

NATIONAL ANTI-CORRUPTION COMMISSION (CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) RULES 2023

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

under item 57 in Schedule 2 to the *National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022*

GLOSSARY

The following abbreviations and acronyms are used throughout this Explanatory Statement.

<i>Abbreviation</i>	<i>Definition</i>
ABF Act	<i>Australian Border Force Act 2015</i>
ACC Act	<i>Australian Crime Commission Act 2002</i>
ACLEI	Australian Commission for Law Enforcement Integrity
ADJR Act	<i>Administrative Decisions (Judicial Review) Act 1977</i>
AFP	Australian Federal Police
AFP Act	<i>Australian Federal Police Act 1979</i>
Consequential and Transitional Act	<i>National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022</i>
Crimes Act	<i>Crimes Act 1914</i>
Inspector	Inspector of the National Anti-Corruption Commission
Integrity Commissioner	Australian Commission for Law Enforcement Integrity Commissioner
LEIC Act	<i>Law Enforcement Integrity Commissioner Act 2006</i>
NACC	National Anti-Corruption Commission
NACC Act	<i>National Anti-Corruption Commission Act 2022</i>
NACC Commissioner	National Anti-Corruption Commissioner
Ombudsman Act	<i>Ombudsman Act 1976</i>
POC Act	<i>Proceeds of Crime Act 2002</i>
Privacy Act	<i>Privacy Act 1988</i>
SD Act	<i>Surveillance Devices Act 2004</i>
TIA Act	<i>Telecommunications (Interception and Access) Act 1979</i>

PURPOSE AND OPERATION OF THE INSTRUMENT

The purpose of the National Anti-Corruption Commission (Consequential and Transitional Provisions) Rules 2023 (the Rules) is to prescribe transitional arrangements to support ACLEI's transition to the NACC on its commencement on 1 July 2023 (the transition time). At the transition time, the NACC will commence operations and ACLEI will be abolished.

Item 57 in Schedule 2 to the Consequential and Transitional Act provides that the Minister may, by legislative instrument, make rules prescribing transitional arrangements that are required or permitted by, or are necessary or convenient for carrying out or giving effect to, the Consequential and Transitional Act.

The Consequential and Transitional Act repeals the LEIC Act, makes consequential amendments to relevant Commonwealth legislation and outlines transitional arrangements to support the transfer of ACLEI's functions, powers, duties and resources (including staff) to the NACC.

Schedule 2 to the Consequential and Transitional Act includes transitional provisions applying to key provisions in the LEIC Act and several Acts amended by the Consequential and Transitional Act to support ACLEI's transition to the NACC. For example, these transitional provisions would:

- enable the NACC Commissioner to transition an investigation that was being undertaken under the LEIC Act at the transition time, and which meets the 'serious or systemic' threshold established by the NACC Act, to a NACC Act investigation and to conduct it as if it had been referred to the NACC (item 3);
- permit the NACC Commissioner to continue to conduct an ACLEI investigation after the transition time under the LEIC Act as if the LEIC Act had not been repealed, where the investigation had commenced but not been completed at the transition time (item 2);
- provide for the LEIC Act to continue to apply to notices to produce and summonses to attend hearings after the transition time, where they had been given to a person before the transition time but not yet complied with (items 9 and 11); and
- provide for requirements or permissions under other Acts granted or required by the Integrity Commissioner before the transition time to continue to have effect after the transition time as if they had been granted or required by the NACC (at Part 5).

