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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**LAW ENFORCEMENT INTEGRITY COMMISSIONER (CONSEQUENTIAL
AMENDMENTS) BILL 2006**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Philip Ruddock MP)

LAW ENFORCEMENT INTEGRITY COMMISSIONER (CONSEQUENTIAL AMENDMENTS) BILL 2006

OUTLINE

The *Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006* ('the Bill') makes consequential amendments related to the establishment of the Office of the Integrity Commissioner, and the Australian Commission for Law Enforcement Integrity ('ACLEI') pursuant to the *Law Enforcement Integrity Commissioner Bill 2006* (the 'LEIC Bill'). The Office of the Integrity Commissioner will be an independent statutory office responsible for the investigation of alleged and suspected corruption within Australian Government law enforcement agencies. The Integrity Commissioner will also be provided with assistance and administrative support from ACLEI.

The objective of the LEIC Bill is to enhance the integrity of Australian Government law enforcement by providing for independent and effective external investigation of possible instances of corruption in federal law enforcement agencies. It is therefore necessary that the Integrity Commissioner be equipped with investigatory and inquiry powers that will allow the Integrity Commissioner to gather information and evidence to perform his or her functions. It is also necessary that information be passed between the Integrity Commissioner and other Commonwealth agencies lawfully, particularly where that information relates to a Commonwealth criminal offence.

Coercive and information gathering powers are contained in numerous Commonwealth Acts and are conferred on, and exercised by different Commonwealth agencies and officials. It is necessary to amend these Commonwealth Acts to provide the Integrity Commissioner with these appropriate powers.

FINANCIAL IMPACT STATEMENT

Funding was allocated both to the Attorney-General's Department and ACLEI in the 2005-06 budget. Of this, \$0.6m was allocated to Attorney-General's Department for the establishment of ACLEI and \$8.9m was allocated to ACLEI staff.

Funding for ACLEI is being held in the Attorney-General's Department's appropriations, pending establishment of the Commission.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

ACC	The Australian Crime Commission
ACC Act	<i>The Australian Crime Commission Act 2002</i>
ACLEI	The Australian Commission for Law Enforcement Integrity
ADJR Act	<i>The Administrative Decisions (Judicial Review) Act 1977</i>
AFP	The Australian Federal Police
AFP Act	<i>The Australian Federal Police Act 1979</i>
ASIO	The Australian Security Intelligence Organisation
ASIO Act	<i>The Australian Security Intelligence Organisation Act 1979</i>
Bill	The Law Enforcement Integrity Commissioner (Consequential Amendments) Bill 2006
CEO	Chief Executive Officer
FTR Act	<i>The Financial Transaction Reports Act 1988</i>
LEIC Bill	The Law Enforcement Integrity Commissioner Bill 2006
POC Act	<i>The Proceeds of Crime Act 2002</i>
SD Act	<i>The Surveillance Devices Act 2004</i>
TA Act	<i>The Taxation Administration Act 1953</i>
TI Act	<i>The Telecommunications (Interception) Act 1979</i>
TI Amendment Bill	<i>The Telecommunications (Interception) Amendment Bill 2006</i>
WP Act	<i>The Witness Protection Act 1994</i>

NOTES ON CLAUSES

Clause 1 – Short Title

Clause 1 is a formal provision to provide that the Bill may be cited as the *Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006* when passed.

Clause 2 - Commencement

Clause 2 details the commencement of each provision of the Bill. Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and the provision explaining the operation of the Schedules to the Bill) and any other provision of the Bill that is not specifically mentioned will commence on the day the Bill receives Royal Assent.

Item 2 of the table provides that items 1 to 83 of Schedule 1 are to commence at the same time as clause 3 of the LEIC Bill.

Item 3 of the table provides that item 86 of Schedule 1 commence when clause 3 of the LEIC Bill commences, however if not commenced by 1 July 2006, the provision does not commence at all.

Item 4 of the table provides that item 87 of Schedule 1 commences immediately after schedule 4 of the *Telecommunications (Interception) Amendment Act 2006* is commenced.

Item 5 of the table provides that items 88 to 92 of Schedule 1 commence when clause 3 of the LEIC Bill commences.

Item 6 of the table provides that items 93 to 95 of Schedule 1 commence when clause 3 of the LEIC Bill commences however, if Schedule 5 of the *Telecommunications (Interception) Amendment Act 2006* commences before clause 3 of the LEIC Bill, items 93 to 95 of the Bill do not commence at all.

Item 7 of the table provides that item 96 of Schedule 1 commences immediately after schedule 1 of the *Telecommunications (Interception) Amendment Act 2006* is commenced.

Item 8 of the table provides that item 97 of Schedule 1 commences when clause 3 of the LEIC Bill commences.

Clause 3 - Schedules

This Clause is a provision explaining the operation of the Schedules to the Bill and provides that each Act specified in a Schedule to the Bill is amended or repealed as set out in the Schedule and that any other item in a Schedule to the Bill has effect according to its terms.

Schedule 1 to the Bill provides for amendments to various existing Commonwealth legislation to include references to the Integrity Commissioner and ACLEI.

