



Law Enforcement Legislation Amendment (Powers) Act 2015

No. 109, 2015

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

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

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

[Assented to 30 June 2015]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
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.	30 June 2015
2. Schedules 1 and 2	The 28th day after this Act receives the Royal Assent.	28 July 2015

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—ACC examination powers

Part 1—Main amendments

Australian Crime Commission Act 2002

1 Subsection 4(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 examination material.

disclose, for examination material or derivative material, includes:

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

examination means an examination under Division 2 of Part II.

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

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

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.

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

post-charge:

- (a) a use or disclosure of examination material or derivative material is a *post-charge* use or disclosure if the use or disclosure happens at a time when:
- (i) the examinee has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (b) material is *post-charge* examination material if the material becomes examination material at a time when:
- (i) the examinee has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (c) an examination is a *post-charge* examination if the examination commences at a time when:
- (i) the examinee has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (d) a summons is a *post-charge* summons if the summons is issued to a person at a time when:
- (i) the person has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent.

post-confiscation application:

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

- (b) material is ***post-confiscation application*** examination material if the material becomes examination material at a time when:
 - (i) a related confiscation proceeding has commenced against the examinee and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or
- (c) an examination is a ***post-confiscation application*** examination if the examination commences at a time when:
 - (i) a related confiscation proceeding has commenced against the examinee and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or
- (d) a summons is a ***post-confiscation application*** summons if the summons is issued to a person at a time when:
 - (i) a related confiscation proceeding has commenced against the person and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent.

pre-charge:

- (a) a use or disclosure of examination material or derivative material is a ***pre-charge*** use or disclosure if the use or disclosure happens at a time when:
 - (i) the examinee has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved; or
- (b) material is ***pre-charge*** examination material if the material becomes examination material at a time when:
 - (i) the examinee has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved; or
- (c) an examination is a ***pre-charge*** examination if the examination commences at a time when:
 - (i) the examinee has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved.

pre-confiscation application:

- (a) a use or disclosure of examination material or derivative material is a ***pre-confiscation application*** use or disclosure if the use or disclosure happens at a time when:
 - (i) a related confiscation proceeding has not commenced against the examinee, and such a proceeding is not imminent; or
 - (ii) all such proceedings have been resolved; or
- (b) material is ***pre-confiscation application*** examination material if the material becomes examination material at a time when:
 - (i) a related confiscation proceeding has not commenced against the examinee, and such a proceeding is not imminent; or
 - (ii) all such proceedings have been resolved; or
- (c) an examination is a ***pre-confiscation application*** examination if the examination commences at a time when:
 - (i) a related confiscation proceeding has not commenced against the examinee, and such a proceeding is not imminent; or
 - (ii) all such proceedings have been resolved.

proceeds of crime authority means:

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

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

prosecutor, of an examinee, means an individual:

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

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

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

4C Resolved

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

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

- (2) A confiscation proceeding is *resolved* in relation to a person at the later of the following times:
- (a) when the proceeding is discontinued;
 - (b) if an appeal relating to the proceeding is not lodged within the period for lodging such an appeal—when that period ends;
 - (c) if an appeal relating to the proceeding is lodged—when the appeal lapses or is finally determined.

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

3 Subsection 7C(2)

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

4 Subsection 7C(3)

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

5 Subsection 12(1) (note 1)

Omit “Note 1”, substitute “Note”.

6 Subsection 12(1) (note 2)

Repeal the note.

7 After subsection 12(1)

Insert:

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

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

8 Subsection 12(1A) (note)

Repeal the note.

9 Subsection 12(2)

Repeal the subsection, substitute:

- (2) Subsection (1A) has effect subject to:
- (a) any relevant direction given under subsection 25A(9) (about confidentiality for examinations); and
 - (b) the CEO complying with sections 25B and 25H to the extent that the evidence is examination material or derivative material.

10 At the end of section 24AA

Add:

Returnable items that are examination material or derivative material

- (10) This section has effect subject to:
- (a) any relevant direction given under subsection 25A(9) (about confidentiality for examinations); and
 - (b) the person making available, or using, the returnable item complying with sections 25B to 25H to the extent that the returnable item is examination material or derivative material.

11 Section 24A

Before “An”, insert “(1)”.

