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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Law Enforcement Legislation
Amendment (Powers) Bill 2015**

No. , 2015

(Justice)

**A Bill for an Act to amend various Acts relating to
the criminal law or law enforcement, and for
related purposes**

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1 **A Bill for an Act to amend various Acts relating to**
2 **the criminal law or law enforcement, and for**
3 **related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Law Enforcement Legislation*
7 *Amendment (Powers) Act 2015*.

8 **2 Commencement**

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

13

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedules 1 and 2	The 28th day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedules**

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1 **Schedule 1—ACC examination powers**

2 **Part 1—Main amendments**

3 *Australian Crime Commission Act 2002*

4 **1 Subsection 4(1)**

5 Insert:

6 ***against***: a confiscation proceeding is ***against*** a person if:

- 7 (a) for a proceeding under the *Proceeds of Crime Act 2002*—the
8 person is a suspect (within the meaning of that Act) for the
9 proceeding; or
10 (b) for a proceeding under a law of a State or Territory—the
11 person is in a corresponding category for that law.

12 ***charged***: a person is ***charged*** with an offence if a process for
13 prosecuting the person for the offence commences.

14 ***derivative material*** means any evidence, information, document or
15 thing obtained directly or indirectly from examination material.

16 ***disclose***, for examination material or derivative material, includes:

- 17 (a) to make available; and
18 (b) to disclose copies, contents or descriptions of that material.

19 ***examination*** means an examination under Division 2 of Part II.

20 ***examination material*** has the meaning given by subsection 4B(1).

21 ***examinee*** has the meaning given by subsection 4B(3).

22 ***imminent***:

- 23 (a) a charge against a person is ***imminent*** if:
24 (i) the person is a protected suspect; or
25 (ii) the person is under arrest for an offence, but has not
26 been charged with the offence; or
27 (iii) a person with authority to commence a process for
28 prosecuting the person for an offence has decided to
29 commence, but not yet commenced, the process; or

Schedule 1 ACC examination powers
Part 1 Main amendments

- 1 (b) a confiscation proceeding against a person is *imminent* if a
2 person with authority to commence the proceeding has
3 decided to commence, but has not yet commenced, the
4 proceeding.

5 Note: Subparagraph (a)(iii) applies, for example, if a person with authority
6 to lay the charge has decided to lay, but not yet laid, the charge.

7 ***post-charge:***

- 8 (a) a use or disclosure of examination material or derivative
9 material is a *post-charge* use or disclosure if the use or
10 disclosure happens at a time when:
11 (i) the examinee has been charged with a related offence
12 and that charge is still to be resolved; or
13 (ii) such a charge is imminent; or
14 (b) material is *post-charge* examination material if the material
15 becomes examination material at a time when:
16 (i) the examinee has been charged with a related offence
17 and that charge is still to be resolved; or
18 (ii) such a charge is imminent; or
19 (c) an examination is a *post-charge* examination if the
20 examination commences at a time when:
21 (i) the examinee has been charged with a related offence
22 and that charge is still to be resolved; or
23 (ii) such a charge is imminent; or
24 (d) a summons is a *post-charge* summons if the summons is
25 issued to a person at a time when:
26 (i) the person has been charged with a related offence and
27 that charge is still to be resolved; or
28 (ii) such a charge is imminent.

29 ***post-confiscation application:***

- 30 (a) a use or disclosure of examination material or derivative
31 material is a *post-confiscation application* use or disclosure
32 if the use or disclosure happens at a time when:
33 (i) a related confiscation proceeding has commenced
34 against the examinee and that proceeding is still to be
35 resolved; or
36 (ii) such a proceeding is imminent; or

- 1 (b) material is **post-confiscation application** examination
2 material if the material becomes examination material at a
3 time when:
4 (i) a related confiscation proceeding has commenced
5 against the examinee and that proceeding is still to be
6 resolved; or
7 (ii) such a proceeding is imminent; or
8 (c) an examination is a **post-confiscation application**
9 examination if the examination commences at a time when:
10 (i) a related confiscation proceeding has commenced
11 against the examinee and that proceeding is still to be
12 resolved; or
13 (ii) such a proceeding is imminent; or
14 (d) a summons is a **post-confiscation application** summons if the
15 summons is issued to a person at a time when:
16 (i) a related confiscation proceeding has commenced
17 against the person and that proceeding is still to be
18 resolved; or
19 (ii) such a proceeding is imminent.

20 **pre-charge:**

- 21 (a) a use or disclosure of examination material or derivative
22 material is a **pre-charge** use or disclosure if the use or
23 disclosure happens at a time when:
24 (i) the examinee has not been charged with a related
25 offence, and such a charge is not imminent; or
26 (ii) all such charges have been resolved; or
27 (b) material is **pre-charge** examination material if the material
28 becomes examination material at a time when:
29 (i) the examinee has not been charged with a related
30 offence, and such a charge is not imminent; or
31 (ii) all such charges have been resolved; or
32 (c) an examination is a **pre-charge** examination if the
33 examination commences at a time when:
34 (i) the examinee has not been charged with a related
35 offence, and such a charge is not imminent; or
36 (ii) all such charges have been resolved.

37 **pre-confiscation application:**

- 1 (a) a use or disclosure of examination material or derivative
2 material is a **pre-confiscation application** use or disclosure if
3 the use or disclosure happens at a time when:
4 (i) a related confiscation proceeding has not commenced
5 against the examinee, and such a proceeding is not
6 imminent; or
7 (ii) all such proceedings have been resolved; or
8 (b) material is **pre-confiscation application** examination material
9 if the material becomes examination material at a time when:
10 (i) a related confiscation proceeding has not commenced
11 against the examinee, and such a proceeding is not
12 imminent; or
13 (ii) all such proceedings have been resolved; or
14 (c) an examination is a **pre-confiscation application**
15 examination if the examination commences at a time when:
16 (i) a related confiscation proceeding has not commenced
17 against the examinee, and such a proceeding is not
18 imminent; or
19 (ii) all such proceedings have been resolved.

20 **proceeds of crime authority** means:

- 21 (a) a proceeds of crime authority within the meaning of the
22 *Proceeds of Crime Act 2002*; or
23 (b) an authority of a State or Territory responsible for conducting
24 a confiscation proceeding under a corresponding law (within
25 the meaning of the *Proceeds of Crime Act 2002*).

26 **prosecuting authority** means an individual, or authority, authorised
27 by or under a law of the Commonwealth or a State or Territory to
28 prosecute an offence.

29 **prosecutor**, of an examinee, means an individual:

- 30 (a) who is a prosecuting authority or is employed or engaged by
31 a prosecuting authority; and
32 (b) who:
33 (i) makes, or is involved in the making of, a decision
34 whether to prosecute the examinee for a related offence;
35 or
36 (ii) is one of the individuals engaging in such a prosecution
37 of the examinee.

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protected suspect means:

- (a) a protected suspect (within the meaning of Part IC of the *Crimes Act 1914*); or
- (b) a person who would be covered by paragraph (a) if the definition of ***Commonwealth offence*** in section 23B of that Act included any offence against a law of a State or Territory.

related confiscation proceeding means:

- (a) for examination material, derivative material or an examinee—a confiscation proceeding if the subject matter of the relevant examination relates to the subject matter of the proceeding; or
- (b) for a summons—a confiscation proceeding if the subject matter of the summons relates to the subject matter of the proceeding.

related offence means:

- (a) for examination material, derivative material or an examinee—an offence if the subject matter of the relevant examination relates to the subject matter of the offence; or
- (b) for a summons—an offence if the subject matter of the summons relates to the subject matter of the offence.

resolved has the meaning given by section 4C.

use, for examination material or derivative material, includes use of copies, contents or descriptions of that material.

2 After section 4A

Insert:

4B Examination material and examinee

(1) ***Examination material*** is:

- (a) any evidence given by a person before an examiner at an examination; or
- (b) a document or thing produced by a person to an examiner at an examination; or

- 1 (c) any information that might enable a person who has given
2 evidence before an examiner at an examination to be
3 identified; or
4 (d) the fact that a person has given or may be about to give
5 evidence at an examination.
- 6 (2) To avoid doubt, information, a document or a thing is not covered
7 by paragraph (1)(a) or (b) to the extent that it is obtained otherwise
8 than at an examination.
- 9 Example: Before a document is produced at an examination, a law enforcement
10 agency obtains a copy of the document when executing a search
11 warrant. The copy obtained under the warrant is not examination
12 material.
- 13 (3) The *examinee* is:
14 (a) for an examination or examination material—the person
15 referred to in paragraph (1)(a), (b), (c) or (d); or
16 (b) for derivative material—the person who is the examinee for
17 the examination material from which the derivative material
18 was obtained.

19 **4C Resolved**

- 20 (1) A charge for an offence is **resolved** in relation to a person at the
21 later of the following times:
22 (a) when:
23 (i) the charge is withdrawn; or
24 (ii) the charge is dismissed; or
25 (iii) the person is not committed on the charge following a
26 committal hearing; or
27 (iv) the person is acquitted of the offence; or
28 (v) the person is sentenced for the offence; or
29 (vi) the person is dealt with by being the subject of an order
30 made as a consequence of a finding of guilt; or
31 (vii) the charge is otherwise finally dealt with;
32 (b) if an appeal relating to the charge is not lodged within the
33 period for lodging such an appeal—when that period ends;
34 (c) if an appeal relating to the charge is lodged—when the
35 appeal lapses or is finally determined.

1 Despite paragraph (b), if an appeal relating to the charge is lodged
2 after that period ends, the charge ceases to be *resolved* until that
3 appeal lapses or is finally determined.

4 (2) A confiscation proceeding is *resolved* in relation to a person at the
5 later of the following times:

6 (a) when the proceeding is discontinued;

7 (b) if an appeal relating to the proceeding is not lodged within
8 the period for lodging such an appeal—when that period
9 ends;

10 (c) if an appeal relating to the proceeding is lodged—when the
11 appeal lapses or is finally determined.

12 Despite paragraph (b), if an appeal relating to the proceeding is
13 lodged after that period ends, the proceeding ceases to be *resolved*
14 until that appeal lapses or is finally determined.

15 **3 Subsection 7C(2)**

16 Omit “effective”, substitute “effective at understanding, disrupting or
17 preventing the federally relevant criminal activity to which the
18 intelligence operation relates”.