SCHEDULE 1 – CONSEQUENTIAL AMENDMENTS

Administrative Decisions (Judicial Review) Act 1977

Item 1 – After paragraph (e) of Schedule 2

Item 1 is an amendment to Schedule 2 of the ADJR Act to include the decisions made by the Integrity Commissioner to the classes of decisions to which section 13 of the ADJR Act does not apply. As a result, the Integrity Commissioner is not obliged to provide reasons for his or her decisions made under the LEIC Bill in relation to corruption investigations or a public inquiry. This amendment is necessary because a disclosure of the Integrity Commissioner's reasons in relation to a corruption issue may prejudice an operation by ACLEI, or another law enforcement agency, a person's right to a fair trial, or any action taken, or to be taken as a result of an investigation.

Archives Act 1983

Item 2 – After paragraph 33(1A)(b)

Item 2 is a consequential amendment to provide that any confidential information provided to the Integrity Commissioner, an ACLEI staff member or ACLEI special investigator, will be characterised as a confidential source of information for the purposes of the Archives Act. This means that the information will be a record that is exempt from being transferred to the Archives (as would be otherwise required under the Archives Act).

Australian Crime Commission Act 2002

Item 3 – Subsection 51(4) (at the end of the definition of *relevant Act*)

Item 3 is a consequential amendment to provide that the LEIC Bill is included in the definition of 'relevant Act' in the section regarding secrecy. As a result of the amendment, a person can make a record, divulge or communicate prescribed information for the purposes of notifying the Integrity Commissioner of a corruption issue, information sharing for the purpose of an investigation under the LEIC Bill, or where ACLEI follows up on action taken on a report of the Integrity Commissioner, the final report and any comments.

Australian Federal Police Act 1979

Item 4 – subsection 60A(2)

Item 4 repeals subsection 60A(2) of the AFP Act. The new subsection 60A(2) replicates the existing subsection but now it includes a reference to the LEIC Bill. The subsection prohibits people from directly or indirectly making a record of prescribed information or divulging or communicating prescribed information to another person. There are exceptions to this prohibition are where the record is made, or the information is divulged or communicated for the purpose of the AFP Act or the AFP Regulations, for the purpose of notifying the Integrity Commissioner of a corruption issue, for the purpose of sharing information for an investigation under the LEIC Bill, for the purpose of following up action taken in response to a report of the Integrity Commissioner, for any purpose in relation to the WP Act, or due to a person carrying out, performing or exercising a duty, function or power under the AFP Act, AFP Regulations, LEIC Bill or the WP Act.

Item 5 – subsection 60A(3) (definition of *prescribed information*)

This item repeals the existing provision to provide that information obtained by a person in the course of performing their duties under the LEIC Bill or the Regulations, will be deemed ‘prescribed information’ for the purposes of the Act, meaning that such information is subject to the secrecy provisions in the Act.

Australian Security Intelligence Organisation Act 1979

Item 6 – paragraph 18(3)(a)

This item repeals paragraph 18(3)(a) of the ASIO Act and replicates the provision in the same form but now includes the Integrity Commissioner, a staff member of ACLEI and an ACLEI special investigator as persons to whom ASIO may communicate certain information and intelligence. Where the ASIO Director-General is satisfied that certain information relates to the commission, or intended commission of an indictable offence, disclosure may be made to one of the prescribed bodies or persons, which also includes members and special members of the AFP and staff members of the ACC.

Item 7 – After subparagraph 18(3)(b)(v)

Item 7 amends subparagraph 18(3)(b)(v) to insert a reference to the Integrity Commissioner, a staff member of ACLEI and an ACLEI special investigator to include them within the class of persons to whom ASIO may communicate certain information and intelligence. The information or intelligence can only be communicated if the ASIO Director-General is satisfied that communication is in the national interest. Under paragraph 18(3)(b), the ASIO Director-General can also make disclosures to other prescribed bodies or persons, which include members and special members of the AFP and staff members of the ACC.

Item 8 – subsection 18(6)

To avoid doubt, item 8 is a consequential amendment to provide that for the purposes of the ASIO Act, “Integrity Commissioner” has the same meaning as the definition enclosed in the LEIC Bill.

Item 9 – subsection 18(6)

To avoid doubt, item 9 is a consequential amendment to provide that for the purposes of the ASIO Act, “Special Investigator” has the same meaning as the definition enclosed in the LEIC Bill.

Item 10 – subsection 18(6)

To avoid doubt, item 10 is a consequential amendment to provide that for the purposes of the ASIO Act, “staff member of ACLEI” has the same meaning as the definition enclosed in the LEIC Bill.

Crimes Act 1914

Items 11-29 are amendments to the controlled operation provisions in the Crimes Act.

Item 11 – subsection 3(1)

This item inserts a new definition for ‘ACLEI authorising officer’ in section 3 of the Crimes Act, which cross refers to subsection 15J (3A) of the Crimes Act which is a new subsection created by item 18 of the Bill. The new subsection defines ‘ACLEI authorising officer’ to mean the Integrity Commissioner, the Assistant Integrity Commissioner and an SES level ACLEI staff member who is authorised by the Integrity Commissioner. This amendment means that law enforcement officers will be able to apply to the Integrity Commissioner, the Assistant Integrity Commissioner or an SES level ACLEI staff member who is authorised by the Integrity Commissioner for a certificate to authorise a controlled operation.