The Rules would complement the transitional provisions in Schedule 2 to the Consequential and Transitional Act to ensure investigations and other processes on foot under the LEIC Act and other Acts before the transition time can be completed. The Rules would further ensure other legislation amended by Schedule 1 to the Consequential and Transitional Act operates appropriately with respect

to ACLEI and the LEIC Act, to support ACLEI's transition to the NACC. Specifically, the Rules would:

- facilitate existing investigations and inquiries continued by the NACC Commissioner under the LEIC Act after the transition time (Part 3);
- ensure the NACC and other entities conducting investigations under the LEIC Act after the transition time meet reporting and information-sharing requirements after the completion of the investigation (Part 2; Part 5; Part 7);
- ensure any reporting and record keeping requirements relating to the exercise of powers by ACLEI are complied with by the NACC, where action to meet those requirements was not completed before the transition time (Part 4);
- continue information-sharing arrangements and confidentiality requirements under the LEIC Act, and continue entitlements to make a complaint about ACLEI decisions and actions under existing frameworks (Part 6; Part 8); and
- provide for other miscellaneous transitional arrangements (Part 9).

Item 57 in Schedule 2 to the Consequential and Transitional Act specifies no conditions that need to be met before the powers to make the Rules may be exercised.

Section 4 of the *Acts Interpretation Act 1901* (Acts Interpretation Act) provides authority for legislative instruments to be made before the commencement of the relevant enabling legislation. Subsection 4(2) of the Acts Interpretation Act enables the Minister to make the Rules as if the Consequential and Transitional Act had already commenced.

The Rules would be a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the Rules are set out in **Attachment A**.

CONSULTATION

Targeted consultation was undertaken on the Rules between February and June 2023. In particular, the following agencies were consulted:

- the ACLEI, in relation to the entire instrument, as ACLEI's functions, powers, duties and resources will transition to the NACC once it commences on 1 July 2023;
- the AFP, in relation to rules relating to the continuation of AFP corruption investigations and information-sharing between the NACC and the AFP, after the transition time;
- the Office of the Commonwealth Ombudsman in relation to rules concerning the Ombudsman's oversight of covert investigatory powers and continued Ombudsman investigations after transition;

- the Department of Home Affairs in relation to rules concerning the ABF Act;
- the Australian Public Service Commission in relation to rules that would transition ACLEI's enterprise agreement to the NACC;
- the designate NACC statutory office-holders appointed by the Governor-General under the NACC Act in relation to the obligations that will transfer from ACLEI to the NACC after the transition time, as provided for by the Rules.

All agencies and office-holders consulted were supportive of the Rules. ACLEI provided input on the operational implications of the Rules. The Australian Government Solicitor also provided legal advice on the Rules and their interaction with relevant provisions of the Consequential and Transitional Act. Where appropriate, this input was incorporated, with all agencies supportive of the Rules in the form proposed.

REGULATION IMPACT STATEMENT

The Office of Impact Analysis advised that a Regulatory Impact Statement is not required as the Rules are unlikely to have more than a minor regulatory impact, as the changes will not affect businesses, individuals or community organisations (OBPR23-04255).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

The National Anti-Corruption Commission (Consequential and Transitional Provisions) Rules 2023 (the Rules) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The purpose of the Rules is to prescribe transitional arrangements to support the transition of the Australian Commission for Law Enforcement Integrity (ACLEI) to the National Anti-Corruption Commission (NACC) on the commencement of the NACC on 1 July 2023 (the transition time). At the transition time, the NACC will commence operations and ACLEI's functions, powers, duties and resources will be transferred to the NACC.

Item 57 in Schedule 2 of the *National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022* (Consequential and Transitional Act) provides that the Minister may, by legislative instrument, make rules prescribing transitional arrangements that are required or permitted by, or are necessary or convenient for carrying out or giving effect to, the Consequential and Transitional Act.

The Consequential and Transitional Act repeals the *Law Enforcement Integrity Commissioner Act 2006* (LEIC Act), makes consequential amendments to relevant Commonwealth legislation, and outlines transitional arrangements to support the transfer of ACLEI's functions, powers, duties and resources (including staff) to the NACC.