12 At the end of section 24A

Add:

- (2) The examination may be:
- (a) a pre-charge examination or a post-charge examination; or
 - (b) a pre-confiscation application examination or a post-confiscation application examination.
- (3) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:

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

13 After subsection 25A(6)

Insert:

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

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

Repeal the subsections, substitute:

Confidentiality

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

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

15 Subsection 25A(14)

Repeal the subsection, substitute:

Offences

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

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

- (14A) A person commits an offence if:
- (a) the person uses or discloses examination material (whether or not the person is the first to do so); and
 - (b) the use or disclosure contravenes a direction given under subsection (9) about the examination material; and
 - (c) the use or disclosure is not under subsection (12) or (13) or paragraph 25C(1)(b).

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

16 After section 25A

Insert:

25B Obtaining derivative material

- (1) An entity mentioned in subsection (3), that may lawfully use or disclose examination material, may lawfully use or disclose the
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material for the purpose of obtaining derivative material if the use or disclosure is:

- (a) a pre-charge use or disclosure of the material; or
 - (b) a post-charge use or disclosure of pre-charge examination material; or
 - (c) a post-charge use or disclosure of post-charge examination material; or
 - (d) a pre-confiscation application use or disclosure of the examination material; or
 - (e) a post-confiscation application use or disclosure of pre-confiscation application examination material; or
 - (f) a post-confiscation application use or disclosure of post-confiscation application examination material.
- (2) Subsection (1) has effect subject to:
- (a) any relevant direction given under subsection 25A(9); and
 - (b) paragraph 25C(1)(b), in the case of a disclosure to a prosecutor of the examinee.
- Subsection (1) does not, by implication, limit the use or disclosure of the examination material for any other purpose.
- (3) The entities are as follows:
- (a) an examiner;
 - (b) the CEO or a member of the staff of the ACC;
 - (c) a person or body investigating whether the examinee committed an offence against a law of the Commonwealth, or of a State or Territory;
 - (d) a prosecutor of the examinee;
 - (e) a prosecuting authority;
 - (f) a proceeds of crime authority;
 - (g) any other person or body lawfully in possession of the examination material.
- (4) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
- (a) one or more of paragraphs (1)(b), (c), (e) and (f) had not been enacted; or
 - (b) subsection (3) were, by express provision, confined to persons or bodies other than either or both of the following:

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

25C Disclosing examination material to prosecutors of the examinee

- (1) A person or body, that may lawfully disclose examination material, may lawfully disclose the material to a prosecutor of the examinee if the disclosure is:
 - (a) a pre-charge disclosure of the material; or
 - (b) a post-charge disclosure of:
 - (i) pre-charge examination material; or
 - (ii) post-charge examination material;under an order made under subsection 25E(1).
- (2) Subsection (1) has effect subject to any relevant direction given under subsection 25A(9), in the case of a pre-charge disclosure of the material.

Note: In the case of a post-charge disclosure, the court will have regard to any direction under subsection 25A(9) in deciding whether to make an order under subsection 25E(1).

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

25D Disclosing derivative material to prosecutors of the examinee

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

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

Court may order that material may be disclosed

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

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

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

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

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

- (1) A person or body, that may lawfully disclose examination material of a kind covered by paragraph 4B(1)(c) or (d), may lawfully disclose the material to a prosecutor of the examinee.
- (2) A person or body, that may lawfully disclose examination material or derivative material, may lawfully disclose the material to a prosecutor of the examinee if the examinee:
- (a) is suspected of; or
 - (b) has been charged with;
- an offence against subsection 30(1), (2) or (3), 33(1) or 35(1) in relation to the examination.
- (3) Subsection (1) or (2) has effect subject to any relevant direction given under subsection 25A(9).
- (4) Subsection (1) or (2) applies whether the disclosure is:
- (a) a pre-charge disclosure of the material; or
 - (b) a post-charge disclosure of:
 - (i) pre-charge examination material; or
 - (ii) derivative material obtained from pre-charge examination material (whether from a pre-charge use of the examination material or otherwise); or
 - (c) a post-charge disclosure of:
 - (i) post-charge examination material; or
 - (ii) derivative material obtained from post-charge examination material;
- and whether or not an order has been made under subsection 25E(1).
- (5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (4)(b) or (c), or both, had not been enacted.