19 **4 Subsection 7C(3)**

20 Omit “effective”, substitute “effective at understanding, disrupting or
21 preventing the federally relevant criminal activity”.

22 **5 Subsection 12(1) (note 1)**

23 Omit “Note 1”, substitute “Note”.

24 **6 Subsection 12(1) (note 2)**

25 Repeal the note.

26 **7 After subsection 12(1)**

27 Insert:

28 (1AA) Subsection (1) has effect subject to:

29 (a) any relevant direction given under subsection 25A(9) (about
30 confidentiality for examinations); and

31 (b) the CEO complying with sections 25B to 25G to the extent
32 that the evidence is examination material or derivative
33 material.

1 **8 Subsection 12(1A) (note)**

2 Repeal the note.

3 **9 Subsection 12(2)**

4 Repeal the subsection, substitute:

5 (2) Subsection (1A) has effect subject to:

- 6 (a) any relevant direction given under subsection 25A(9) (about
7 confidentiality for examinations); and
8 (b) the CEO complying with sections 25B and 25H to the extent
9 that the evidence is examination material or derivative
10 material.

11 **10 At the end of section 24AA**

12 Add:

13 *Returnable items that are examination material or derivative*
14 *material*

15 (10) This section has effect subject to:

- 16 (a) any relevant direction given under subsection 25A(9) (about
17 confidentiality for examinations); and
18 (b) the person making available, or using, the returnable item
19 complying with sections 25B to 25H to the extent that the
20 returnable item is examination material or derivative
21 material.

22 **11 Section 24A**

23 Before “An”, insert “(1)”.

24 **12 At the end of section 24A**

25 Add:

26 (2) The examination may be:

- 27 (a) a pre-charge examination or a post-charge examination; or
28 (b) a pre-confiscation application examination or a
29 post-confiscation application examination.

30 (3) Without limiting its effect apart from this subsection, this Act also
31 has the effect it would have if:

- 1 (a) paragraph (2)(a) were, by express provision, confined to
2 pre-charge examinations; or
3 (b) paragraph (2)(b) were, by express provision, confined to
4 pre-confiscation application examinations.

5 **13 After subsection 25A(6)**

6 Insert:

- 7 (6A) For the purposes of subsection (6), the matters relevant to the ACC
8 operation/investigation may include:
9 (a) the subject matter of any charge, or imminent charge, against
10 the witness; and
11 (b) the subject matter of any confiscation proceeding, or
12 imminent confiscation proceeding, against the witness.
- 13 (6B) Without limiting its effect apart from this subsection, this Act also
14 has the effect it would have if:
15 (a) subsection (6A) had not been enacted; or
16 (b) subsection (6A) were, by express provision, confined to
17 dealing with a charge against the witness or such a charge
18 that is imminent; or
19 (c) subsection (6A) were, by express provision, confined to
20 dealing with a confiscation proceeding against the witness
21 that has commenced or is imminent.

22 **14 Subsections 25A(9), (10) and (11)**

23 Repeal the subsections, substitute:

24 *Confidentiality*

- 25 (9) An examiner may direct that examination material:
26 (a) must not be used or disclosed; or
27 (b) may only be used by, or disclosed to, specified persons in
28 specified ways or on specified conditions.
- 29 (9A) An examiner must give a direction under subsection (9) about
30 examination material if the failure to do so:
31 (a) might prejudice a person's safety; or
32 (b) would reasonably be expected to prejudice the examinee's
33 fair trial, if the examinee has been charged with a related
34 offence or such a charge is imminent.

- 1 (10) A direction under subsection (9) about examination material may,
2 in writing, be varied or revoked by:
3 (a) the CEO; or
4 (b) the examiner conducting the examination, if the examinee for
5 the examination material has neither been excused nor
6 released from further attendance at the examination.
- 7 (11) However, the direction cannot be varied or revoked if the variation
8 or revocation:
9 (a) might prejudice a person's safety; or
10 (b) would reasonably be expected to prejudice the examinee's
11 fair trial, if the examinee has been charged with a related
12 offence or such a charge is imminent.

13 **15 Subsection 25A(14)**

14 Repeal the subsection, substitute:

15 *Offences*

- 16 (14) A person commits an offence if the person contravenes
17 subsection (5) by being present at an examination.

18 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- 19 (14A) A person commits an offence if:

- 20 (a) the person uses or discloses examination material (whether or
21 not the person is the first to do so); and
22 (b) the use or disclosure contravenes a direction given under
23 subsection (9) about the examination material; and
24 (c) the use or disclosure is not under subsection (12) or (13) or
25 paragraph 25C(1)(b).

26 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

27 **16 After section 25A**

28 Insert:

29 **25B Obtaining derivative material**

- 30 (1) An entity mentioned in subsection (3), that may lawfully use or
31 disclose examination material, may lawfully use or disclose the

- 1 material for the purpose of obtaining derivative material if the use
2 or disclosure is:
- 3 (a) a pre-charge use or disclosure of the material; or
 - 4 (b) a post-charge use or disclosure of pre-charge examination
5 material; or
 - 6 (c) a post-charge use or disclosure of post-charge examination
7 material; or
 - 8 (d) a pre-confiscation application use or disclosure of the
9 examination material; or
 - 10 (e) a post-confiscation application use or disclosure of
11 pre-confiscation application examination material; or
 - 12 (f) a post-confiscation application use or disclosure of
13 post-confiscation application examination material.
- 14 (2) Subsection (1) has effect subject to:
- 15 (a) any relevant direction given under subsection 25A(9); and
 - 16 (b) paragraph 25C(1)(b), in the case of a disclosure to a
17 prosecutor of the examinee.
- 18 Subsection (1) does not, by implication, limit the use or disclosure
19 of the examination material for any other purpose.
- 20 (3) The entities are as follows:
- 21 (a) an examiner;
 - 22 (b) the CEO or a member of the staff of the ACC;
 - 23 (c) a person or body investigating whether the examinee
24 committed an offence against a law of the Commonwealth, or
25 of a State or Territory;
 - 26 (d) a prosecutor of the examinee;
 - 27 (e) a prosecuting authority;
 - 28 (f) a proceeds of crime authority;
 - 29 (g) any other person or body lawfully in possession of the
30 examination material.
- 31 (4) Without limiting its effect apart from this subsection, this Act also
32 has the effect it would have if:
- 33 (a) one or more of paragraphs (1)(b), (c), (e) and (f) had not been
34 enacted; or
 - 35 (b) subsection (3) were, by express provision, confined to
36 persons or bodies other than either or both of the following:

- 1 (i) prosecutors of the examinee;
2 (ii) proceeds of crime authorities.

3 **25C Disclosing examination material to prosecutors of the examinee**

- 4 (1) A person or body, that may lawfully disclose examination material,
5 may lawfully disclose the material to a prosecutor of the examinee
6 if the disclosure is:
7 (a) a pre-charge disclosure of the material; or
8 (b) a post-charge disclosure of:
9 (i) pre-charge examination material; or
10 (ii) post-charge examination material;
11 under an order made under subsection 25E(1).
- 12 (2) Subsection (1) has effect subject to any relevant direction given
13 under subsection 25A(9), in the case of a pre-charge disclosure of
14 the material.
- 15 Note: In the case of a post-charge disclosure, the court will have regard to
16 any direction under subsection 25A(9) in deciding whether to make an
17 order under subsection 25E(1).
- 18 (3) Without limiting its effect apart from this subsection, this Act also
19 has the effect it would have if paragraph (1)(b), or either of its
20 subparagraphs, had not been enacted.

21 **25D Disclosing derivative material to prosecutors of the examinee**

- 22 (1) A person or body, that may lawfully disclose derivative material,
23 may lawfully disclose the material to a prosecutor of the examinee
24 if the disclosure is:
25 (a) a pre-charge disclosure of the material; or
26 (b) a post-charge disclosure of derivative material obtained from
27 pre-charge examination material (whether from a pre-charge
28 use of that examination material or otherwise); or
29 (c) a post-charge disclosure of derivative material obtained from
30 post-charge examination material, and the disclosure is under
31 an order made under subsection 25E(1).
- 32 (2) Without limiting its effect apart from this subsection, this Act also
33 has the effect it would have if paragraph (1)(b) or (c), or both, had
34 not been enacted.

1 **25E Court's powers to order disclosure and to ensure a fair trial**

2 *Court may order that material may be disclosed*

- 3 (1) A court may, on application or on its own initiative, order that
4 examination material or derivative material may be disclosed to
5 prosecutors of the examinee if the court is satisfied that the
6 disclosure is required:
7 (a) in the interests of justice; and
8 (b) despite any relevant direction given under subsection 25A(9).
9 The order may specify the prosecutors (by any means), and the
10 uses to which they may put the material.
- 11 (2) Subsection (1) applies to:
12 (a) if the examinee has been charged with a related offence
13 before a federal court or a court of a State or Territory—that
14 court; or
15 (b) otherwise—a federal court (other than the Family Court of
16 Australia) or a court of a State or Territory.

17 *Court's powers to ensure the examinee's fair trial*

- 18 (3) Subsection (1) and sections 25B, 25C, 25D, 25F and 25G do not,
19 by implication, restrict a court's power to make any orders
20 necessary to ensure that the examinee's fair trial is not prejudiced
21 by the possession or use of examination material or derivative
22 material by a prosecutor of the examinee.
- 23 (4) However, a person's trial for:
24 (a) an offence against a law of the Commonwealth or a
25 Territory; or
26 (b) an offence against a law of a State that has a federal aspect;
27 is not unfair merely because the person has been an examinee. This
28 applies whether the person became an examinee:
29 (c) before being charged with the offence and before such a
30 charge was imminent; or
31 (d) after being charged with the offence or after such a charge
32 was imminent.

1 (5) Without limiting its effect apart from this subsection, this Act also
2 has the effect it would have if subsection (4), or paragraph (4)(d),
3 had not been enacted.

4 **25F Certain material may always be disclosed to prosecutors of the**
5 **examinee**

6 (1) A person or body, that may lawfully disclose examination material
7 of a kind covered by paragraph 4B(1)(c) or (d), may lawfully
8 disclose the material to a prosecutor of the examinee.