Item 12 – subsection 3(1) (after paragraph (a) of the definition of *appropriate authorising officer*)

Item 12 amends the definition of ‘appropriate authorising officer’ in section 3 of the Crimes Act to include ACLEI authorising officers. As a result, an ACLEI authorising officer may issue a controlled operation certificate, provided that he or she is reasonably satisfied of the matters listed in section 15M of the Crimes Act.

Item 13 – subsection 3(1)

To avoid doubt, item 13 is a consequential amendment to provide that for the purposes of the Crimes Act, “Integrity Commissioner” has the same meaning as the definition enclosed in the LEIC Bill.

Item 14 – subsection 3(1) (after paragraph (b) of the definition of law enforcement officer)

Item 14 is a consequential amendment to include ACLEI staff members to the definition of ‘law enforcement officer’ in section 3 of the Crimes Act. This means that ACLEI staff members are able to participate in controlled operations.

Item 15 – subsection 3(1)

To avoid doubt, this item provides that ‘staff member of ACLEI’ has the same meaning as is provided in the LEIC Bill.

Item 16 – subparagraph 15G(1)(b)(i)

Item 16 is a consequential amendment to provide that one of the purposes of Part IAB of the Crimes Act, ‘Controlled operations for obtaining evidence about Commonwealth offences’ is to require the Integrity Commissioner to report to the Minister on requests to authorise controlled operations, and on the action taken in respect of controlled operations authorised under Part IAB. This is the same purpose as enunciated for the Commissioner of the AFP and the CEO of the ACC.

Item 17 – After paragraph 15J(2)(b)

This item amends the definition of ‘authorising officer’ in subsection 15J(2) of the Crimes Act to provide that an ‘ACLEI authorising officer’ is an ‘authorising officer’ where a controlled operation relates to the investigation of a corruption issue that concerns conduct, or possible conduct involving a serious Commonwealth offence (‘corruption issue’ has the same meaning as provided in the LEIC Bill). This means that a law enforcement officer may apply to an ACLEI authorising officer for a certificate authorising a controlled operation (provided that the other conditions are present. That is, the operation is related to the investigation of a corruption issue, and there is conduct, or possible conduct involving a serious Commonwealth offence).

Item 18 – After subsection 15J(3)

Item 18 inserts subsection 15J(3A) in the Crimes Act. It defines ‘ACLEI authorising officer’ to mean the Integrity Commissioner, the Assistant Integrity Commissioner and an SES level ACLEI staff member who is authorised by the Integrity Commissioner in writing. This means that law enforcement officers will be able to apply to the Integrity Commissioner, the Assistant Integrity Commissioner or an SES level ACLEI staff member who is authorised by the Integrity Commissioner for a certificate authorising a controlled operation.

Item 19 – After paragraph 15N(2A)(a)

Section 15N of the Crimes Act requires that persons who are not law enforcement officers, but are permitted to be involved in a controlled operation are to be identified in the certificate authorising a controlled operation. Item 19 of the Bill inserts a new paragraph 15N(2A)(aa) into the Crimes Act which will enable those persons to be identified by a false name or code in the certificate that authorises the controlled

operation, where the Integrity Commissioner holds a document that enables the person to be identified from that false name or code.

Item 20 – After subsection 150A(1)

Item 20 amends the Crimes Act to provide that any ACLEI authorising officer may terminate a controlled operation certificate that was given by him or her, or another ACLEI authorising officer. This provision is currently available to the members and special members of the AFP, and the staff members of the ACC.

Item 21 – subsection 150A(4)

Item 21 amends the Crimes Act to prescribe that where an ACLEI authorising officer terminates a controlled operation certificate, he or she must send written notice of the termination to the law enforcement officer in charge of the operation. This obligation is currently imposed on special members of the AFP and the staff members of the ACC.

Item 22 – paragraph 150A(5)(b)

Item 22 amends the Act to provide that where an ACLEI authorising officer terminates a controlled operation certificate, the written notice required to be sent to the law enforcement officer in charge of the operation must be signed by the ACLEI authorising officer who is terminating the certificate. This obligation is currently imposed on the members and special members of the AFP and the staff members of the ACC.

Item 23 – paragraph 15Q(1)(a)

Item 23 is a consequential amendment providing that ACLEI authorising officers will be required to notify the CEO of Australian Customs Service of any circumstances which may involve the Australian Customs Service dealing with illicit goods that are involved in a controlled operation. This requirement is currently imposed on AFP and ACC authorising officers.

Item 24 – After subsection 15R(1)

Item 24 amends the Crimes Act to require the Integrity Commissioner to provide the Minister with a quarterly report on controlled operations certificates granted and refused; certificates currently in force; and variations, reviews, terminations and surrenders of certificates. The quarterly reports must be given within two weeks of the end of each quarter. This is the same requirement currently imposed on the Commissioner of the AFP and the CEO of the ACC. This report must also be provided to the Ombudsman under section 15UA of the Crimes Act.

Item 25 – subsection 15T(4)

Section 15T of the Crimes Act requires the Minister to table an annual report on controlled operations in each House of Parliament no later than the first sitting day of that House following 1 October. Item 25 of the Bill prescribes that the Minister may

exclude information provided by the Integrity Commissioner where the Minister is of the view that inclusion of that information may endanger the safety of a person, or prejudice an investigation or prosecution. This is same discretion that the Minister currently holds in relation to information provided by the Commissioner of the AFP and the CEO of the ACC.