25G Other matters about prosecutors and examinees

- (1) If a prosecutor of the examinee lawfully possesses examination material or derivative material, the prosecutor may use that material for purposes that include:
 - (a) making a decision whether to prosecute the examinee; and
 - (b) prosecuting the examinee.This use of the examination material is subject to subsection 30(5) and any relevant direction given under subsection 25A(9).
- (2) If material is lawfully in the possession of a prosecutor of the examinee, the fact that the material is examination material or derivative material does not prevent it from being admissible in evidence against the examinee in a criminal proceeding.

Note: The material may be inadmissible for other reasons (for example, because of subsection 30(5)).
- (3) Sections 25B to 25F and subsection (1) of this section do not, by implication, restrict the use of examination material or derivative material by, or the disclosure of that material to:
 - (a) a prosecuting authority; or
 - (b) an individual employed or engaged by a prosecuting authority;who is not a prosecutor of the examinee.
- (4) This section has effect subject to any law of the Commonwealth, a State or Territory.

25H Proceeds of crime authorities and examinations

- (1) A person or body, that may lawfully disclose examination material or derivative material, may lawfully disclose the material to a proceeds of crime authority if the disclosure is:
 - (a) a pre-confiscation application disclosure of the material; or
 - (b) a post-confiscation application disclosure of:
 - (i) pre-confiscation application examination material; or
 - (ii) derivative material obtained from pre-confiscation application examination material (whether from a pre-confiscation application use of the examination material or otherwise); or
 - (c) a post-confiscation application disclosure of:

- (i) post-confiscation application examination material; or
 - (ii) derivative material obtained from post-confiscation application examination material.
- (2) Subsection (1) has effect subject to any relevant direction given under subsection 25A(9).
- (3) If material is lawfully in the possession of a proceeds of crime authority, the fact that the material is examination material or derivative material does not prevent it from being admissible in evidence against the examinee in a confiscation proceeding.
- Note: The material may be inadmissible for other reasons (for example, because of subsection 30(5)).
- (4) Subsections (3), 21E(3) and 30(5A) do not, by implication, restrict a court's power to make any orders necessary to prevent prejudice to the proper administration of justice.
- (5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (1)(b) or (c), or both, had not been enacted.

17 Subsection 28(1)

Repeal the subsection, substitute:

- (1) An examiner may summon a person to appear before an examiner at an examination to do either or both of the following:
- (a) give evidence;
 - (b) produce any documents or other things referred to in the summons;
- if the examiner is satisfied that issuing the summons is:
- (c) in all cases—reasonable in all the circumstances; and
 - (d) in the case of a post-charge, or post-confiscation application, summons—reasonably necessary for the purposes of the relevant special ACC operation/investigation even though:
 - (i) the person has been charged or the confiscation proceeding has commenced; or
 - (ii) that charge or proceeding is imminent.

18 Subsection 28(1A)

Omit the first sentence.

19 At the end of subsection 28(3)

Add:

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

20 At the end of section 28

Add:

Severability

- (9) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
- (a) paragraph (1)(d) had not been enacted; or
 - (b) paragraph (1)(d) were, by express provision, confined to dealing with a charge against the person or such a charge that is imminent; or
 - (c) paragraph (1)(d) were, by express provision, confined to dealing with a confiscation proceeding against the person that has commenced or is imminent.

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

Repeal the subparagraphs, substitute:

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

22 Subsection 29B(1) (penalty)

Repeal the penalty, substitute:

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

23 Subsection 29B(3) (penalty)

Repeal the penalty, substitute:

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

24 Subsection 30(4)

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

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

Repeal the subparagraph, substitute:

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

26 Subsection 30(5)

Repeal the subsection, substitute:

- (5) The answer, document or thing is not admissible in evidence against the person in:
 - (a) a criminal proceeding; or
 - (b) a proceeding for the imposition of a penalty; or
 - (c) a confiscation proceeding.
- (5A) Subsection (5) 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 the examination at a time when the proceeding had not commenced and is not imminent; or
 - (b) a proceeding about:
 - (i) in the case of an answer—the falsity of the answer; or
 - (ii) in the case of the production of a document—the falsity of any statement contained in the document.

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

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

27 At the end of paragraph 34A(a)

Add:

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

28 Subsection 51(2)

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

29 Paragraph 59AB(1)(e)

Repeal the paragraph, substitute:

- (e) disclosing the ACC information would not prejudice:
 - (i) a person’s safety; or
 - (ii) a person’s fair trial if the person has been charged with an offence or such a charge is imminent; and
- (f) disclosing the ACC information would not be contrary to a law of the Commonwealth, a State or Territory that would otherwise apply.