Schedule 2 to the Consequential and Transitional Act includes transitional provisions applying to key provisions in the LEIC Act and several Acts amended by the Consequential and Transitional Act to support ACLEI's transition to the NACC. For example, these transitional provisions would:

- enable the NACC Commissioner to transition an investigation that was being undertaken under the LEIC Act at the transition time, and which meets the 'serious or systemic' threshold established by the *National Anti-Corruption Commission Act 2022* (NACC Act), to a NACC Act investigation and to conduct it as if it had been referred to the NACC (item 3);
- permit the NACC Commissioner to continue to conduct an ACLEI investigation after the transition time under the LEIC Act as if the LEIC Act had not been repealed, where the investigation had commenced but not been completed at the transition time (item 2);
- provide for the LEIC Act to continue to apply to notices to produce and summonses to attend hearings after the transition time, where they had been given to a person before the transition time but not yet complied with (items 9 and 11); and
- provide for requirements or permissions under other Acts granted or required by the Integrity Commissioner before the transition time to continue to have effect after the transition time as if they had been granted or required by the NACC (at Part 5).

The Rules would complement the transitional provisions in Schedule 2 to the Consequential and Transitional Act to ensure investigations and other processes on foot under the LEIC Act and other Acts before the transition time can be completed. The Rules would further ensure other legislation amended by Schedule 1 to the Consequential and Transitional Act operates appropriately with respect to ACLEI and the LEIC Act, to support ACLEI's transition to the NACC. Specifically, the Rules would:

- facilitate existing investigations and inquiries continued by the NACC Commissioner under the LEIC Act after the transition time (Part 3);
- ensure the NACC and other entities conducting investigations under the LEIC Act after the transition time meet reporting and information-sharing requirements after the completion of the investigation (Part 2; Part 5; Part 7);
- ensure any reporting and record keeping requirements relating to the exercise of powers by ACLEI are complied with by the NACC, where action to meet those requirements was not completed before the transition time (Part 4);

- continue information-sharing arrangements and confidentiality requirements under the LEIC Act, and continue entitlements to make a complaint about ACLEI decisions and actions under existing frameworks (Part 6; Part 8); and
- provide for other miscellaneous transitional arrangements (Part 9).

Human rights implications

The measures in the Rules would engage the following human rights contained in the International Covenant on Civil and Political Rights (ICCPR):

- the right to an effective remedy contained in article 2(3);
- the right to a fair trial and a fair hearing under article 14(1);
- the prohibition on interference with privacy, and right to reputation, under article 17; and
- the right to freedom of expression under article 19(2).

Right to an effective remedy contained in article 2(3) of the ICCPR

Article 2(3) of the ICCPR guarantees the right to an effective remedy for any violation of rights or freedoms recognised by the ICCPR, including the right to have such a remedy determined by competent judicial, administrative or legislative authorities.

The Rules would promote the right to an effective remedy by:

- continuing rights of review, by enabling investigations by the Ombudsman into complaints about action taken by ACLEI, the Integrity Commissioner or an Assistant Integrity Commissioner after the transition time (section 70); and
- allowing for ongoing oversight of ACLEI's investigations and use of covert powers, via measures that continue reporting and record-keeping obligations after the transition time, for example, section 9 and Divisions 1, 3 and 4 of Part 4.

Rights of review – Ombudsman investigations

The Rules would promote the right to an effective remedy by ensuring any complaint concerning the actions of ACLEI, the Integrity Commissioner, or an Assistant Integrity Commissioner can continue to be investigated by the Ombudsman after the transition time.

Under the *Ombudsman Act 1976* (Ombudsman Act), the Ombudsman can investigate complaints made concerning actions taken by departments and prescribed authorities. This includes complaints made with respect to ACLEI, the Integrity Commissioner, or an Assistant Integrity Commissioner. However, after repeal of the LEIC Act at the transition time, ACLEI, the Integrity Commissioner and any Assistant Integrity Commissioner will no longer exist.