Item 26 – subsection 15U(2)

This item amends the Crimes Act to provide that for the prosecution of a serious Commonwealth offence resulting from a controlled operation, the Integrity Commissioner will be able to certify a copy of the certificate authorising the controlled operation in order for that certification to be tendered into evidence as if it were the original certificate. This power is currently held by the Commissioner of the AFP and the CEO of the ACC under the Crimes Act.

Item 27 – After paragraph 15UA(1)(a)

Item 27 is a consequential amendment to the Crimes Act requiring the Integrity Commissioner to provide the Ombudsman with a copy of his or her quarterly reports on controlled operations (given to the Minister under subsection 15R(1) of the Crimes Act) within two weeks of the end of each quarter. This obligation is currently imposed on the Commissioner of the AFP and the CEO of the ACC.

Item 28 – subsection 15UA(2)

This item amends subsection 15UA (2) of the Crimes Act to require the Integrity Commissioner to comply with the Ombudsman’s requests for information in relation to applications for controlled operations, certificates currently in force and the variations, reviews, termination or surrender of any certificates. This obligation is also currently imposed on the Commissioner of the AFP and the CEO of the ACC.

Item 29 – subsection 15UB(1)

This item amends the Crimes Act to provide that the Ombudsman must inspect all of ACLEI’s records in relation to controlled operations at least every 12 months. Further, the amendment also provides that the Ombudsman may also inspect ACLEI’s records at any time to ensure that all requirements are complied with in relation to controlled operations. This provision applies equally to the controlled operations records held by the AFP and the ACC.

Item 30 – subsection 15XA(1) (after paragraph (b) of the definition of *Commonwealth participating agency*)

Item 30 is a consequential amendment to Part IAC, ‘Assumed Identities’ of the Crimes Act. The amendment provides that ACLEI is a ‘Commonwealth participating agency’. ACLEI will have the power to acquire, authorise, cancel, revoke and vary assumed identities. These powers are currently exercised by the AFP and the ACC.

Item 31 – subsection 85ZL (after paragraph (ba) of the definition of *law enforcement agency*)

Item 31 amends the Act to include ACLEI as a ‘law enforcement agency’ for the purposes of Part VIIC of the Crimes Act. ACLEI will be permitted to disclose, record, file, use or take account of information about spent convictions during the performance of their duties.

Criminal Code Act 1995

Item 32 – section 146.1 of the Criminal Code (after paragraph (a) of the definition of *Commonwealth law enforcement officer*)

Item 32 is a consequential amendment including the Integrity Commissioner and staff members of ACLEI to the definition of ‘Commonwealth law enforcement officer’ in section 146.1 of the Criminal Code, for the purposes of Part 7.8 ‘Causing harm to, and impersonation and obstruction of, Commonwealth public officials’. A ‘staff member of ACLEI’ will have the same meaning as is given to that phrase in the LEIC Bill.

Part 7.8 of the Criminal Code creates criminal offences for harming, threatening to harm, impersonating, or obstructing a public official. A ‘Commonwealth law enforcement officer’ is characterised as a ‘public official’ for the purposes of these offences and higher penalties may apply where the offence is committed against a ‘Commonwealth law enforcement officer’ as opposed to other categories of public officials.

Financial Transaction Reports Act 1998

Item 33 – subsection 3(1)

To avoid doubt, item 33 is a consequential amendment to provide that for the purpose of the FTR Act, “Integrity Commissioner” has the same meaning as the definition enclosed in the LEIC Bill.

Item 34 – subsection 3(1)

Item 34 is a consequential amendment clarifying that the meaning of ‘staff member of ACLEI’ under the FTR Act has the same meaning as provided for the term in the LEIC Bill. The amendment provides the Integrity Commissioner and ACLEI with the same powers as the Commissioner of the AFP and a member of the AFP respectively in relation to investigating and receiving FTR information.

Item 35 – Subsection 16(6) (definition of *investigating officer*)

Item 35 inserts ACLEI staff members to the definition of ‘investigating officers’ under subsection 16(6) of the FTR Act. The Integrity Commissioner and ACLEI will have the same powers as the Commissioner of the AFP and a member of the AFP respectively in relation to investigating and receiving FTR information.

Item 36 – subsection 16(6) (after paragraph (a) of the definition of *relevant authority*)

This item adds the Integrity Commissioner to the definition of ‘relevant authority’. The amendment provides the Integrity Commissioner with the same powers as the Commissioner of the AFP in relation to investigating and receiving FTR information under the FTR Act.

Item 37 – After paragraph 26(1)(b)

Item 37 amends section 26 (1) of the FTR Act to allow ACLEI staff members to convey information to the Integrity Commissioner without breaching the FTR Act secrecy provisions. This is the same approach as that adopted for communications between AFP members and the Commissioner of the AFP, as well as ACC staff and the CEO of the ACC.

Item 38 – After subsection 27(5)

This item creates subsection 27(5A) which allows the Integrity Commissioner and ACLEI staff members, to communicate FTR information in limited circumstances. This is consistent with subsection 27(5) which currently prescribes circumstances where the CEO of the ACC, and ACC staff, may communicate FTR information.