30 Subsection 59AB(7) (penalty)

Repeal the penalty, substitute:

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

31 Subsection 59AB(7) (note)

Repeal the note.

32 Subsection 59AB(8) (penalty)

Repeal the penalty, substitute:

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

33 Subsection 59AB(8) (note)

Repeal the note.

34 Section 59AC

Repeal the section, substitute:

59AC Restrictions on disclosing examination material or derivative material

- (1) Section 59 has effect subject to:

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

35 Subsection 60(5)

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

36 Subsection 61(4)

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

37 Application of amendments

- (1) Subject to subitems (3) to (6), the amendments made by this Part apply in relation to:
 - (a) the use, disclosure or admissibility in evidence of examination material or derivative material at or after the commencement of this Part (regardless of when the examination was conducted); or
 - (b) summonses issued under subsection 28(1) of the *Australian Crime Commission Act 2002* at or after the commencement of this Part.
 - (2) The amendments made by this Part of subsections 7C(2) and (3) of that Act apply in relation to determinations made under those subsections at or after the commencement of this Part.
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- (3) Subsections 25A(10) and (11) of that Act (as inserted by this Part) apply in relation to decisions to vary, or revoke, made at or after the commencement of this Part (regardless of when the direction was given).
- (4) Subsections 25A(14) and (14A) of that Act (as inserted by this Part) apply in relation to contraventions at or after the commencement of this Part (regardless of when the examination was conducted or when the direction was given).
- (5) The amendments made by this Part of section 30 of that Act apply in relation to the admissibility in evidence, at or after the commencement of this Part, of answers, documents or things (regardless of when the relevant examination was conducted).
- (6) The amendments made by this Part of subsections 51(2) and 59AB(7) and (8) of that Act apply in relation to records, communications, disclosures, acts or omissions made or happening at or after the commencement of this Part (regardless of when the information was acquired).

38 Transitional—existing directions and summonses

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

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

Australian Crime Commission Act 2002

39 Subsection 4(1)

Insert:

legal aid officer means:

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

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

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

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

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

41 After section 21

Insert:

21A Notices to produce a document or thing

- (1) An examiner may, by issuing a written notice served on a person, require the person:
 - (a) to attend, at a specified time and place, before an examiner or member of the staff of the ACC; and
 - (b) to produce to that person at that time and place a specified document or thing relevant to a special ACC operation/investigation;
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if the examiner is satisfied that issuing the notice is reasonable in all the circumstances.

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

- (2) The examiner must record in writing the reasons for the notice. The record must be made at or before the time the notice is issued.
- (3) A notice may be issued under subsection (1) whether or not an examination is being held for the purposes of the special ACC operation/investigation.
- (4) A person commits an offence if:
 - (a) the person is served with a notice under subsection (1); and
 - (b) the person fails to comply with a notice.

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

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

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

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

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

Notations prohibiting disclosures of information about a notice

- (1) Subsections (2) to (4) provide when a notice under subsection 21A(1) can include a notation to the effect that disclosure of information about:
 - (a) the notice; or
 - (b) any official matter connected with it;is prohibited except in any circumstances specified in the notation.
- (2) The notice must include such a notation if the examiner issuing the notice is satisfied that the failure to do so would reasonably be expected to prejudice:
 - (a) a person's safety or reputation; or

Schedule 1 ACC examination powers

Part 2 Amendments relating to notices to produce documents or things

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

Written statement to accompany notation

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

When notations are cancelled

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

Relationship with the Privacy Act 1988

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

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

21C Notices—offences of disclosure

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

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

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

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

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

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

- (4) Subsection (3) does not apply if the person discloses the information:
- (a) if the person is an officer or agent of a body corporate referred to in paragraph (2)(d):
 - (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the notice; or
 - (ii) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the notice; or
 - (iii) to a legal aid officer for the purpose of seeking assistance under section 27 in relation to the notice; or
 - (b) if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or seeking assistance under section 27, in relation to the notice; or
 - (c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation in relation to the notice; or
 - (d) to the Ombudsman for the purpose of making a complaint under the *Ombudsman Act 1976*; or

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

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

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

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

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

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

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

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

21E Notices—self-incrimination etc.