9 (2) A person or body, that may lawfully disclose examination material
10 or derivative material, may lawfully disclose the material to a
11 prosecutor of the examinee if the examinee:

12 (a) is suspected of; or

13 (b) has been charged with;

14 an offence against subsection 30(1), (2) or (3), 33(1) or 35(1) in
15 relation to the examination.

16 (3) Subsection (1) or (2) has effect subject to any relevant direction
17 given under subsection 25A(9).

18 (4) Subsection (1) or (2) applies whether the disclosure is:

19 (a) a pre-charge disclosure of the material; or

20 (b) a post-charge disclosure of:

21 (i) pre-charge examination material; or

22 (ii) derivative material obtained from pre-charge
23 examination material (whether from a pre-charge use of
24 the examination material or otherwise); or

25 (c) a post-charge disclosure of:

26 (i) post-charge examination material; or

27 (ii) derivative material obtained from post-charge
28 examination material;

29 and whether or not an order has been made under
30 subsection 25E(1).

31 (5) Without limiting its effect apart from this subsection, this Act also
32 has the effect it would have if paragraph (4)(b) or (c), or both, had
33 not been enacted.

1 **25G Other matters about prosecutors and examinees**

2 (1) If a prosecutor of the examinee lawfully possesses examination
3 material or derivative material, the prosecutor may use that
4 material for purposes that include:

- 5 (a) making a decision whether to prosecute the examinee; and
6 (b) prosecuting the examinee.

7 This use of the examination material is subject to subsection 30(5)
8 and any relevant direction given under subsection 25A(9).

9 (2) If material is lawfully in the possession of a prosecutor of the
10 examinee, the fact that the material is examination material or
11 derivative material does not prevent it from being admissible in
12 evidence against the examinee in a criminal proceeding.

13 Note: The material may be inadmissible for other reasons (for example,
14 because of subsection 30(5)).

15 (3) Sections 25B to 25F and subsection (1) of this section do not, by
16 implication, restrict the use of examination material or derivative
17 material by, or the disclosure of that material to:

- 18 (a) a prosecuting authority; or
19 (b) an individual employed or engaged by a prosecuting
20 authority;

21 who is not a prosecutor of the examinee.

22 (4) This section has effect subject to any law of the Commonwealth, a
23 State or Territory.

24 **25H Proceeds of crime authorities and examinations**

25 (1) A person or body, that may lawfully disclose examination material
26 or derivative material, may lawfully disclose the material to a
27 proceeds of crime authority if the disclosure is:

- 28 (a) a pre-confiscation application disclosure of the material; or
29 (b) a post-confiscation application disclosure of:

- 30 (i) pre-confiscation application examination material; or
31 (ii) derivative material obtained from pre-confiscation
32 application examination material (whether from a
33 pre-confiscation application use of the examination
34 material or otherwise); or

35 (c) a post-confiscation application disclosure of:

- 1 (i) post-confiscation application examination material; or
2 (ii) derivative material obtained from post-confiscation
3 application examination material.

4 (2) Subsection (1) has effect subject to any relevant direction given
5 under subsection 25A(9).

6 (3) If material is lawfully in the possession of a proceeds of crime
7 authority, the fact that the material is examination material or
8 derivative material does not prevent it from being admissible in
9 evidence against the examinee in a confiscation proceeding.

10 Note: The material may be inadmissible for other reasons (for example,
11 because of subsection 30(5)).

12 (4) Subsections (3), 21E(3) and 30(5A) do not, by implication, restrict
13 a court's power to make any orders necessary to prevent prejudice
14 to the proper administration of justice.

15 (5) Without limiting its effect apart from this subsection, this Act also
16 has the effect it would have if paragraph (1)(b) or (c), or both, had
17 not been enacted.

18 **17 Subsection 28(1)**

19 Repeal the subsection, substitute:

20 (1) An examiner may summon a person to appear before an examiner
21 at an examination to do either or both of the following:

- 22 (a) give evidence;
23 (b) produce any documents or other things referred to in the
24 summons;

25 if the examiner is satisfied that issuing the summons is:

- 26 (c) in all cases—reasonable in all the circumstances; and
27 (d) in the case of a post-charge, or post-confiscation application,
28 summons—reasonably necessary for the purposes of the
29 relevant special ACC operation/investigation even though:
30 (i) the person has been charged or the confiscation
31 proceeding has commenced; or
32 (ii) that charge or proceeding is imminent.

33 **18 Subsection 28(1A)**

34 Omit the first sentence.

1 **19 At the end of subsection 28(3)**

2 Add:

3 Note: Those matters could relate to a charge or confiscation proceeding
4 against the person (see subsection 25A(6A)).

5 **20 At the end of section 28**

6 Add:

7 *Severability*

8 (9) Without limiting its effect apart from this subsection, this Act also
9 has the effect it would have if:

10 (a) paragraph (1)(d) had not been enacted; or

11 (b) paragraph (1)(d) were, by express provision, confined to
12 dealing with a charge against the person or such a charge that
13 is imminent; or

14 (c) paragraph (1)(d) were, by express provision, confined to
15 dealing with a confiscation proceeding against the person that
16 has commenced or is imminent.

17 **21 Subparagraphs 29A(2)(a)(ii) and (b)(ii)**

18 Repeal the subparagraphs, substitute:

19 (ii) a person's fair trial, if the person has been charged with
20 an offence or such a charge is imminent; or

21 **22 Subsection 29B(1) (penalty)**

22 Repeal the penalty, substitute:

23 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

24 **23 Subsection 29B(3) (penalty)**

25 Repeal the penalty, substitute:

26 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

27 **24 Subsection 30(4)**

28 Omit "That subsection only applies", substitute "Subsections (5) and
29 (5A) only apply".

1 **25 Subparagraph 30(4)(a)(ii)**

2 Repeal the subparagraph, substitute:

- 3 (ii) produces a document or thing that he or she was
4 required to produce by a summons under this Act; or
5 (iii) produces a document or thing that he or she was
6 required to produce under subsection 28(4); and

7 **26 Subsection 30(5)**

8 Repeal the subsection, substitute:

9 (5) The answer, document or thing is not admissible in evidence
10 against the person in:

- 11 (a) a criminal proceeding; or
12 (b) a proceeding for the imposition of a penalty; or
13 (c) a confiscation proceeding.

14 (5A) Subsection (5) does not affect whether the answer, document or
15 thing is admissible in evidence against the person in:

- 16 (a) a confiscation proceeding, if the answer was given, or the
17 document or thing was produced, at the examination at a time
18 when the proceeding had not commenced and is not
19 imminent; or
20 (b) a proceeding about:
21 (i) in the case of an answer—the falsity of the answer; or
22 (ii) in the case of the production of a document—the falsity
23 of any statement contained in the document.

24 Note: For paragraph (a), the court may order otherwise (see
25 subsection 25H(4)).

26 (5B) Subsection (5A) does not, by implication, affect the admissibility
27 or relevance of the answer, document or thing for any other
28 purpose.

29 **27 At the end of paragraph 34A(a)**

30 Add:

- 31 (iv) refuses or fails to produce a document or thing that he
32 or she was required to produce under subsection 28(4);
33 or

1 **28 Subsection 51(2)**

2 Omit all the words after “this Act,”, substitute “commits an offence
3 punishable on conviction by imprisonment for a period not exceeding 2
4 years, a fine not exceeding 120 penalty units, or both”.

5 **29 Paragraph 59AB(1)(e)**

6 Repeal the paragraph, substitute:

7 (e) disclosing the ACC information would not prejudice:

8 (i) a person’s safety; or

9 (ii) a person’s fair trial if the person has been charged with
10 an offence or such a charge is imminent; and

11 (f) disclosing the ACC information would not be contrary to a
12 law of the Commonwealth, a State or Territory that would
13 otherwise apply.

14 **30 Subsection 59AB(7) (penalty)**

15 Repeal the penalty, substitute:

16 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

17 **31 Subsection 59AB(7) (note)**

18 Repeal the note.

19 **32 Subsection 59AB(8) (penalty)**

20 Repeal the penalty, substitute:

21 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

22 **33 Subsection 59AB(8) (note)**

23 Repeal the note.

24 **34 Section 59AC**

25 Repeal the section, substitute:

26 **59AC Restrictions on disclosing examination material or derivative**
27 **material**

28 (1) Section 59 has effect subject to:

- 1 (a) any relevant direction given under subsection 25A(9) (about
2 confidentiality for examinations); and
3 (b) the Chair of the Board or the CEO (as applicable) complying
4 with sections 25B to 25H to the extent that the information to
5 be provided or disclosed is examination material or
6 derivative material.
- 7 (2) Sections 59AA and 59AB have effect subject to:
8 (a) any relevant direction given under subsection 25A(9) (about
9 confidentiality for examinations); and
10 (b) the CEO complying with sections 25B to 25H to the extent
11 that the ACC information is examination material or
12 derivative material.

13 **35 Subsection 60(5)**

14 Omit “or prejudice the fair trial of a person who has been or may be
15 charged with an offence”, substitute “, or prejudice a person’s fair trial
16 if the person has been charged with an offence or such a charge is
17 imminent”.

18 **36 Subsection 61(4)**

19 Omit “or prejudice the fair trial of a person who has been or may be
20 charged with an offence”, substitute “, or prejudice a person’s fair trial
21 if the person has been charged with an offence or such a charge is
22 imminent”.

23 **37 Application of amendments**

- 24 (1) Subject to subitems (3) to (6), the amendments made by this Part apply
25 in relation to:
26 (a) the use, disclosure or admissibility in evidence of
27 examination material or derivative material at or after the
28 commencement of this Part (regardless of when the
29 examination was conducted); or
30 (b) summonses issued under subsection 28(1) of the *Australian*
31 *Crime Commission Act 2002* at or after the commencement
32 of this Part.
- 33 (2) The amendments made by this Part of subsections 7C(2) and (3) of that
34 Act apply in relation to determinations made under those subsections at
35 or after the commencement of this Part.
-

- 1 (3) Subsections 25A(10) and (11) of that Act (as inserted by this Part) apply
2 in relation to decisions to vary, or revoke, made at or after the
3 commencement of this Part (regardless of when the direction was
4 given).
- 5 (4) Subsections 25A(14) and (14A) of that Act (as inserted by this Part)
6 apply in relation to contraventions at or after the commencement of this
7 Part (regardless of when the examination was conducted or when the
8 direction was given).
- 9 (5) The amendments made by this Part of section 30 of that Act apply in
10 relation to the admissibility in evidence, at or after the commencement
11 of this Part, of answers, documents or things (regardless of when the
12 relevant examination was conducted).
- 13 (6) The amendments made by this Part of subsections 51(2) and 59AB(7)
14 and (8) of that Act apply in relation to records, communications,
15 disclosures, acts or omissions made or happening at or after the
16 commencement of this Part (regardless of when the information was
17 acquired).

