performance of the Integrity Commissioner's functions;
or
 - (b) the exercise of the Integrity Commissioner's powers; or
 - (c) an investigation of a corruption issue conducted by the Integrity Commissioner; or
 - (d) a public inquiry conducted by the Integrity Commissioner.
- (2) Subsection (1) has effect:
 - (a) subject to subsections (3) and (4) and section 210; and
 - (b) despite any other provision of this Act.
- (3) The Integrity Commissioner must not disclose under subsection (1) information that is section 149 certified information.
- (4) In deciding whether to disclose under subsection (1) information that the Integrity Commissioner is satisfied is sensitive information, the Integrity Commissioner must seek to achieve an appropriate balance between:
 - (a) the public interest that would be served by disclosing the information; and
 - (b) the prejudicial consequences that might result from disclosing the information.

210 Opportunity to be heard

Opinion or finding critical of a government agency or person

- (1) The Integrity Commissioner must not disclose information under section 209 in relation to an investigation of a corruption issue under this Act that includes an opinion or finding that is critical of a government agency or person (either expressly or impliedly) unless the Integrity Commissioner has taken the action required by subsection (2) or (3) before disclosing the information.

Section 211

Opportunity to appear and make submissions

- (2) If the opinion or finding is critical of a government agency, the Integrity Commissioner must give the head of the agency:
 - (a) a statement setting out the opinion or finding; and
 - (b) a reasonable opportunity to appear before him or her and to make submissions in relation to the opinion or finding.
- (3) If the opinion or finding is critical of a person, the Integrity Commissioner must give the person:
 - (a) a statement setting out the opinion or finding; and
 - (b) a reasonable opportunity to appear before him or her and to make submissions in relation to the opinion or finding.
- (4) The submissions may be made orally or in writing.
- (5) The head of a government agency may:
 - (a) appear before the Integrity Commissioner personally; or
 - (b) authorise another person to appear before the Integrity Commissioner on his or her behalf.
- (6) A person referred to in subsection (3):
 - (a) may appear before the Integrity Commissioner personally; or
 - (b) may, with the Integrity Commissioner's approval, be represented by another person.

211 ACLEI staff generally not compellable in court proceedings

- (1) This section applies to:
 - (a) proceedings before a court (whether exercising federal jurisdiction or not); and
 - (b) proceedings before any tribunal, authority or person having power to require the production of documents or the answering of questions.
- (2) A person who is, or has been, a staff member of ACLEI is not compellable in any proceedings to which this section applies:
 - (a) to disclose any information that:
 - (i) he or she acquired because of his or her being or having been a staff member of ACLEI; and

Section 211

- (ii) was disclosed or obtained under the provisions of, or for the purposes of, this Act; or
- (b) to produce any document that:
 - (i) has come into his or her custody or control in the course of, or because of, the performance of his or her duties under this Act; and
 - (ii) was produced under the provisions of, or for the purposes of, this Act.
- (3) Subsection (1) does not apply to a proceeding if:
 - (a) any of the following is a party to the proceedings in his or her official capacity:
 - (i) the Integrity Commissioner;
 - (ii) a delegate of the Integrity Commissioner;
 - (iii) a person authorised by the Integrity Commissioner to exercise a power or perform a function under this Act; or
 - (b) the proceeding is brought for the purposes of carrying into effect a provision of this Act; or
 - (c) the proceeding is a prosecution, civil penalty proceeding or confiscation proceeding brought as a result of:
 - (i) a corruption investigation or public inquiry; or
 - (ii) an investigation of a corruption issue that the Integrity Commissioner manages or oversees.
- (4) In this section:
produce includes permit access to, and **production** has a corresponding meaning.

Section 212

Part 14—Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity

212 Definitions

In this Part:

Committee means the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity for the time being constituted under this Part.

member means a member of the Committee.

213 Joint Committee on the Australian Commission for Law Enforcement Integrity

- (1) As soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of the Parliament to be known as the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity is to be appointed according to the practice of the Parliament with reference to the appointment of members to serve on joint select committees of both Houses of the Parliament.
- (2) The Committee shall consist of 10 members, namely, 5 members of the Senate appointed by the Senate, and 5 members of the House of Representatives appointed by that House.
- (3) A member of the Parliament is not eligible for appointment as a member of the Committee if he or she is:
 - (a) a Minister; or
 - (b) the President of the Senate; or
 - (c) the Speaker of the House of Representatives; or
 - (d) the Deputy President and Chair of Committees of the Senate or the Chair of Committees of the House of Representatives.

Section 214

- (4) A member ceases to hold office:
 - (a) when the House of Representatives expires by the passing of time or is dissolved; or
 - (b) if he or she becomes the holder of an office specified in any of the paragraphs of subsection (3); or
 - (c) if he or she ceases to be a member of the House of the Parliament by which he or she was appointed; or
 - (d) if he or she resigns his or her office as provided by subsection (5) or (6).
- (5) A member appointed by the Senate may resign his or her office by writing signed by him or her and delivered to the President of the Senate.
- (6) A member appointed by the House of Representatives may resign his or her office by writing signed by him or her and delivered to the Speaker of that House.
- (7) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the Committee appointed by that House.