- (1) A person is not excused from producing a document or thing, when served with a notice to do so under section 21A, on the ground that doing so would tend to incriminate the person or expose the person to a penalty.
- (2) If the person is an individual, 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.
- (3) Subsection (2) does not affect whether the document or thing is admissible in evidence against the person in:
 - (a) a confiscation proceeding, if the document or thing was produced at a time when the proceeding had not commenced and is not imminent; or
 - (b) a proceeding about:
 - (i) in the case of an answer—the falsity of the answer; or
 - (ii) in the case of the production of a document—the falsity of any statement contained in the document.

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

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

21F Notices—allowances for expenses

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

42 Subsection 26(1)

Omit “(1) A”, substitute “A”.

43 Subsection 26(2)

Repeal the subsection.

44 Section 29

Repeal the section.

45 Section 29A (heading)

Repeal the heading, substitute:

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

46 Subsection 29A(1)

Omit “or a notice under section 29”.

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

Omit “or notice” (wherever occurring).

48 Subsection 29A(4)

Omit “or notices”.

49 Subsection 29A(5)

Omit “or notice”.

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

Repeal the subparagraph.

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

Omit “or notice”.

52 Subsection 29A(8)

Repeal the subsection.

53 Section 29B (heading)

Repeal the heading, substitute:

29B Summonses—offences of disclosure

54 Subsection 29B(1)

Omit “or notice” (wherever occurring).

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

Omit “, notice”.

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

Omit “or notice”.

57 Paragraph 29B(3)(b)

Omit “, notice”.

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

Omit “or notice”.

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

Omit “, notice”.

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

Omit “, notice”.

61 Subsection 29B(5)

Omit “or notice” (wherever occurring).

62 Subsection 29B(7)

Repeal the subsection.

Public Interest Disclosure Act 2013

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

Insert:

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

64 Transitional and application issues—existing notices

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

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

- (2) A notation that:
- (a) was included in a notice:
 - (i) issued under subsection 29(1) of the *Australian Crime Commission Act 2002*; and
 - (ii) in force immediately before the commencement of this Part; and
 - (b) had not been cancelled under subsection 29A(4) of that Act before the commencement of this Part;

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

- (3) Section 21C of the *Australian Crime Commission Act 2002* (as inserted by this Part) applies to the following:
- (a) each disclosure, covered by paragraph 21C(1)(b) of that Act, made at or after the commencement of this Part (regardless of when the related notice was served);
 - (b) each disclosure, covered by paragraph 21C(3)(c) of that Act, made at or after the commencement of this Part (regardless of

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

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

post-charge:

- (a) a use or disclosure of hearing material or derivative material is a ***post-charge*** use or disclosure if the use or disclosure happens at a time when:
 - (i) the witness has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (b) material is ***post-charge*** hearing material if the material becomes hearing material at a time when:
 - (i) the witness has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (c) a hearing is a ***post-charge*** hearing if the hearing commences at a time when:
 - (i) the witness has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (d) a summons is a ***post-charge*** summons if the summons is issued to a person at a time when:
 - (i) the person has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent.

post-confiscation application:

- (a) a use or disclosure of hearing material or derivative material is a ***post-confiscation application*** use or disclosure if the use or disclosure happens at a time when:
 - (i) a related confiscation proceeding has commenced against the witness and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or
 - (b) material is ***post-confiscation application*** hearing material if the material becomes hearing material at a time when:
 - (i) a related confiscation proceeding has commenced against the witness and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or
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- (c) a hearing is a **post-confiscation application** hearing if the hearing commences at a time when:
 - (i) a related confiscation proceeding has commenced against the witness and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or
 - (d) a summons is a **post-confiscation application** summons if the summons is issued to a person at a time when:
 - (i) a related confiscation proceeding has commenced against the person and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent.

pre-charge:

- (a) a use or disclosure of hearing material or derivative material is a **pre-charge** use or disclosure if the use or disclosure happens at a time when:
 - (i) the witness has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved; or
- (b) material is **pre-charge** hearing material if the material becomes hearing material at a time when:
 - (i) the witness has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved; or
- (c) a hearing is a **pre-charge** hearing if the hearing commences at a time when:
 - (i) the witness has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved.

pre-confiscation application:

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

- (b) material is **pre-confiscation application** hearing material if the material becomes hearing material at a time when:
 - (i) a related confiscation proceeding has not commenced against the witness, and such a proceeding is not imminent; or
 - (ii) all such proceedings have been resolved; or
- (c) a hearing is a **pre-confiscation application** hearing if the hearing commences at a time when:
 - (i) a related confiscation proceeding has not commenced against the witness, and such a proceeding is not imminent; or
 - (ii) all such proceedings have been resolved.

proceeds of crime authority means:

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

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

prosecutor, of a witness, means an individual:

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

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 hearing material, derivative material or a witness—a confiscation proceeding if the subject matter of the relevant hearing 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 hearing material, derivative material or a witness—an offence if the subject matter of the relevant hearing 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 8B.

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

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

2 After section 8

Insert:

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

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

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

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

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

- (3) The *witness* is:
- (a) for the hearing or hearing material—the person referred to in paragraph (1)(a), (b), (c) or (d); or
 - (b) for derivative material—the person who is the witness for the hearing material from which the derivative material was obtained.

8B Resolved

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

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

- (2) A confiscation proceeding is *resolved* in relation to a person at the later of the following times:
- (a) when the proceeding is discontinued;
 - (b) if an appeal relating to the proceeding is not lodged within the period for lodging such an appeal—when that period ends;

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

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

3 Paragraph 77A(3)(b)

Repeal the paragraph, substitute:

(b) a person’s fair trial, if the person has been charged with an offence or such a charge is imminent; or

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

Repeal the subparagraph, substitute:

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

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

Repeal the penalties, substitute:

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

6 Subsection 80(3)

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

7 Subsection 80(4)

Repeal the subsection, substitute:

(4) The information 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 information, document or thing is admissible in evidence against the person in:

- (a) a confiscation proceeding, if the information was given, or the document or thing was produced, at a time when the proceeding had not commenced and such a proceeding is not imminent; or
- (b) a proceeding for an offence against section 77B or 78; 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 proceeding for an offence against section 149.1 of the *Criminal Code* (about obstruction of Commonwealth public officials) that relates to this Act; or
- (e) a disciplinary proceeding against the person if the person is a staff member of a law enforcement agency.

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

8 After subsection 82(1)

Insert:

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

9 Subsection 83(1)

Repeal the subsection, substitute:

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

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

- (i) the person has been charged or the confiscation proceeding has commenced; or
- (ii) that charge or proceeding is imminent.

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

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

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

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

10 At the end of subsection 83(2)

Add:

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

11 After subsection 83(2)

Insert:

- (2A) The matters in relation to which the Integrity Commissioner may require the person to give evidence, or produce documents or things, at the hearing may include:
- (a) the subject matter of any charge, or imminent charge, against the person; and
 - (b) the subject matter of any confiscation proceeding, or imminent confiscation proceeding, against the person.

12 After subsection 83(5)

Insert:

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

13 Subsection 83(6)

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

14 At the end of section 83

Add:

- (7) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
- (a) paragraph (1)(d) or subsection (2A) had not been enacted; or
 - (b) paragraph (1)(d) or subsection (2A) were, by express provision, confined to dealing with a charge against the person or such a charge that is imminent; or
 - (c) paragraph (1)(d) or subsection (2A) were, by express provision, confined to dealing with a confiscation proceeding against the person that has commenced or is imminent.

15 Paragraph 86(3)(a)

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

16 Subsection 86(5) (penalty)

Repeal the penalty, substitute:

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

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

Repeal the subsections, substitute:

Prohibition or limitation on use or disclosure

- (1) The Integrity Commissioner may direct that hearing material:
- (a) must not be used or disclosed; or
 - (b) may only be used by, or disclosed to, specified persons in specified ways or on specified conditions.
- Note: Failure to comply with a direction is an offence: see subsection (6).
- (2) If all or part of the hearing is held in private, the Integrity Commissioner must give a direction under subsection (1) if the Commissioner is satisfied that the failure to give such a direction:
- (a) might prejudice a person’s safety; or
 - (b) would reasonably be expected to prejudice the witness’ fair trial, if the witness has been charged with a related offence or such a charge is imminent; or

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

18 Subsection 90(6)

Repeal the subsection, substitute:

Offence

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

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

19 Paragraph 91(1)(b)

Repeal the paragraph, substitute:

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

20 Paragraph 91(3)(b)

Repeal the paragraph, substitute:

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

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

Repeal the subparagraph, substitute:

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

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

Repeal the penalties, substitute:

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

23 Section 94

Repeal the section, substitute:

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

A person commits an offence if the person:

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

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

24 Subsection 96(1)

Repeal the subsection, substitute:

Self-incrimination

- (1) 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 would tend to incriminate the person or expose the person to a penalty.