18 **38 Transitional—existing directions and summonses**

- 19 (1) A direction given under subsection 25A(9) of the *Australian Crime*
20 *Commission Act 2002*, that is in force immediately before the
21 commencement of this Part, continues in force (and may be dealt with)
22 as if it had been given under that subsection as amended by this Part.
- 23 (2) A summons issued under subsection 28(1) of the *Australian Crime*
24 *Commission Act 2002*, that is in force immediately before the
25 commencement of this Part, continues in force (and may be dealt with)
26 as if it had been issued under that subsection as amended by this Part.

1 **Part 2—Amendments relating to notices to produce**
2 **documents or things**

3 ***Australian Crime Commission Act 2002***

4 **39 Subsection 4(1)**

5 Insert:

6 ***legal aid officer*** means:

- 7 (a) a member, or member of staff, of an authority established by
8 or under a law of a State or Territory for purposes that
9 include providing legal assistance; or
10 (b) a person to whom the Attorney-General has delegated his or
11 her powers and functions under section 27.

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

- 14 (a) a determination referred to in subsection 28(2);
15 (b) an ACC operation/investigation;
16 (c) an examination held by an examiner;
17 (d) a court proceeding.

18 **40 Subsection 4(1) (subparagraph (b)(i) of the definition of**
19 ***returnable item*)**

20 Omit “given under section 29”, substitute “issued under section 21A”.

21 **41 After section 21**

22 Insert:

23 **21A Notices to produce a document or thing**

- 24 (1) An examiner may, by issuing a written notice served on a person,
25 require the person:
26 (a) to attend, at a specified time and place, before an examiner or
27 member of the staff of the ACC; and
28 (b) to produce to that person at that time and place a specified
29 document or thing relevant to a special ACC
30 operation/investigation;

1 if the examiner is satisfied that issuing the notice is reasonable in
2 all the circumstances.

3 Note: The examiner may need to include a notation in the notice (see
4 section 21B).

5 (2) The examiner must record in writing the reasons for the notice. The
6 record must be made at or before the time the notice is issued.

7 (3) A notice may be issued under subsection (1) whether or not an
8 examination is being held for the purposes of the special ACC
9 operation/investigation.

10 (4) A person commits an offence if:
11 (a) the person is served with a notice under subsection (1); and
12 (b) the person fails to comply with a notice.

13 Penalty: Imprisonment for 5 years or 200 penalty units, or both.

14 (5) A failure to comply with section 21B does not affect the validity of
15 a notice issued under subsection (1).

16 Note 1: A legal practitioner may refuse to comply with the notice in certain
17 circumstances: see section 21D.

18 Note 2: Subsection (4) is not subject to the privilege against self-incrimination
19 but there are limits on the uses to which the document or thing may be
20 put: see section 21E.

21 **21B Notices—disclosing information about a notice may be** 22 **prohibited**

23 *Notations prohibiting disclosures of information about a notice*

24 (1) Subsections (2) to (4) provide when a notice under
25 subsection 21A(1) can include a notation to the effect that
26 disclosure of information about:

- 27 (a) the notice; or
28 (b) any official matter connected with it;

29 is prohibited except in any circumstances specified in the notation.

30 (2) The notice must include such a notation if the examiner issuing the
31 notice is satisfied that the failure to do so would reasonably be
32 expected to prejudice:

- 33 (a) a person's safety or reputation; or
-

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- 1 (b) a person's fair trial, if the person has been charged with an
2 offence or such a charge is imminent; or
3 (c) the effectiveness of an operation or investigation.
- 4 (3) The notice may include such a notation if the examiner issuing the
5 notice is satisfied that the failure to do so:
6 (a) might prejudice:
7 (i) a person's safety or reputation; or
8 (ii) a person's fair trial, if the person has been charged with
9 an offence or such a charge is imminent; or
10 (iii) the effectiveness of an operation or investigation; or
11 (b) might otherwise be contrary to the public interest.
- 12 (4) The notice must not include such a notation in any other case.

13 *Written statement to accompany notation*

- 14 (5) If such a notation is included in the notice, it must be accompanied
15 by a written statement setting out the rights and obligations
16 conferred or imposed by section 21C on the person who was
17 served the notice.

18 *When notations are cancelled*

- 19 (6) Such a notation included in the notice is cancelled if:
20 (a) the ACC concludes the special ACC operation/investigation
21 to which the notice relates; and
22 (b) all criminal proceedings (if any) resulting from the operation
23 or investigation have commenced.
- 24 (7) If a notation is cancelled by subsection (6), the CEO must give
25 written advice of the cancellation to the person who was served the
26 notice.

27 *Relationship with the Privacy Act 1988*

- 28 (8) For the purposes of the *Privacy Act 1988*, if:
29 (a) a notation has been included under, but not cancelled by, this
30 section; and
31 (b) apart from this subsection, a credit reporting body (within the
32 meaning of that Act) would be required, under

1 subsection 20E(5) of that Act, to make a note about the
2 disclosure of information to which the notation relates;
3 such a note must not be made until the notation is cancelled.

4 **21C Notices—offences of disclosure**

- 5 (1) A person commits an offence if:
- 6 (a) the person is served with a notice under section 21A that
7 includes a notation under section 21B; and
 - 8 (b) the person discloses the existence of, or any information
9 about:
 - 10 (i) the notice; or
 - 11 (ii) any official matter connected with the notice; and
 - 12 (c) when the disclosure is made:
 - 13 (i) the notation has not been cancelled by
14 subsection 21B(6); and
 - 15 (ii) the period of 5 years after the notice is served under
16 section 21A has not ended.

17 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- 18 (2) Subsection (1) does not apply if the person makes the disclosure:
- 19 (a) in any circumstances permitted by the notation; or
 - 20 (b) to a legal practitioner for the purpose of obtaining legal
21 advice or representation in relation to the notice; or
 - 22 (c) to a legal aid officer for the purpose of seeking assistance
23 under section 27 in relation to the notice; or
 - 24 (d) if the person is a body corporate—to an officer or agent of
25 the body corporate for the purpose of ensuring compliance
26 with the notice; or
 - 27 (e) if the person is a legal practitioner—for the purpose of
28 obtaining the agreement of another person under
29 subsection 21D(2) to the legal practitioner producing a
30 document or thing; or
 - 31 (f) to the Ombudsman for the purpose of making a complaint
32 under the *Ombudsman Act 1976*; or
 - 33 (g) to the Australian Law Enforcement Integrity Commission for
34 the purpose of referring to the Integrity Commissioner, under
35 the *Law Enforcement Integrity Commissioner Act 2006*, an
36 allegation or information that raises a corruption issue.

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

- 3 (3) A person commits an offence if:
4 (a) a disclosure is made to a person about:
5 (i) a notice under section 21A that includes a notation
6 under section 21B; or
7 (ii) any official matter connected with such a notice; and
8 (b) the disclosure is permitted under subsection (2) or (4)
9 because the person is a person of a particular kind; and
10 (c) while the person is a person of that kind, the person discloses
11 the existence of, or any information about:
12 (i) the notice; or
13 (ii) any official matter connected with the notice; and
14 (d) when the disclosure by the person is made:
15 (i) the notation has not been cancelled by
16 subsection 21B(6); and
17 (ii) the period of 5 years after the notice is served under
18 section 21A has not ended.

19 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- 20 (4) Subsection (3) does not apply if the person discloses the
21 information:
22 (a) if the person is an officer or agent of a body corporate
23 referred to in paragraph (2)(d):
24 (i) to another officer or agent of the body corporate for the
25 purpose of ensuring compliance with the notice; or
26 (ii) to a legal practitioner for the purpose of obtaining legal
27 advice or representation in relation to the notice; or
28 (iii) to a legal aid officer for the purpose of seeking
29 assistance under section 27 in relation to the notice; or
30 (b) if the person is a legal practitioner—for the purpose of giving
31 legal advice, making representations, or seeking assistance
32 under section 27, in relation to the notice; or
33 (c) if the person is a legal aid officer—for the purpose of
34 obtaining legal advice or representation in relation to the
35 notice; or
36 (d) to the Ombudsman for the purpose of making a complaint
37 under the *Ombudsman Act 1976*; or

1 (e) to the Australian Law Enforcement Integrity Commission for
2 the purpose of referring to the Integrity Commissioner, under
3 the *Law Enforcement Integrity Commissioner Act 2006*, an
4 allegation or information that raises a corruption issue.

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

- 7 (5) A person commits an offence if:
- 8 (a) a disclosure is made to a person about:
 - 9 (i) a notice under section 21A that includes a notation
 - 10 under section 21B; or
 - 11 (ii) any official matter connected with such a notice; and
 - 12 (b) the disclosure is permitted under subsection (2) or (4)
 - 13 because the person is a person of a particular kind; and
 - 14 (c) when the person is no longer a person of that kind, the
 - 15 person:
 - 16 (i) makes a record of the notice; or
 - 17 (ii) discloses the existence of the notice; or
 - 18 (iii) discloses any information about the notice or the
 - 19 existence of it; and
 - 20 (d) when the record, or disclosure, is made by the person:
 - 21 (i) the notation has not been cancelled by
 - 22 subsection 21B(6); and
 - 23 (ii) the period of 5 years after the notice is served under
 - 24 section 21A has not ended.

25 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

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

29 **21D Notices—legal practitioner not required to disclose privileged**
30 **communications**

- 31 (1) A legal practitioner may refuse to produce a document or thing,
32 when served with a notice to do so under section 21A, if the
33 document contains a privileged communication made by or to the
34 legal practitioner in his or her capacity as a legal practitioner.