214 Powers and proceedings of the Committee

All matters relating to the powers and proceedings of the Committee are to be determined by resolution of both Houses of the Parliament.

215 Duties of the Committee

- (1) The Committee has the following duties:
 - (a) to monitor and review the Integrity Commissioner's performance of his or her functions;
 - (b) to report to both Houses of the Parliament, with such comments as it thinks fit, on any matter:
 - (i) connected with the performance of the Integrity Commissioner's functions; or
 - (ii) relating to ACLEI;

Section 216

that the Committee considers should be directed to the attention of Parliament;

(c) to examine:

- (i) each annual report prepared by the Integrity Commissioner under section 201; and
- (ii) any special report prepared by the Integrity Commissioner under section 204;

and report to the Parliament on any matter appearing in, or arising out of, any such annual report or special report;

(d) to examine trends and changes in:

- (i) law enforcement in so far as they relate to corruption; and
- (ii) corruption generally in, or the integrity of staff members of, Commonwealth government agencies with a law enforcement function;

and report to both Houses of the Parliament on any change that the Committee thinks desirable:

- (iii) to the Integrity Commissioner's functions or powers; or
- (iv) to the procedures followed by the Integrity Commissioner; or
- (v) to ACLEI's structure;

(e) to inquire into any question in connection with the Committee's duties that is referred to it by either House of the Parliament, and to report to that House upon that question.

(2) Subsection (1) does not authorise the Committee:

- (a) to investigate a corruption issue or an ACLEI corruption issue; or
- (b) to reconsider the Integrity Commissioner's decisions or recommendations in relation to a particular corruption issue or ACLEI corruption issue; or
- (c) to reconsider a special investigator's decisions or recommendations in relation to an ACLEI corruption issue.

216 Disclosure to Committee by Integrity Commissioner

(1) Subject to subsections (2) and (3), the Integrity Commissioner:

Section 216

- (a) must comply with a request by the Committee to give the Committee information in relation to:
 - (i) an investigation of a corruption issue; or
 - (ii) a public inquiry;that the Integrity Commissioner has conducted or is conducting; and
 - (b) must when requested by the Committee, and may at such other times as the Integrity Commissioner thinks appropriate, inform the Committee concerning the general performance of the Integrity Commissioner's functions.
- (2) The Integrity Commissioner must not comply with the request if:
- (a) the information is section 149 certified information; and
 - (b) the disclosure of the information to the Committee would contravene the certificate issued under section 149.
- (3) The Integrity Commissioner may decide not to comply with the request if the Integrity Commissioner is satisfied that:
- (a) the information is sensitive information; and
 - (b) the public interest that would be served by giving the information to the Committee is outweighed by the prejudicial consequences that might result from giving the information to the Committee.
- (4) If the Integrity Commissioner does not give information to the Committee because of subsection (3), the Committee may refer the request to the Minister.
- (5) If the Committee refers the request to the Minister, the Minister:
- (a) must determine in writing whether:
 - (i) the information is sensitive information; and
 - (ii) if it is, whether the public interest that would be served by giving the information to the Committee is outweighed by the prejudicial consequences that might result from giving the information to the Committee; and
 - (b) must provide copies of that determination to the Integrity Commissioner and the Committee; and

Section 217

- (c) must not disclose his or her reasons for determining the question referred to in subparagraph (a)(ii) in the way stated in the determination.
- (6) A determination made by the Minister under subsection (5) is not a legislative instrument.

217 Disclosure to Committee by Minister

- (1) Subject to subsections (2) and (3), the Minister must comply with a request by the Committee to give the Committee information in relation to an investigation of a corruption issue that a special investigator has conducted or is conducting.
- (2) The Minister must not comply with the request if:
 - (a) the information is section 149 certified information; and
 - (b) the disclosure of the information to the Committee would contravene the certificate issued under section 149.
- (3) The Minister may decide not to comply with the request if the Minister is satisfied that:
 - (a) the information is sensitive information; and
 - (b) the public interest that would be served by giving the information to the Committee is outweighed by the prejudicial consequences that might result from giving the information to the Committee.

218 Ombudsman to brief committee about controlled operations

- (1) At least once in each year the Ombudsman must provide a briefing to the Committee about the Integrity Commissioner's involvement in controlled operations under Part IAB of the *Crimes Act 1914* during the preceding 12 months.
- (2) For the purposes of receiving a briefing from the Ombudsman under subsection (1), the Committee must meet in private.

Part 15—Miscellaneous

219 Delegation

Delegation to an Assistant Integrity Commissioner

- (1) The Integrity Commissioner may delegate all or any of his or her functions or powers to an Assistant Integrity Commissioner.
- (2) Subsection (1) does not apply to the power to hold a hearing for the purpose of conducting a public inquiry.