25 Subsection 96(3)

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:

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

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

28 Paragraph 96(7)(b)

Repeal the paragraph, substitute:

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

29 After Subdivision E of Division 2 of Part 9

Insert:

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

96AA Obtaining derivative material

- (1) An entity mentioned in subsection (3), that may lawfully use or disclose hearing material, may lawfully use or disclose the material for the purpose of obtaining derivative material if the use or disclosure is:
 - (a) a pre-charge use or disclosure of the material; or
 - (b) a post-charge use or disclosure of pre-charge hearing material; or
 - (c) a post-charge use or disclosure of post-charge hearing material; or
 - (d) a pre-confiscation application use or disclosure of the hearing material; or

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

96AB Disclosing hearing material to prosecutors of the witness

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

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

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

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

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

96AC Disclosing derivative material to prosecutors of the witness

- (1) A person or body, that may lawfully disclose derivative material, may lawfully disclose the material to a prosecutor of the witness if the disclosure is:
- (a) a pre-charge disclosure of the material; or
 - (b) a post-charge disclosure of derivative material obtained from pre-charge hearing material (whether from a pre-charge use of that hearing material or otherwise); or
 - (c) a post-charge disclosure of derivative material obtained from post-charge hearing material, and the disclosure is under an order made under subsection 96AD(1).
- (2) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (1)(b) or (c), or both, had not been enacted.

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

Court may order that material may be disclosed

- (1) A court may, on application or on its own initiative, order that hearing material or derivative material may be disclosed to prosecutors of the witness if the court is satisfied that the disclosure is required:
- (a) in the interests of justice; and
 - (b) despite any direction given under subsection 90(1).

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

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

Court's powers to ensure the witness' fair trial

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

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

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

prosecutor of the witness if the witness is suspected of, or has been charged with:

- (a) an offence against section 77B, 92, 93 or 94 in relation to the hearing; or
 - (b) an offence against section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents) in relation to the hearing.
- (3) Subsection (1) or (2) has effect subject to any direction given under subsection 90(1).
- (4) Subsection (1) or (2) applies whether the disclosure is:
- (a) a pre-charge disclosure of the material; or
 - (b) a post-charge disclosure of:
 - (i) pre-charge hearing material; or
 - (ii) derivative material obtained from pre-charge hearing material (whether from a pre-charge use of the hearing material or otherwise); or
 - (c) a post-charge disclosure of:
 - (i) post-charge hearing material; or
 - (ii) derivative material obtained from post-charge hearing material;
- and whether or not an order has been made under subsection 96AD(1).
- (5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (4)(b) or (c), or both, had not been enacted.

96AF Other matters about prosecutors and witnesses

- (1) If a prosecutor of the witness lawfully possesses hearing material or derivative material, the prosecutor may use that material for purposes that include:
- (a) making a decision whether to prosecute the witness; and
 - (b) prosecuting the witness.
- This use of the hearing material is subject to subsection 96(4A) and any direction given under subsection 90(1).
- (2) If material is lawfully in the possession of a prosecutor of the witness, the fact that the material is hearing material or derivative
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material does not prevent it from being admissible in evidence against the witness in a criminal proceeding.

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

- (3) This Subdivision does not, by implication, restrict the use of hearing material or derivative material by, or the disclosure of that material to:
 - (a) a prosecuting authority; or
 - (b) an individual employed or engaged by a prosecuting authority;who is not a prosecutor of the witness.
- (4) This section has effect subject to any law of the Commonwealth, a State or Territory.