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- 1 (2) Subsection (1) does not apply if the person to or by whom the
2 communication was made agrees to the legal practitioner
3 producing the document or thing.
- 4 (3) If the legal practitioner refuses to produce the document or thing,
5 he or she must, if required by the examiner who issued the notice,
6 give the examiner the name and address of the person to or by
7 whom the communication was made.
- 8 (4) If a legal practitioner gets agreement, as mentioned in
9 subsection (2):
- 10 (a) the fact that he or she produces a document or thing does not
11 otherwise affect a claim of legal professional privilege that
12 anyone may make in relation to that document or thing; and
- 13 (b) the document does not cease to be the subject of legal
14 professional privilege merely because it is produced or
15 referred to.

16 **21E Notices—self-incrimination etc.**

- 17 (1) A person is not excused from producing a document or thing, when
18 served with a notice to do so under section 21A, on the ground that
19 doing so would tend to incriminate the person or expose the person
20 to a penalty.
- 21 (2) If the person is an individual, the document or thing produced is
22 not admissible in evidence against the person in:
- 23 (a) a criminal proceeding; or
24 (b) a proceeding for the imposition or recovery of a penalty; or
25 (c) a confiscation proceeding.
- 26 (3) Subsection (2) does not affect whether the document or thing is
27 admissible in evidence against the person in:
- 28 (a) a confiscation proceeding, if the document or thing was
29 produced at a time when the proceeding had not commenced
30 and is not imminent; or
31 (b) a proceeding about:
- 32 (i) in the case of an answer—the falsity of the answer; or
33 (ii) in the case of the production of a document—the falsity
34 of any statement contained in the document.

1 Note: For paragraph (a), the court may order otherwise (see
2 subsection 25H(4)).

3 (4) Subsection (3) does not, by implication, affect the admissibility or
4 relevance of the document or thing for any other purpose.

5 **21F Notices—allowances for expenses**

6 A person complying with a notice under section 21A is entitled to
7 be paid by the Commonwealth any allowances, for travelling and
8 other expenses, that are prescribed by regulations made for the
9 purposes of this section.

10 **42 Subsection 26(1)**

11 Omit “(1) A”, substitute “A”.

12 **43 Subsection 26(2)**

13 Repeal the subsection.

14 **44 Section 29**

15 Repeal the section.

16 **45 Section 29A (heading)**

17 Repeal the heading, substitute:

18 **29A Summonses—disclosing information about a summons may be**
19 **prohibited**

20 **46 Subsection 29A(1)**

21 Omit “or a notice under section 29”.

22 **47 Subsections 29A(1), (2) and (3)**

23 Omit “or notice” (wherever occurring).

24 **48 Subsection 29A(4)**

25 Omit “or notices”.

26 **49 Subsection 29A(5)**

27 Omit “or notice”.

1 **50 Subparagraph 29A(7)(a)(ii)**

2 Repeal the subparagraph.

3 **51 Subparagraph 29A(7)(a)(iii)**

4 Omit “or notice”.

5 **52 Subsection 29A(8)**

6 Repeal the subsection.

7 **53 Section 29B (heading)**

8 Repeal the heading, substitute:

9 **29B Summonses—offences of disclosure**

10 **54 Subsection 29B(1)**

11 Omit “or notice” (wherever occurring).

12 **55 Paragraphs 29B(2)(b) and (c)**

13 Omit “, notice”.

14 **56 Paragraphs 29B(2)(d) and (3)(a)**

15 Omit “or notice”.

16 **57 Paragraph 29B(3)(b)**

17 Omit “, notice”.

18 **58 Subparagraph 29B(4)(a)(i)**

19 Omit “or notice”.

20 **59 Subparagraphs 29B(4)(a)(ii) and (iii)**

21 Omit “, notice”.

22 **60 Paragraphs 29B(4)(b) and (c)**

23 Omit “, notice”.

24 **61 Subsection 29B(5)**

25 Omit “or notice” (wherever occurring).

1 **62 Subsection 29B(7)**

2 Repeal the subsection.

3 ***Public Interest Disclosure Act 2013***

4 **63 Section 8 (after paragraph (i) of the definition of**
5 ***designated publication restriction*)**

6 Insert:

7 (ia) section 21C of the *Australian Crime Commission Act 2002*;

8 **64 Transitional and application issues—existing notices**

9 (1) A notice issued under subsection 29(1) of the *Australian Crime*
10 *Commission Act 2002*, that is in force immediately before the
11 commencement of this Part, continues in force (and may be dealt with)
12 as if it had been issued under subsection 21A(1) of that Act (as inserted
13 by this Part).

14 Note: A consequence of this subitem is that things can be done under that Act after that
15 commencement in relation to things done before that commencement (e.g. section 21E
16 of that Act applies, after that commencement, in relation to a document or thing
17 produced under the notice before that commencement).

18 (2) A notation that:

19 (a) was included in a notice:

20 (i) issued under subsection 29(1) of the *Australian Crime*
21 *Commission Act 2002*; and

22 (ii) in force immediately before the commencement of this
23 Part; and

24 (b) had not been cancelled under subsection 29A(4) of that Act
25 before the commencement of this Part;

26 continues in force (and may be dealt with) as if it were a notation
27 included under section 21B of that Act (as inserted by this Part).

28 (3) Section 21C of the *Australian Crime Commission Act 2002* (as inserted
29 by this Part) applies to the following:

30 (a) each disclosure, covered by paragraph 21C(1)(b) of that Act,
31 made at or after the commencement of this Part (regardless of
32 when the related notice was served);

33 (b) each disclosure, covered by paragraph 21C(3)(c) of that Act,
34 made at or after the commencement of this Part (regardless of

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- 1 when the related disclosure covered by paragraph 21C(3)(a)
2 was made);
- 3 (c) each record or disclosure, covered by paragraph 21C(5)(c) of
4 that Act, made at or after the commencement of this Part
5 (regardless of when the related disclosure covered by
6 paragraph 21C(5)(a) was made).
- 7 (4) For the purposes of section 21C of the *Australian Crime Commission*
8 *Act 2002* (as inserted by this Part), a disclosure:
- 9 (a) made before the commencement of this Part; and
10 (b) covered by paragraph 29B(2)(e) of that Act;
- 11 is treated as if it were a disclosure covered by paragraph 21C(2)(e) of
12 that Act.

Schedule 2—Integrity Commissioner investigation powers

Law Enforcement Integrity Commissioner Act 2006

1 Subsection 5(1)

Insert:

against: a confiscation proceeding is ***against*** a person if:

- (a) for a proceeding under the *Proceeds of Crime Act 2002*—the person is a suspect (within the meaning of that Act) for the proceeding; or
- (b) for a proceeding under a law of a State or Territory—the person is in a corresponding category for that law.

charged: a person is ***charged*** with an offence if a process for prosecuting the person for the offence commences.

derivative material means any evidence, information, document or thing obtained directly or indirectly from hearing material.

disclose, for hearing material or derivative material, includes:

- (a) to make available; and
- (b) to disclose copies, contents or descriptions of that material.

hearing material has the meaning given by subsection 8A(1).

imminent:

- (a) a charge against a person is ***imminent*** if:
 - (i) the person is a protected suspect; or
 - (ii) the person is under arrest for an offence, but has not been charged with the offence; or
 - (iii) a person with authority to commence a process for prosecuting the person for an offence has decided to commence, but not yet commenced, the process; or
- (b) a confiscation proceeding against a person is ***imminent*** if a person with authority to commence the proceeding has decided to commence, but has not yet commenced, the proceeding.

1 Note: Subparagraph (a)(iii) applies, for example, if a person with authority
2 to lay the charge has decided to lay, but not yet laid, the charge.

3 ***post-charge:***

- 4 (a) a use or disclosure of hearing material or derivative material
5 is a ***post-charge*** use or disclosure if the use or disclosure
6 happens at a time when:
7 (i) the witness has been charged with a related offence and
8 that charge is still to be resolved; or
9 (ii) such a charge is imminent; or
10 (b) material is ***post-charge*** hearing material if the material
11 becomes hearing material at a time when:
12 (i) the witness has been charged with a related offence and
13 that charge is still to be resolved; or
14 (ii) such a charge is imminent; or
15 (c) a hearing is a ***post-charge*** hearing if the hearing commences
16 at a time when:
17 (i) the witness has been charged with a related offence and
18 that charge is still to be resolved; or
19 (ii) such a charge is imminent; or
20 (d) a summons is a ***post-charge*** summons if the summons is
21 issued to a person at a time when:
22 (i) the person has been charged with a related offence and
23 that charge is still to be resolved; or
24 (ii) such a charge is imminent.

25 ***post-confiscation application:***

- 26 (a) a use or disclosure of hearing material or derivative material
27 is a ***post-confiscation application*** use or disclosure if the use
28 or disclosure happens at a time when:
29 (i) a related confiscation proceeding has commenced
30 against the witness and that proceeding is still to be
31 resolved; or
32 (ii) such a proceeding is imminent; or
33 (b) material is ***post-confiscation application*** hearing material if
34 the material becomes hearing material at a time when:
35 (i) a related confiscation proceeding has commenced
36 against the witness and that proceeding is still to be
37 resolved; or
38 (ii) such a proceeding is imminent; or
-

- 1 (c) a hearing is a **post-confiscation application** hearing if the
 2 hearing commences at a time when:
 3 (i) a related confiscation proceeding has commenced
 4 against the witness and that proceeding is still to be
 5 resolved; or
 6 (ii) such a proceeding is imminent; or
 7 (d) a summons is a **post-confiscation application** summons if the
 8 summons is issued to a person at a time when:
 9 (i) a related confiscation proceeding has commenced
 10 against the person and that proceeding is still to be
 11 resolved; or
 12 (ii) such a proceeding is imminent.

13 **pre-charge:**

- 14 (a) a use or disclosure of hearing material or derivative material
 15 is a **pre-charge** use or disclosure if the use or disclosure
 16 happens at a time when:
 17 (i) the witness has not been charged with a related offence,
 18 and such a charge is not imminent; or
 19 (ii) all such charges have been resolved; or
 20 (b) material is **pre-charge** hearing material if the material
 21 becomes hearing material at a time when:
 22 (i) the witness has not been charged with a related offence,
 23 and such a charge is not imminent; or
 24 (ii) all such charges have been resolved; or
 25 (c) a hearing is a **pre-charge** hearing if the hearing commences
 26 at a time when:
 27 (i) the witness has not been charged with a related offence,
 28 and such a charge is not imminent; or
 29 (ii) all such charges have been resolved.