Item 39 – After paragraph 27(14)(b)

Item 39 is a consequential amendment to include ACLEI to the definitions of ‘law enforcement agencies’. This provides ACLEI with the same powers as the AFP, the ACC and the Australian Securities Commission under the relevant section of the FTR Act.

Item 40 – After paragraph 27(15)(g)

Item 40 adds staff members of ACLEI to the definition of ‘law enforcement officers’ under subsection (15), which provides ACLEI with the same powers as the AFP, the ACC and the Australian Securities Commission under the relevant section of the FTR Act.

Ombudsman Act 1976

Item 41 – After subsection 5(3A)

Item 41 is a consequential amendment providing that the Ombudsman is authorised to investigate action taken by the Integrity Commissioner or Assistant Integrity Commissioner, even if a Justice or Judge is appointed.

Item 42 – At the end of section 6

Item 42 is a consequential amendment of the Ombudsman Act providing the Ombudsman with the discretion under section 6 to decide not to investigate certain

complaints that involve an allegation or information which raises a corruption issue (not a significant corruption issue) and he or she may refer the complaint to the Integrity Commissioner. However, a complaint received by the Ombudsman raising a serious corruption issue must be referred to the Integrity Commissioner. In circumstances where the Ombudsman is referring a complaint to the Integrity Commissioner, he or she must do so as soon as practicable, provide all relevant documents and information to the Integrity Commissioner and notify the complainant that the matter has been referred to the Integrity Commissioner. To avoid doubt, this amendment also clarifies that “corruption issue” and “significant corruption issue” are given the same meaning as provided in the LEIC Bill.

Item 43 – After section 6A

Item 43 is an amendment to the Act by creating section 6B providing the Ombudsman with the discretion to decide to transfer a complaint in relation to the Integrity Commissioner to another authority to deal with. Where the Ombudsman decides to transfer the complaint to another agency, he or she must do so as soon as practicable and, subject to section 35C (a new section created by item 47 of the Bill in relation to the disclosure of ACLEI information), the Ombudsman must provide the agency with all relevant documents and information and notify the complainant that the matter has been referred to that agency.

Item 44 – After section 8B

Item 44 amends the Ombudsman Act by creating section 8C. This section provides that where an authority established under a law of the Commonwealth, a State or Territory has the power to investigate an action of the Integrity Commissioner or a staff member of ACLEI, the Ombudsman may arrange for the authority to conduct an investigation. The Integrity Commissioner and the head of the relevant agency may agree to vary or revoke the arrangement and the Regulations may make provision for the Ombudsman to participate in the investigation, in accordance with the arrangement.

Item 45 – After paragraph 9(3)(e)

Item 45 is a consequential amendment to subsection 9(3) of the Ombudsman Act preventing the Ombudsman from requiring a person to furnish information, records or documents that are, or were in the possession or control of the Integrity Commissioner where the Attorney-General certifies that the disclosure would be contrary to public interest by reason that it would endanger a person’s life or create a risk of serious injury.

Item 46 – At the end of subsection 35(6A)

Item 46 amends subsection 35(6A) of the Ombudsman Act to provide that in circumstances where the Ombudsman decides to refer a complaint to the Integrity Commissioner, the provisions of confidentiality do not prevent the officers of the Ombudsman from providing the Integrity Commissioner with all relevant information.

Item 47 – After section 35B

Item 47 amends the Ombudsman Act by creating section 35C. This section provides that the Attorney-General may give the Ombudsman a certificate certifying that a certain disclosure of particular ACLEI information would be contrary to public interest. To avoid doubt, this amendment also defines ‘ACLEI information’ and ‘Listed Disclosure Method’ for the purpose of this section of the Ombudsman Act.

Privacy Act 1988

Item 48 – subsection 6 (1) (after paragraph (a) of the definition of *enforcement body*)

Item 48 is a consequential amendment to subsection 6(1) of the Privacy Act to provide that the Integrity Commissioner is an ‘enforcement body’ under the Privacy Act. This means personal information may be disclosed to the Integrity Commissioner in certain circumstances, including where the disclosure is for the purpose of preventing, detecting, investigating or prosecuting criminal offences, or for the prevention, detection, investigation or remedying of seriously improper conduct (refer clauses 2 and 6 of Schedule 3 of the Privacy Act).

Item 49 – subsection 6(1)

Item 49 is a consequential amendment to subsection 6(1) of the Privacy Act to provide that “Integrity Commissioner” has the same meaning under the Privacy Act as provided for the term in the LEIC Bill.

Item 50 – After subparagraph 7(1)(a)(iii)

Paragraph 7(1)(a) of the Privacy Act provides a general rule that references in the Act to ‘an act or a practice’ are to be read as a reference to an act done, or a practice engaged in, by an agency. However, there are a number of exclusions to this general rule and this item of the Bill includes the Integrity Commissioner to these express exclusions. This means that references in the Privacy Act to an act or practice cannot be read as an act done, or practice engaged in, by the Integrity Commissioner.