96AG Proceeds of crime authorities and hearings

- (1) A person or body, that may lawfully disclose hearing material or derivative material, may lawfully disclose the material to a proceeds of crime authority if the disclosure is:
 - (a) a pre-confiscation application disclosure of the material; or
 - (b) a post-confiscation application disclosure of:
 - (i) pre-confiscation application hearing material; or
 - (ii) derivative material obtained from pre-confiscation application hearing material (whether from a pre-confiscation application use of the hearing material or otherwise); or
 - (c) a post-confiscation application disclosure of:
 - (i) post-confiscation application hearing material; or
 - (ii) derivative material obtained from post-confiscation application hearing material.
- (2) Subsection (1) has effect subject to any direction given under subsection 90(1).
- (3) If material is lawfully in the possession of a proceeds of crime authority, the fact that the material is hearing material or derivative material does not prevent it from being admissible in evidence against the witness in a confiscation proceeding.

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

- (4) Subsections (3), 80(4A) and 96(4A) do not, by implication, restrict a court's power to make any orders necessary to prevent prejudice to the proper administration of justice.
- (5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (1)(b) or (c), or both, had not been enacted.

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

Add:

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

31 Paragraph 96A(1)(f)

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

32 Paragraph 96A(1)(g)

Omit "interrupts", substitute "disrupts".

33 Subsection 102(1)

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

34 Subsection 207(1) (penalty)

Repeal the penalty, substitute:

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

35 After paragraph 208(1)(b)

Insert:

- ; and (c) to the extent that the information is hearing material or derivative material—divulges or 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.

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:
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- (a) the use, disclosure or admissibility in evidence of hearing material or derivative material at or after the commencement of this Schedule (regardless of when the hearing was held); or
 - (b) summonses issued under subsection 83(1) of the *Law Enforcement Integrity Commissioner Act 2006* at or after that commencement.
 - (2) The amendments of section 77A of that Act by this Schedule apply in relation to notices under section 75 of that Act issued at or after the commencement of this Schedule.
 - (3) The amendments of section 77B of that Act by this Schedule apply in relation to:
 - (a) disclosures covered by paragraph 77B(1)(c) or (3)(c) of that Act; or
 - (b) records or disclosures covered by paragraph 77B(5)(c) of that Act;at or after the commencement of this Schedule.
 - (4) Subject to subitem (5), the amendments made of section 80 of that Act by this Schedule apply in relation to the admissibility in evidence, at or after the commencement of this Schedule, of information, documents or things (regardless of when the relevant notice was issued).
 - (5) Paragraph 80(4A)(b) of that Act:
 - (a) as inserted by this Part; and
 - (b) to the extent that it relates to offences against section 77B of that Act;applies in relation to the admissibility in evidence, at or after the commencement of this Part, of information, documents or things given or produced at or after that commencement.
 - (6) Subsections 83(5A) and 86(5) and section 94 of that Act (as inserted or amended by this Schedule) apply in relation to hearings conducted at or after the commencement of this Schedule (regardless of when any summons was issued).
 - (7) Subsections 90(3) and (3A) of that Act (as inserted by this Schedule) apply in relation to decisions to vary, or revoke, made at or after the commencement of this Schedule (regardless of when the direction was given).
-

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- (8) Subsection 90(6) of that Act (as inserted by this Schedule) applies in relation to contraventions at or after the commencement of this Schedule (regardless of when the direction was given).
- (9) The amendments of section 92 of that Act by this Schedule apply in relation to:
- (a) disclosures covered by paragraph 92(1)(c) or (3)(c) of that Act; or
 - (b) records or disclosures covered by paragraph 92(5)(c) of that Act;
- at or after the commencement of this Schedule.
- (10) Subject to subitem (11), the amendments made of section 96 of that Act by this Schedule apply in relation to the admissibility in evidence, at or after the commencement of this Schedule, of answers, documents or things (regardless of when the hearing was held).
- (11) Paragraph 96(4A)(b) of that Act (as inserted by this Part), to the extent that it relates to:
- (a) offences against section 94 of that Act; or
 - (b) proceedings relating to applications for persons to be dealt with for being in contempt of ACLEI;
- applies in relation to the admissibility in evidence, at or after the commencement of this Part, of answers, documents or things given or produced at or after that commencement.
- (12) The amendment made by this Schedule of subsection 207(1) of that Act applies in relation to records, communications or disclosures made at or after that commencement (regardless of when the information was acquired).

39 Transitional—existing directions and summonses

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

Schedule 2 Integrity Commissioner investigation powers

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

*[Minister's second reading speech made in—
House of Representatives on 26 March 2015
Senate on 15 June 2015]*

(40/15)