30 **pre-confiscation application:**

- 31 (a) a use or disclosure of hearing material or derivative material
 32 is a **pre-confiscation application** use or disclosure if the use
 33 or disclosure happens at a time when:
 34 (i) a related confiscation proceeding has not commenced
 35 against the witness, and such a proceeding is not
 36 imminent; or
 37 (ii) all such proceedings have been resolved; or
-

- 1 (b) material is **pre-confiscation application** hearing material if
2 the material becomes hearing material at a time when:
3 (i) a related confiscation proceeding has not commenced
4 against the witness, and such a proceeding is not
5 imminent; or
6 (ii) all such proceedings have been resolved; or
7 (c) a hearing is a **pre-confiscation application** hearing if the
8 hearing commences at a time when:
9 (i) a related confiscation proceeding has not commenced
10 against the witness, and such a proceeding is not
11 imminent; or
12 (ii) all such proceedings have been resolved.

13 **proceeds of crime authority** means:

- 14 (a) a proceeds of crime authority within the meaning of the
15 *Proceeds of Crime Act 2002*; or
16 (b) an authority of a State or Territory responsible for conducting
17 a confiscation proceeding under a corresponding law (within
18 the meaning of the *Proceeds of Crime Act 2002*).

19 **prosecuting authority** means an individual, or authority, authorised
20 by or under a law of the Commonwealth or of a State or Territory
21 to prosecute an offence.

22 **prosecutor**, of a witness, means an individual:

- 23 (a) who is a prosecuting authority or is employed or engaged by
24 a prosecuting authority; and
25 (b) who:
26 (i) makes, or is involved in the making of, a decision
27 whether to prosecute the witness for a related offence;
28 or
29 (ii) is one of the individuals engaging in such a prosecution
30 of the witness.

31 **protected suspect** means:

- 32 (a) a protected suspect (within the meaning of Part IC of the
33 *Crimes Act 1914*); or
34 (b) a person who would be covered by paragraph (a) if the
35 definition of **Commonwealth offence** in section 23B of that
36 Act included any offence against a law of a State or
37 Territory.
-

1 ***related confiscation proceeding*** means:

- 2 (a) for hearing material, derivative material or a witness—a
 3 confiscation proceeding if the subject matter of the relevant
 4 hearing relates to the subject matter of the proceeding; or
 5 (b) for a summons—a confiscation proceeding if the subject
 6 matter of the summons relates to the subject matter of the
 7 proceeding.

8 ***related offence*** means:

- 9 (a) for hearing material, derivative material or a witness—an
 10 offence if the subject matter of the relevant hearing relates to
 11 the subject matter of the offence; or
 12 (b) for a summons—an offence if the subject matter of the
 13 summons relates to the subject matter of the offence.

14 ***resolved*** has the meaning given by section 8B.

15 ***use***, for hearing material or derivative material, includes use of
 16 copies, contents or descriptions of that material.

17 ***witness***, for a hearing under Part 9, hearing material or derivative
 18 material, has the meaning given by subsection 8A(3).

19 **2 After section 8**

20 Insert:

21 **8A Meaning of *hearing material* and *witness***

22 (1) ***Hearing material*** is:

- 23 (a) particular evidence given by a person at a hearing under
 24 Part 9; or
 25 (b) a document or thing produced by a person to the Integrity
 26 Commissioner at a hearing under Part 9; or
 27 (c) particular information that might enable a person, who has
 28 given evidence at a hearing under Part 9, to be identified; or
 29 (d) the fact that a particular person has given or may be about to
 30 give evidence at a hearing under Part 9.

31 (2) To avoid doubt, information, a document or a thing is not covered
 32 by paragraph (1)(a) or (b) to the extent that it is obtained otherwise
 33 than at a hearing.

1 Example: Before a document is produced at a hearing, a law enforcement
2 agency obtains a copy of the document when executing a search
3 warrant. The copy obtained under the warrant is not hearing material.

4 (3) The *witness* is:

- 5 (a) for the hearing or hearing material—the person referred to in
6 paragraph (1)(a), (b), (c) or (d); or
7 (b) for derivative material—the person who is the witness for the
8 hearing material from which the derivative material was
9 obtained.

10 **8B Resolved**

11 (1) A charge for an offence is *resolved* in relation to a person at the
12 later of the following times:

- 13 (a) when:
14 (i) the charge is withdrawn; or
15 (ii) the charge is dismissed; or
16 (iii) the person is not committed on the charge following a
17 committal hearing; or
18 (iv) the person is acquitted of the offence; or
19 (v) the person is sentenced for the offence; or
20 (vi) the person is dealt with by being the subject of an order
21 made as a consequence of a finding of guilt; or
22 (vii) the charge is otherwise finally dealt with;
23 (b) if an appeal relating to the charge is not lodged within the
24 period for lodging such an appeal—when that period ends;
25 (c) if an appeal relating to the charge is lodged—when the
26 appeal lapses or is finally determined.

27 Despite paragraph (b), if an appeal relating to the charge is lodged
28 after that period ends, the charge ceases to be *resolved* until that
29 appeal lapses or is finally determined.

30 (2) A confiscation proceeding is *resolved* in relation to a person at the
31 later of the following times:

- 32 (a) when the proceeding is discontinued;
33 (b) if an appeal relating to the proceeding is not lodged within
34 the period for lodging such an appeal—when that period
35 ends;

- 1 (c) if an appeal relating to the proceeding is lodged—when the
2 appeal lapses or is finally determined.
3 Despite paragraph (b), if an appeal relating to the proceeding is
4 lodged after that period ends, the proceeding ceases to be *resolved*
5 until that appeal lapses or is finally determined.

6 **3 Paragraph 77A(3)(b)**

- 7 Repeal the paragraph, substitute:
8 (b) a person’s fair trial, if the person has been charged with an
9 offence or such a charge is imminent; or

10 **4 Subparagraph 77A(4)(a)(ii)**

- 11 Repeal the subparagraph, substitute:
12 (ii) a person’s fair trial, if the person has been charged with
13 an offence or such a charge is imminent; or

14 **5 Subsections 77B(1), (3) and (5) (penalty)**

- 15 Repeal the penalties, substitute:
16 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

17 **6 Subsection 80(3)**

- 18 Omit “Subsection (4) does”, substitute “Subsections (4) and (4A) do”.

19 **7 Subsection 80(4)**

- 20 Repeal the subsection, substitute:
21 (4) The information given, or the document or thing produced, is not
22 admissible in evidence against the person in:
23 (a) a criminal proceeding; or
24 (b) a proceeding for the imposition or recovery of a penalty; or
25 (c) a confiscation proceeding.
26 (4A) Subsection (4) does not affect whether the information, document
27 or thing is admissible in evidence against the person in:
28 (a) a confiscation proceeding, if the information was given, or
29 the document or thing was produced, at a time when the
30 proceeding had not commenced and such a proceeding is not
31 imminent; or
32 (b) a proceeding for an offence against section 77B or 78; or
-

- 1 (c) a proceeding for an offence against section 137.1 or 137.2 of
2 the *Criminal Code* (about false or misleading information or
3 documents) that relates to this Act; or
4 (d) a proceeding for an offence against section 149.1 of the
5 *Criminal Code* (about obstruction of Commonwealth public
6 officials) that relates to this Act; or
7 (e) a disciplinary proceeding against the person if the person is a
8 staff member of a law enforcement agency.

9 (4B) Subsection (4A) does not, by implication, affect the admissibility
10 or relevance of the information, document or thing for any other
11 purpose.

12 **8 After subsection 82(1)**

13 Insert:

- 14 (1A) A hearing may be:
15 (a) a pre-charge hearing or a post-charge hearing; or
16 (b) a pre-confiscation application hearing or a post-confiscation
17 application hearing.
- 18 (1B) Without limiting its effect apart from this subsection, this Act also
19 has the effect it would have if:
20 (a) paragraph (1A)(a) were, by express provision, confined to
21 pre-charge hearings; or
22 (b) paragraph (1B)(b) were, by express provision, confined to
23 pre-confiscation application hearings.

24 **9 Subsection 83(1)**

25 Repeal the subsection, substitute:

- 26 (1) The Integrity Commissioner may summon a person to attend a
27 hearing at a time and place specified in the summons to do either
28 or both of the following:
29 (a) give evidence;
30 (b) produce any documents or other things referred to in the
31 summons;
32 if the Integrity Commissioner has reasonable grounds to suspect
33 that the evidence, documents or things:
34 (c) in all cases—will be relevant to the investigation of a
35 corruption issue or the conduct of a public inquiry; and
-

1 (d) in the case of a post-charge, or post-confiscation, summons—
 2 are necessary for the purposes of that investigation or public
 3 inquiry even though:

4 (i) the person has been charged or the confiscation
 5 proceeding has commenced; or

6 (ii) that charge or proceeding is imminent.

7 Note 1: Disclosing the existence of a summons, or any information about it,
 8 may be an offence: see section 92.

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

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

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

14 **10 At the end of subsection 83(2)**

15 Add:

16 The Integrity Commissioner must record in writing the reasons for
 17 the summons. The record must be made at or before the time the
 18 summons is issued.

19 **11 After subsection 83(2)**

20 Insert:

21 (2A) The matters in relation to which the Integrity Commissioner may
 22 require the person to give evidence, or produce documents or
 23 things, at the hearing may include:

24 (a) the subject matter of any charge, or imminent charge, against
 25 the person; and

26 (b) the subject matter of any confiscation proceeding, or
 27 imminent confiscation proceeding, against the person.

28 **12 After subsection 83(5)**

29 Insert:

30 (5A) The Integrity Commissioner may, at the hearing, require the
 31 witness to produce a document or other thing.