Item 51 – After paragraph 7(1)(g)

Item 51 amends the Privacy Act by adding new paragraph 7(1)(ga). This paragraph provides that a reference to an act or practice does not include a reference to an act done, or practice engaged in, in relation to a record that has originated with, or has been received from the Integrity Commissioner or an ACLEI staff member.

Item 52 – subsection 18K(5) (Note)

Under the LEIC Bill, the Integrity Commissioner may summons persons to attend a private hearing to give oral evidence or produce documents or information. Section 91 of the LEIC Bill allows the Integrity Commissioner to include a notation on a summons prohibiting disclosure of information about the summons or any

investigation, hearing or court proceedings connected with that summons. Subsection 91(9) of the LEIC Bill further provides that where a notation has been made on a summons, credit reporting agencies are prohibited from making a note about any disclosure of personal information they make about an individual unless the notation is cancelled. This is relevant because credit reporting agencies would otherwise be required to make a note about that disclosure in the individual's credit information file (subsection 18(5) of the Privacy Act). This item of the Bill amends the note that follows subsection 18(5) of the Privacy Act to include specific reference to this exception (in subsection 91(9) of the LEIC Bill) to the requirement on credit reporting agencies to make a note in an individual's credit information files when the agency discloses personal information about that individual.

Item 53 – After paragraph 70(2)(b)

Item 53 amends the Privacy Act to prevent ensure that information can be protected if the release of it would prejudice the proper performance of the functions of the Integrity Commissioner.

Proceeds of Crime Act 2002

Item 54 – After paragraph 213(3)(c)

Item 54 is a consequential amendment to subsection 213(3) of the POC Act prescribing that the Integrity Commissioner may give a notice to a financial institution requiring the production of relevant information or documents. This power is given to heads of other agencies, including the Commissioner and Deputy Commissioner of the AFP, and the CEO of the ACC.

Item 55 – section 338 (after paragraph (a) of the definition of *authorised officer*)

Item 55 amends section 338 of the POC Act to include the Integrity Commissioner, Assistant Integrity Commissioner and authorised ACLEI staff members to the definition of 'authorised officer'. This amendment provides ACLEI with the same powers as members and special members of the AFP and staff members of the ACC in relation to the implementation of the scheme to confiscate the proceeds of crime.

Radiocommunications Act 1992

Item 56 – After paragraph 27(1)(b)

This item amends the Radiocommunications Act to exclude the Integrity Commissioner from the operation of the Radiocommunications Act when he or she is performing functions as the Integrity Commissioner. This amendment authorises the Integrity Commissioner to access the radio frequency spectrum without the need to obtain a licence or be subject to restricted zone use.

Royal Commissions Act 1902

Item 57 – subsection 6F(2)

Item 57 amends the Royal Commissions Act providing that information or documents provided to the Integrity Commissioner by a Commission do not have to be returned to the Commission. This provision is currently applicable to the ACC.

Item 58 – After subsection 6P(2A)

Item 58 amends subsection 6P (2A) of the Royal Commissions Act to provide that a Commission may communicate or provide information to the Integrity Commissioner where it relates to the performance of his or her functions as the Integrity Commissioner. This is the same discretion that a Commission currently holds regarding information about the ACC. It is important for the Integrity Commissioner to have access to all relevant information, including information obtained by a Commission in order to prudently perform his or her functions.

Item 59 – subsection 6P(3)

This item provides that a reference to furnishing the Integrity Commissioner with a document or thing under the Royal Commissions Act should be read as including a reference to furnishing the contents, or a description of the document or thing.

Surveillance Devices Act 2004

Item 60 – subsection 6(1) (after paragraph (a) of the definition of *appropriate authorising officer*)

Item 60 amends the SD Act to include the Integrity Commissioner, Assistant Integrity Commissioner, and SES staff members of ACLEI who are authorised by the Integrity Commissioner in writing, to the definition of ‘appropriate authorising officer’ for the purposes of the SD Act.

Item 61 – subsection 6(1)

Item 61 is a consequential amendment clarifying that the meaning of ‘Assistant Integrity Commissioner’ under the SD Act has the same meaning as provided for the term in the LEIC Bill.

Item 62 – subsection 6(1) (after paragraph (a) of the definition of *chief officer*)

Item 62 is an amendment to provide that for the purposes of the SD Act, the Integrity Commissioner is the ‘chief officer’ of ACLEI.

Item 63 – subsection 6(1)

Item 63 is a consequential amendment clarifying that the meaning of ‘Integrity Commissioner’ under the SD Act has the same meaning as provided for the term in the LEIC Bill.

Item 64 – Subsection 6(1) (after paragraph (a) of the definition of *law enforcement agency*)

Item 64 amends the definition of ‘law enforcement agency’ to include ACLEI for the purposes of the SD Act. The definition also includes agencies such as the AFP and the ACC.

Item 65 - subsection 6(1) (after paragraph (a) of the definition of *law enforcement officer*)

Item 65 amends the SD Act to include the Integrity Commissioner, Assistant Integrity Commissioner and staff members of ACLEI authorised by the Integrity Commissioner in writing, to the definition of ‘law enforcement officer’.

Item 66 – subsection 6(1)

Item 66 is a consequential amendment clarifying that the meaning of ‘staff member of ACLEI’ under the SD Act has the same meaning as provided for the term in the LEIC Bill.