Delegation to certain staff members of ACLEI

- (3) The Integrity Commissioner may delegate all or any of his or her functions or powers to a staff member of ACLEI who is an SES employee or acting SES employee.
- (4) Subsection (3) does not apply to:
 - (a) the power to hold a hearing for the purpose of conducting a public inquiry; or
 - (b) a power under Division 1, 2 or 3 of Part 9.

Form of delegation

- (5) A delegation under this section must be in writing and signed by the Integrity Commissioner.

220 Offence of victimisation

- (1) A person commits an offence if the person causes, or threatens to cause, detriment to another person (the *victim*) on the ground that the victim, or any other person:
 - (a) has referred, or may refer, to the Integrity Commissioner an allegation, or information, that raises a corruption issue; or
 - (b) has referred, or may refer, to the Minister an allegation, or information, that raises an ACLEI corruption issue; or

Section 221

- (c) has notified, or may notify, the Integrity Commissioner of an allegation, or information, that raises an ACLEI corruption issue; or
- (d) has given, or may give, information to the Integrity Commissioner or a special investigator; or
- (e) has produced, or may produce, a document or thing to the Integrity Commissioner or a special investigator.

Penalty: Imprisonment for 2 years.

- (2) For the purpose of subsection (1), a threat may be:
 - (a) express or implied; or
 - (b) conditional or unconditional.
- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

221 Legal and financial assistance in relation to applications for administrative review

- (1) A person may apply to the Attorney-General for assistance in respect of the person's application, or proposed application, to the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act.
- (2) The Attorney-General may, if he or she is satisfied that:
 - (a) it would involve substantial hardship to the person to refuse the application; or
 - (b) the circumstances of the case are of such a special nature that the application should be granted;authorise the Commonwealth to provide the person with legal or financial assistance, determined by the Attorney-General, in respect of the person's application to the Federal Court or the Federal Magistrates Court, as the case may be.
- (3) Legal or financial assistance may be given:
 - (a) unconditionally; or

- (b) subject to such conditions as the Attorney-General determines.
- (4) An instrument that determines the conditions on which legal or financial assistance may be given is not a legislative instrument.

222 Immunity from civil proceedings

- (1) A staff member of ACLEI is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the staff member's functions, powers or duties under, or in relation to, this Act.
- (2) A person whom the Integrity Commissioner requests, in writing, to assist a staff member of ACLEI is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith for the purpose of assisting the staff member.
- (3) A special investigator is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the special investigator's functions, powers or duties under, or in relation to, this Act.
- (4) A person whom a special investigator requests, in writing, to assist the special investigator is not liable to civil proceedings in relation to an act done, or omitted to be done, in good faith for the purpose of assisting the special investigator.
- (5) If:
 - (a) information or evidence has been given to the Integrity Commissioner or a special investigator; or
 - (b) a document or thing has been produced to the Integrity Commissioner or a special investigator;a person is not liable to an action, suit or proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the information or evidence was given or the document or thing was produced.

Section 223

223 Immunities from certain State and Territory laws

The Integrity Commissioner, an Assistant Integrity Commissioner or a staff member of ACLEI is not required under, or by reason of, a law of a State or Territory:

- (a) to obtain or have a licence or permission for doing any act or thing in the exercise of his or her powers or the performance of his or her duties as the Integrity Commissioner, an Assistant Integrity Commissioner or a staff member of ACLEI; or
- (b) to register any vehicle, vessel, animal or article belonging to the Commonwealth.

223A Review of operation of Act

Undertaking the review

- (1) The Minister must cause an independent review to be undertaken of the first 3 years of the operation of this Act.

Report to Minister

- (2) The persons undertaking the review must give the Minister a written report of the review within 6 months after the end of the 3-year period.

Submissions

- (3) The review must include an opportunity for:
 - (a) persons who are, or have been, staff members of law enforcement agencies; and
 - (b) members of the public;to make written submissions on the operation of this Act.

Assistance

- (4) The Integrity Commissioner and staff members of ACLEI must, if requested to do so by the persons undertaking the review, assist them in:
 - (a) conducting the review; and

- (b) preparing the written report.

Tabling of report

- (5) The Minister must cause a copy of the report of the review to be laid before each House of the Parliament within 15 sitting days of that House.

Section not to apply if review conducted by Parliamentary committee

- (6) However, this section does not apply if a committee of one or both Houses of the Parliament (including the Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity) has reviewed the operation of this Act, or started such a review, before the end of the 3-year period.

Definition

- (7) In this section:

independent review means a review undertaken by a person or persons who, in the Minister's opinion, possess appropriate qualifications to undertake the review.

224 Regulations

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may require that information or reports that are required to be given under prescribed provisions are also to be given to prescribed persons in specified circumstances.

*[Minister's second reading speech made in—
House of Representatives on 29 March 2006
Senate on 22 June 2006]*

(37/06)