32 **13 Subsection 83(6)**

33 Omit “A person summoned to appear as a witness”, substitute “A
 34 witness appearing”.

1 **14 At the end of section 83**

2 Add:

3 (7) Without limiting its effect apart from this subsection, this Act also
4 has the effect it would have if:

5 (a) paragraph (1)(d) or subsection (2A) had not been enacted; or

6 (b) paragraph (1)(d) or subsection (2A) were, by express
7 provision, confined to dealing with a charge against the
8 person or such a charge that is imminent; or

9 (c) paragraph (1)(d) or subsection (2A) were, by express
10 provision, confined to dealing with a confiscation proceeding
11 against the person that has commenced or is imminent.

12 **15 Paragraph 86(3)(a)**

13 Omit “a person (the *witness*)”, substitute “a witness”.

14 **16 Subsection 86(5) (penalty)**

15 Repeal the penalty, substitute:

16 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

17 **17 Subsections 90(1), (2) and (3)**

18 Repeal the subsections, substitute:

19 *Prohibition or limitation on use or disclosure*

20 (1) The Integrity Commissioner may direct that hearing material:

21 (a) must not be used or disclosed; or

22 (b) may only be used by, or disclosed to, specified persons in
23 specified ways or on specified conditions.

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

25 (2) If all or part of the hearing is held in private, the Integrity
26 Commissioner must give a direction under subsection (1) if the
27 Commissioner is satisfied that the failure to give such a direction:

28 (a) might prejudice a person’s safety; or

29 (b) would reasonably be expected to prejudice the witness’ fair
30 trial, if the witness has been charged with a related offence or
31 such a charge is imminent; or

- 1 (c) might lead to the publication of section 149 certified
2 information.
- 3 (3) The Integrity Commissioner may, in writing, vary or revoke a
4 direction.
- 5 (3A) However, the direction cannot be varied or revoked if the Integrity
6 Commissioner is satisfied that the variation or revocation:
- 7 (a) might prejudice a person's safety; or
8 (b) would reasonably be expected to prejudice the witness' fair
9 trial, if the witness has been charged with a related offence or
10 such a charge is imminent; or
11 (c) might lead to the publication of section 149 certified
12 information.

13 **18 Subsection 90(6)**

14 Repeal the subsection, substitute:

15 *Offence*

- 16 (6) A person commits an offence if:
- 17 (a) the person uses or discloses hearing material (whether or not
18 the person is the first to do so); and
- 19 (b) the use or disclosure contravenes a direction given under
20 subsection (1) about the hearing material; and
- 21 (c) the use or disclosure is not under subsection (4) or (5) or
22 paragraph 96AB(1)(b).

23 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

24 **19 Paragraph 91(1)(b)**

25 Repeal the paragraph, substitute:

- 26 (b) all or part of the hearing is to be held in private.

27 **20 Paragraph 91(3)(b)**

28 Repeal the paragraph, substitute:

- 29 (b) a person's fair trial, if the person has been charged with a
30 related offence or such a charge is imminent; or

1 **21 Subparagraph 91(4)(a)(ii)**

2 Repeal the subparagraph, substitute:

- 3 (ii) a person's fair trial, if the person has been charged with
4 a related offence or such a charge is imminent; or

5 **22 Subsections 92(1), (3) and (5) (penalty)**

6 Repeal the penalties, substitute:

7 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

8 **23 Section 94**

9 Repeal the section, substitute:

10 **94 Offences—obstructing or hindering the conduct of hearings etc.**

11 A person commits an offence if the person:

- 12 (a) obstructs or hinders the Integrity Commissioner in the
13 performance of his or her functions or the exercise of his or
14 her powers; or
15 (b) disrupts a hearing being held under this Part; or
16 (c) threatens any person present at a hearing being held under
17 this Part.

18 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

19 **24 Subsection 96(1)**

20 Repeal the subsection, substitute:

21 *Self-incrimination*

- 22 (1) A person is not excused from answering a question, or producing a
23 document or thing:

- 24 (a) when summoned under section 83 to do so; or
25 (b) when required to do so under subsection 83(5A);

26 on the ground that doing so would tend to incriminate the person or
27 expose the person to a penalty.

28 **25 Subsection 96(3)**

29 Omit "Subsection (4) does", substitute "Subsections (4) and (4A) do".

26 Subsection 96(4)

Repeal the subsection, substitute:

- (4) The answer given, or the document or thing produced, is not admissible in evidence against the person in:
- (a) a criminal proceeding; or
 - (b) a proceeding for the imposition or recovery of a penalty; or
 - (c) a confiscation proceeding.

(4A) Subsection (4) does not affect whether the answer, document or thing is admissible in evidence against the person in:

- (a) a confiscation proceeding, if the answer was given, or the document or thing was produced, at a time when the proceeding had not commenced and is not imminent; or
- (b) a proceeding for an offence against section 77B, 92, 93 or 94; or
- (c) a proceeding for an offence against section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents) that relates to this Act; or
- (d) a disciplinary proceeding against the person if the person is a staff member of a law enforcement agency; or
- (e) a proceeding relating to an application for a person to be dealt with for being in contempt of ACLEI.

Note: For paragraph (a), the court may order otherwise (see subsection 96AG(4)).

(4B) Subsection (4A) does not, by implication, affect the admissibility or relevance of the answer, document or thing for any other purpose.

27 Subsection 96(5)

Repeal the subsection, substitute:

Public interest grounds

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

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

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

14 **28 Paragraph 96(7)(b)**

15 Repeal the paragraph, substitute:

- 16 (b) produces a document or thing that the person is required to
17 produce in accordance with the summons or under
18 subsection 83(5A).

19 **29 After Subdivision E of Division 2 of Part 9**

20 Insert:

21 **Subdivision EAA—Particular uses or disclosures of hearing**
22 **material and derivative material**

23 **96AA Obtaining derivative material**

- 24 (1) An entity mentioned in subsection (3), that may lawfully use or
25 disclose hearing material, may lawfully use or disclose the material
26 for the purpose of obtaining derivative material if the use or
27 disclosure is:
28 (a) a pre-charge use or disclosure of the material; or
29 (b) a post-charge use or disclosure of pre-charge hearing
30 material; or
31 (c) a post-charge use or disclosure of post-charge hearing
32 material; or
33 (d) a pre-confiscation application use or disclosure of the hearing
34 material; or

-
- 1 (e) a post-confiscation application use or disclosure of
 2 pre-confiscation application hearing material; or
 3 (f) a post-confiscation application use or disclosure of
 4 post-confiscation application hearing material.
- 5 (2) Subsection (1) has effect subject to:
 6 (a) any direction given under subsection 90(1); and
 7 (b) paragraph 96AB(1)(b), in the case of a disclosure to a
 8 prosecutor of the witness.
- 9 Subsection (1) does not, by implication, limit the use or disclosure
 10 of the hearing material for any other purpose.
- 11 (3) The entities are as follows:
 12 (a) a staff member of ACLEI;
 13 (b) a person or body investigating whether the witness
 14 committed an offence against a law of the Commonwealth or
 15 of a State or Territory;
 16 (c) a prosecutor of the witness;
 17 (d) a prosecuting authority;
 18 (e) a proceeds of crime authority;
 19 (f) any other person or body lawfully in possession of the
 20 hearing material.
- 21 (4) Without limiting its effect apart from this subsection, this Act also
 22 has the effect it would have if:
 23 (a) one or more of paragraphs (1)(b), (c), (e) and (f) had not been
 24 enacted; or
 25 (b) subsection (3) were, by express provision, confined to
 26 persons or bodies other than either or both of the following:
 27 (i) prosecutors of the witness;
 28 (ii) proceeds of crime authorities.

29 **96AB Disclosing hearing material to prosecutors of the witness**

- 30 (1) A person or body, that may lawfully disclose hearing material, may
 31 lawfully disclose the material to a prosecutor of the witness if the
 32 disclosure is:
 33 (a) a pre-charge disclosure of the material; or
 34 (b) a post-charge disclosure of:
 35 (i) pre-charge hearing material; or
-

1 (ii) post-charge hearing material;
2 under an order made under subsection 96AD(1).

3 (2) Subsection (1) has effect subject to any direction given under
4 subsection 90(1), in the case of a pre-charge disclosure of the
5 material.

6 Note: In the case of a post-charge disclosure, the court will have regard to
7 any direction under subsection 90(1) in deciding whether to make an
8 order under subsection 96AD(1).

9 (3) Without limiting its effect apart from this subsection, this Act also
10 has the effect it would have if paragraph (1)(b), or either of its
11 subparagraphs, had not been enacted.

12 **96AC Disclosing derivative material to prosecutors of the witness**

13 (1) A person or body, that may lawfully disclose derivative material,
14 may lawfully disclose the material to a prosecutor of the witness if
15 the disclosure is:

- 16 (a) a pre-charge disclosure of the material; or
17 (b) a post-charge disclosure of derivative material obtained from
18 pre-charge hearing material (whether from a pre-charge use
19 of that hearing material or otherwise); or
20 (c) a post-charge disclosure of derivative material obtained from
21 post-charge hearing material, and the disclosure is under an
22 order made under subsection 96AD(1).

23 (2) Without limiting its effect apart from this subsection, this Act also
24 has the effect it would have if paragraph (1)(b) or (c), or both, had
25 not been enacted.

26 **96AD Court's powers to order disclosure and to ensure a fair trial**

27 *Court may order that material may be disclosed*

28 (1) A court may, on application or on its own initiative, order that
29 hearing material or derivative material may be disclosed to
30 prosecutors of the witness if the court is satisfied that the
31 disclosure is required:

- 32 (a) in the interests of justice; and
33 (b) despite any direction given under subsection 90(1).

1 The order may specify the prosecutors (by any means), and the
2 uses to which they may put the material.

- 3 (2) Subsection (1) applies to the following court:
4 (a) if the witness has been charged with a related offence before
5 a federal court or a court of a State or Territory—that court;
6 (b) otherwise—a federal court (other than the Family Court of
7 Australia) or a court of a State or Territory.

8 *Court's powers to ensure the witness' fair trial*

- 9 (3) This Subdivision does not, by implication, restrict a court's power
10 to make any orders necessary to ensure that the witness' fair trial is
11 not prejudiced by the possession or use of hearing material or
12 derivative material by a prosecutor of the witness.
- 13 (4) However, a person's trial for:
14 (a) an offence against a law of the Commonwealth or of a
15 Territory; or
16 (b) an offence against a law of a State that has a federal aspect
17 (within the meaning of the *Australian Crime Commission Act*
18 *2002*);
19 is not unfair merely because the person has been a witness. This
20 applies whether the person became a witness:
21 (c) before being charged with the offence and before such a
22 charge was imminent; or
23 (d) after being charged with the offence or after such a charge
24 was imminent.
- 25 (5) Without limiting its effect apart from this subsection, this Act also
26 has the effect it would have if subsection (4), or paragraph (4)(d),
27 had not been enacted.