Item 67 – At the end of subsection 6(4)

Item 67 is an amendment to prescribe that a person who belongs or is seconded to ACLEI will be included in the definition of ‘staff member of ACLEI’.

Item 68 – After paragraph 37(1)(a)

Item 68 is a consequential amendment to subsection 37(1) of the SD Act allowing federal law enforcement officers belonging to, or seconded to ACLEI, to use an optical surveillance device without a warrant, for any purpose whilst acting in the course of his or her duties. This means that law enforcement officers belonging to, or seconded to ACLEI will have the same powers and obligations under the Act as afforded to other federal law enforcement officers such as officers belonging to, or seconded to, the AFP or the ACC.

Item 69 – After paragraph 38(1)(a)

Item 69 amends subsection 38 (1) of the SD Act to allow federal law enforcement officers belonging to, or seconded to ACLEI to use a surveillance device without a warrant, for any purpose whilst acting in the course of his or her duties involving listening to, or recording words spoken. This provision is also applicable to federal law enforcement officers belonging to, or seconded to the AFP and the ACC.

Item 70 – After paragraph 64(a)

Item 70 repeals subsection 64(a) of the SD Act by substituting a new paragraph prescribing that any person who suffers a loss or injury as a result of the use of a surveillance device by the AFP, ACLEI or the ACC, may claim compensation from the Commonwealth where the use of the surveillance device was prohibited by a law and not conducted in accordance with the SD Act. The new paragraph 64(a) replicates the current paragraph 64(a) but now includes reference to the Integrity Commissioner and ACLEI staff members.

Taxation Administration Act 1953

Item 71 – subsection 2(1) (after paragraph (c) of the definition of head)

Item 71 is an amendment to provide that for the purposes of the definition of ‘head’ in subsection 2(1) of the TA Act, the Integrity Commissioner will be the head of ACLEI. Characterising the Integrity Commissioner as the head of ACLEI for the purposes of the TA Act will mean that the Integrity Commissioner will be able to delegate his or her power to receive information under the Act, to staff members of ACLEI. This is the practice currently adopted by other agency heads, including the Commissioner of AFP and the Commonwealth Director of Public Prosecutions.

Item 72 – subsection 2(1) (after paragraph (c) of the definition of law enforcement agency)

This item provides that ACLEI will be characterised as a ‘law enforcement agency’ for the purposes of the TA Act. This will allow the Commissioner of Taxation to disclose information relevant to a serious offence, or a proceeds of crime order, to the Integrity Commissioner or an authorised staff member of ACLEI.

Telecommunications Act 1997

Item 73 – section 7 (after paragraph (b) of the definition of agency)

Item 73 is a consequential amendment to section 7 of the Telecommunications Act including ACLEI to the definition of an ‘agency’. ACLEI will have the same powers held by the AFP and the ACC under the Act, such as having the authority to receive information in relation to the contents or substance of a communication that relates to the enforcement of a criminal law.

Item 74 – after subsection 280(1)

This item amends the Telecommunications Act to provide that the disclosure or use of information is authorised if the disclosure is made in connection with the performance of the Integrity Commissioner’s functions.

Item 75 - section 282(10) (after paragraph (b) of the definition of *criminal law enforcement agency*)

Item 75 amends subsection 282(10) of the Act to include ACLEI in the definition of ‘criminal law enforcement agency’ for the purposes of the Telecommunications Act, again providing ACLEI with the same powers as the AFP and the ACC. For example, ACLEI staff will be authorised to record information from telecommunication networks and facilities during the performance of their duties and functions as a staff member of ACLEI.

Telecommunications (Interception) Act 1979

Item 76 – subsection 5(1)

Item 76 is a consequential amendment clarifying that the meaning of ‘Assistant Integrity Commissioner’ under the TI Act has the same meaning as provided for the term in the LEIC Bill.

Item 77 - subsection 5(1) (after paragraph (a) of the definition of *certifying officer*)

Item 77 amends the TI Act to include the Integrity Commissioner, Assistant Integrity Commissioner, and an SES staff member of the ACLEI who is authorised by the Integrity Commissioner in writing, to the definition of ‘certifying officers’ for the purpose of the TI Act.

Item 78 - subsection 5(1) (after paragraph (a) of the definition of *chief officer*)

Item 78 amends the TI Act to provide that the Integrity Commissioner will be the ‘chief officer’ of ACLEI, as the Commissioner of the AFP is the chief officer of the AFP for the purposes of the Act.

Item 79 - subsection 5(1) (after paragraph (a) of the definition of *Commonwealth agency*)

This item includes ACLEI to the definition of ‘Commonwealth agency’ which currently includes the AFP and the ACC.

Item 80 – subsection 5(1)

Item 80 is a consequential amendment clarifying that the meaning of ‘Integrity Commissioner’ under the TI Act has the same meaning as provided for the term in the LEIC Bill.

Item 81 - subsection 5(1) (after paragraph (a) of the definition of *officer*)

Item 81 is an amendment to the TI Act deeming ACLEI, the Integrity Commissioner and staff members of ACLEI as ‘officers’ for the purpose of the TI Act. ‘Officers’ current include members and special members of the AFP.

Item 82 -subsection 5(1) (after paragraph (b) of the definition of *permitted purpose*)

Item 82 amends the TI Act to include a corruption investigation or a report on a corruption investigation by ACLEI as a ‘permitted purpose’ under the TI Act.

Item 83 - subsection 5(1) (after paragraph (a) of the definition of *prescribed investigation*)

Item 83 amends subsection 5 of the TI Act to provide that a corruption investigation conducted by ACLEI is included in the definition of ‘prescribed investigation’ for the purposes of the Act.

Item 84 - subsection 5(1) (after paragraph (a) of the definition of *relevant offence*)

Item 84 amends the definition of ‘relevant offence’ to include an investigation by ACLEI concerning conduct, or possible conduct involving a ‘prescribed offence’.

Item 85 - subsection 5(1)

To avoid doubt, this item confirms that for the purpose of the Act, the meaning of ‘staff member of ACLEI’ will be the same meaning as provided in the LEIC Bill.

Item 86 – At the end of section 5D

Item 86 inserts subsection 5D(7). The subsection provides that theft from a Commonwealth entity, general dishonesty, providing or receiving benefits from a Commonwealth public official, abuse of public office, impersonation of an official by another official, perverting the course of justice, giving false testimony, fabricating evidence, intimidating a witness, corruption of a witness, destroying evidence, conspiracy to bring false accusation, conspiracy to defeat justice, attempting to pervert justice, aiding a prisoner to escape or escaping are all offences which will be characterised as ‘class 2 offences’. This amendment expands the offences in relation to which a class 2 telecommunications service warrant may be issued under section 46 of the TI Act.

Item 87 - At the end of section 5D

Item 87 inserts subsection 5D(8) into the TI Act. The new subsection provides that theft from a Commonwealth entity, general dishonesty, providing or receiving benefits from a Commonwealth public official, abuse of public office, impersonation of an official by another official, perverting the course of justice, giving false testimony, fabricating evidence, intimidating a witness, corruption of a witness, destroying evidence, conspiracy to bring false accusation, conspiracy to defeat justice, attempting to pervert justice, aiding a prisoner to escape or escaping are all offences which will be characterised as ‘serious offences’. This amendment expands the offences in relation to which a telecommunications service warrant may be issued under sections 45 or 46 of the TI Act.

Item 88 – Before subparagraph 6A(1)(c)(i)

Item 88 amends paragraph 6A (1) (c) of the TI Act to provide that a reference in the TI Act to an investigation by an agency, in the case of an investigation by ACLEI, is to be read as a prescribed investigation.

Item 89 – paragraph 6L(2)(a)

Item 89 amends subsection 6L(2)(a) of the TI Act to include ACLEI to the agencies and eligible authorities to which a ‘relevant proceeding’ may relate in circumstances where proceedings are brought as a result of a prescribed investigation by ACLEI.

Item 90 – After paragraph 39(2)(a)

Item 90 amend paragraph 39(2)(a) of the TI Act providing that the Integrity Commissioner, Assistant Integrity Commissioner and ACLEI staff members authorised by the Integrity Commissioner in writing, may make applications for TI warrants on behalf of ACLEI.

Item 91 – After paragraph 68(da)

Item 91 amends the TI Act to allow the chief officer of an agency to communicate lawfully obtained information to the Integrity Commissioner where the information relates to, or appears to relate to, a corruption issue.

Item 92 – After paragraph 71(2)(c)

Item 92 amends the TI Act to include the Integrity Commissioner as a person to whom information may be communicated regarding a suspicion of unlawful interception.

Item 93 – After subsection 80(1)

Item 93 amends the TI Act to require the Integrity Commissioner to keep records on warrants issued to ACLEI, notifications given to the Commissioner for Police, instruments revoking warrants, certified certificates and authorisations given to ACLEI staff members to receive information obtained by interceptions.

Item 94 – After subsection 81(1)

Item 94 imposes reporting requirements on the Integrity Commissioner where a warrant application is made by telephone. Such requirements include particulars of the person applying for the warrant, the day, time, duration and service to which an interception relates, particulars of the restricted records, particulars of the use made by lawfully obtained information including each occasion in which the information was used in evidence of relevant proceedings.

Item 95 – subsection 81(2A)

Item 95 amends subsection 81 (2A) of the TI Act to provide that a named warrant must include the service in respect of each interception and the date and time each interception begun.

Item 96 – subsection 140(1)

Item 96 amends subsection 140(1) of the TI Act. Currently, subsection 140(1) is not contained in the TI Act but is to be inserted by the *Telecommunications (Interceptions) Amendment Bill 2006*, which is currently before Parliament. The Integrity Commissioner will be inserted into the section to be a person to whom information may be communicated regarding suspicions of unlawful access to a stored communication if the proposed amendments are passed by Parliament.

Witness Protection Act 1994

Item 97 – section 3 (after paragraph (a) of the definition of *Approved Authority*)

Item 97 amends section 3 of the WP Act which includes the Integrity Commissioner to the definition of ‘approved authority’. This amendment provides the Integrity Commissioner with the same powers and obligations under the WP Act, as possessed by the Commissioner of a police force of a State or Territory. The Integrity Commissioner will be authorised to enter into arrangements with the Commissioner of the AFP for the protection of witnesses.