28 **96AE Certain material may always be disclosed to prosecutors of**
29 **the witness**

- 30 (1) A person or body, that may lawfully disclose hearing material of a
31 kind covered by paragraph 8A(1)(c) or (d), may lawfully disclose
32 the material to a prosecutor of the witness.
- 33 (2) A person or body, that may lawfully disclose hearing material or
34 derivative material, may lawfully disclose the material to a

- 1 prosecutor of the witness if the witness is suspected of, or has been
2 charged with:
- 3 (a) an offence against section 77B, 92, 93 or 94 in relation to the
4 hearing; or
- 5 (b) an offence against section 137.1 or 137.2 of the *Criminal*
6 *Code* (about false or misleading information or documents)
7 in relation to the hearing.
- 8 (3) Subsection (1) or (2) has effect subject to any direction given under
9 subsection 90(1).
- 10 (4) Subsection (1) or (2) applies whether the disclosure is:
- 11 (a) a pre-charge disclosure of the material; or
- 12 (b) a post-charge disclosure of:
- 13 (i) pre-charge hearing material; or
- 14 (ii) derivative material obtained from pre-charge hearing
15 material (whether from a pre-charge use of the hearing
16 material or otherwise); or
- 17 (c) a post-charge disclosure of:
- 18 (i) post-charge hearing material; or
- 19 (ii) derivative material obtained from post-charge hearing
20 material;
- 21 and whether or not an order has been made under
22 subsection 96AD(1).
- 23 (5) Without limiting its effect apart from this subsection, this Act also
24 has the effect it would have if paragraph (4)(b) or (c), or both, had
25 not been enacted.

26 **96AF Other matters about prosecutors and witnesses**

- 27 (1) If a prosecutor of the witness lawfully possesses hearing material
28 or derivative material, the prosecutor may use that material for
29 purposes that include:
- 30 (a) making a decision whether to prosecute the witness; and
31 (b) prosecuting the witness.
- 32 This use of the hearing material is subject to subsection 96(4A) and
33 any direction given under subsection 90(1).
- 34 (2) If material is lawfully in the possession of a prosecutor of the
35 witness, the fact that the material is hearing material or derivative
-

1 material does not prevent it from being admissible in evidence
2 against the witness in a criminal proceeding.

3 Note: The material may be inadmissible for other reasons (for example,
4 because of subsection 96(4)).

5 (3) This Subdivision does not, by implication, restrict the use of
6 hearing material or derivative material by, or the disclosure of that
7 material to:

8 (a) a prosecuting authority; or

9 (b) an individual employed or engaged by a prosecuting
10 authority;

11 who is not a prosecutor of the witness.

12 (4) This section has effect subject to any law of the Commonwealth, a
13 State or Territory.

14 **96AG Proceeds of crime authorities and hearings**

15 (1) A person or body, that may lawfully disclose hearing material or
16 derivative material, may lawfully disclose the material to a
17 proceeds of crime authority if the disclosure is:

18 (a) a pre-confiscation application disclosure of the material; or

19 (b) a post-confiscation application disclosure of:

20 (i) pre-confiscation application hearing material; or

21 (ii) derivative material obtained from pre-confiscation
22 application hearing material (whether from a
23 pre-confiscation application use of the hearing material
24 or otherwise); or

25 (c) a post-confiscation application disclosure of:

26 (i) post-confiscation application hearing material; or

27 (ii) derivative material obtained from post-confiscation
28 application hearing material.

29 (2) Subsection (1) has effect subject to any direction given under
30 subsection 90(1).

31 (3) If material is lawfully in the possession of a proceeds of crime
32 authority, the fact that the material is hearing material or derivative
33 material does not prevent it from being admissible in evidence
34 against the witness in a confiscation proceeding.

1 Note: The material may be inadmissible for other reasons (for example,
2 because of subsection 96(4)).

3 (4) Subsections (3), 80(4A) and 96(4A) do not, by implication, restrict
4 a court's power to make any orders necessary to prevent prejudice
5 to the proper administration of justice.

6 (5) Without limiting its effect apart from this subsection, this Act also
7 has the effect it would have if paragraph (1)(b) or (c), or both, had
8 not been enacted.

9 **30 At the end of paragraph 96A(1)(a)**

10 Add:

11 (vi) subject to subsection (3), refuses or fails to produce a
12 document or thing that the person was required to
13 produce under subsection 83(5A); or

14 **31 Paragraph 96A(1)(f)**

15 After "functions", insert "or the exercise of his or her powers".

16 **32 Paragraph 96A(1)(g)**

17 Omit "interrupts", substitute "disrupts".

18 **33 Subsection 102(1)**

19 After "section 83,", insert "or as required under subsection 83(5A)".

20 **34 Subsection 207(1) (penalty)**

21 Repeal the penalty, substitute:

22 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

23 **35 After paragraph 208(1)(b)**

24 Insert:

25 ; and (c) to the extent that the information is hearing material or
26 derivative material—divulges or communicates the material
27 in accordance with:

28 (i) any direction given under subsection 90(1) (about
29 confidentiality for hearings); and

30 (ii) Subdivision EAA of Division 2 of Part 9.

36 After paragraph 208(2)(b)

Insert:

; and (c) to the extent that the information is hearing material or derivative material—the person communicates the material in accordance with:

- (i) any direction given under subsection 90(1) (about confidentiality for hearings); and
- (ii) Subdivision EAA of Division 2 of Part 9.

37 Subsection 208(3)

Repeal the subsection, substitute:

Disclosure to a 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;
- (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:

- (g) the Integrity Commissioner is satisfied that, having regard to the functions of the agency concerned, it is appropriate to do so; and
- (h) to the extent that the information is hearing material or derivative material—the Integrity Commissioner discloses the material in accordance with:
 - (i) any direction given under subsection 90(1) (about confidentiality for hearings); and
 - (ii) Subdivision EAA of Division 2 of Part 9.

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

38 Application of amendments

(1) Subject to subitems (6) to (12), the amendments made by this Schedule apply in relation to:

- 1 (a) the use, disclosure or admissibility in evidence of hearing
2 material or derivative material at or after the commencement
3 of this Schedule (regardless of when the hearing was held);
4 or
5 (b) summonses issued under subsection 83(1) of the *Law*
6 *Enforcement Integrity Commissioner Act 2006* at or after that
7 commencement.
- 8 (2) The amendments of section 77A of that Act by this Schedule apply in
9 relation to notices under section 75 of that Act issued at or after the
10 commencement of this Schedule.
- 11 (3) The amendments of section 77B of that Act by this Schedule apply in
12 relation to:
13 (a) disclosures covered by paragraph 77B(1)(c) or (3)(c) of that
14 Act; or
15 (b) records or disclosures covered by paragraph 77B(5)(c) of that
16 Act;
17 at or after the commencement of this Schedule.
- 18 (4) Subject to subitem (5), the amendments made of section 80 of that Act
19 by this Schedule apply in relation to the admissibility in evidence, at or
20 after the commencement of this Schedule, of information, documents or
21 things (regardless of when the relevant notice was issued).
- 22 (5) Paragraph 80(4A)(b) of that Act:
23 (a) as inserted by this Part; and
24 (b) to the extent that it relates to offences against section 77B of
25 that Act;
26 applies in relation to the admissibility in evidence, at or after the
27 commencement of this Part, of information, documents or things given
28 or produced at or after that commencement.
- 29 (6) Subsections 83(5A) and 86(5) and section 94 of that Act (as inserted or
30 amended by this Schedule) apply in relation to hearings conducted at or
31 after the commencement of this Schedule (regardless of when any
32 summons was issued).
- 33 (7) Subsections 90(3) and (3A) of that Act (as inserted by this Schedule)
34 apply in relation to decisions to vary, or revoke, made at or after the
35 commencement of this Schedule (regardless of when the direction was
36 given).
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- 1 (8) Subsection 90(6) of that Act (as inserted by this Schedule) applies in
 2 relation to contraventions at or after the commencement of this
 3 Schedule (regardless of when the direction was given).
- 4 (9) The amendments of section 92 of that Act by this Schedule apply in
 5 relation to:
- 6 (a) disclosures covered by paragraph 92(1)(c) or (3)(c) of that
 7 Act; or
- 8 (b) records or disclosures covered by paragraph 92(5)(c) of that
 9 Act;
- 10 at or after the commencement of this Schedule.
- 11 (10) Subject to subitem (11), the amendments made of section 96 of that Act
 12 by this Schedule apply in relation to the admissibility in evidence, at or
 13 after the commencement of this Schedule, of answers, documents or
 14 things (regardless of when the hearing was held).
- 15 (11) Paragraph 96(4A)(b) of that Act (as inserted by this Part), to the extent
 16 that it relates to:
- 17 (a) offences against section 94 of that Act; or
- 18 (b) proceedings relating to applications for persons to be dealt
 19 with for being in contempt of ACLEI;
- 20 applies in relation to the admissibility in evidence, at or after the
 21 commencement of this Part, of answers, documents or things given or
 22 produced at or after that commencement.
- 23 (12) The amendment made by this Schedule of subsection 207(1) of that Act
 24 applies in relation to records, communications or disclosures made at or
 25 after that commencement (regardless of when the information was
 26 acquired).

27 **39 Transitional—existing directions and summonses**

- 28 (1) A direction given under subsection 90(1) of the *Law Enforcement*
 29 *Integrity Commissioner Act 2006* that is in force immediately before the
 30 commencement of this Schedule continues in force (and may be dealt
 31 with) as if it had been given under that subsection as amended by this
 32 Schedule.
- 33 (2) A summons issued under subsection 83(1) of that Act that is in force
 34 immediately before the commencement of this Schedule continues in

Schedule 2 Integrity Commissioner investigation powers

1 force (and may be dealt with) as if it had been issued under that
2 subsection as amended by this Schedule.