Section 70 of the Rules would allow the Ombudsman to deal with a complaint after the transition time concerning the actions of ACLEI, the Integrity Commissioner or an Assistant Integrity Commissioner as if each continued to be a prescribed authority. This ensures that after ACLEI is abolished and its functions, powers, duties and resources are transferred to the NACC, a person can continue to make complaints to the Ombudsman. Equally, section 70 would allow the Ombudsman to continue any incomplete investigation into ACLEI, the Integrity Commissioner or an Assistant Integrity Commissioner after the transition time.

The NACC Commissioner would be taken to be the prescribed authority for the purpose of an investigation commenced or continued by the Ombudsman after the transition time. This would ensure that the NACC Commissioner is able to comply with any outstanding requirements following the Ombudsman completing their investigation and delivering their report. For example, the NACC Commissioner would be required to furnish the particulars of any action that they propose to take with respect to the matters and recommendations included in the Ombudsman's report, if requested by the Ombudsman under subsection 15(4) of the Ombudsman Act. This would further promote a complainant's right to an effective remedy, as it would ensure action can be taken in response to any findings or recommendations following a complaint.

Oversight of ACLEI's investigations and use of covert powers

The Rules would promote the right to an effective remedy by ensuring reporting and record keeping obligations continue to apply after the transition time, allowing ongoing oversight of ACLEI's investigations and use of covert powers.

Under the LEIC Act, ACLEI and other agencies responsible for investigating matters under the LEIC Act are subject to reporting requirements after the completion of an investigation. These reports must include the findings of the investigation, and the evidence and other material on which those findings are based. This is important to ensure effective oversight of the investigation.

At the transition time, the LEIC Act will be repealed and reporting obligations under the LEIC Act would no longer apply to existing investigations that are continued under the LEIC Act in accordance with subitem 2(2) in Schedule 2 to the Consequential and Transitional Act. Reporting obligations would also not apply to a Commonwealth government agency that has completed an investigation of a corruption issue under the LEIC Act but not yet prepared a report under subsection 66(1) of the LEIC Act. Section 9 of the Rules would ensure that the NACC Commissioner and other investigating agencies comply with any outstanding reporting requirements contained in the LEIC Act. This ensures appropriate oversight of investigations, and promotes the right to an effective remedy for those who are impacted by an investigation.

As is the case with other law enforcement agencies that are authorised to exercise covert powers, ACLEI's use of various covert and intrusive powers under the *Crimes Act 1914* (Crimes Act), *Surveillance Devices Act 2004* (SD Act) and *Telecommunications (Interception and Access) Act 1979* (TIA Act) are subject to oversight by the Ombudsman and responsible Ministers. These Acts include extensive reporting and record keeping obligations to ensure the Ombudsman can perform its oversight function, and responsible Ministers are kept informed. For example, under the Crimes Act, law enforcement agencies are required to prepare 6-monthly or annual reports on the use of controlled operations, integrity testing operations and assumed identities. Similarly, the TIA Act requires law enforcement agencies to report to the Minister and the Ombudsman regarding warrants and authorisations, and maintain relevant records.

At the transition time, ACLEI will be abolished and will no longer be able to comply with ongoing oversight and reporting or record-keeping obligations. Divisions 1, 3 and 4 of Part 4 of the Rules would ensure that the NACC complies with any outstanding reporting and record keeping obligations with respect to ACLEI's use of covert powers under these Acts.

These reporting and record keeping obligations are necessary to ensure the Ombudsman can perform its oversight function over ACLEI's use of covert powers. They also ensure relevant information is provided to the responsible Ministers. This in turn promotes the right to an effective remedy by ensuring that activities that were undertaken by ACLEI remain subject to effective oversight after the transition time.

Right to a fair trial and fair hearing contained in article 14(1) of the ICCPR

Article 14(1) of the ICCPR protects the right to a fair and public criminal trial, and public hearing in civil proceedings. It provides that all persons shall be equal before the courts and tribunals, and, in the determination of criminal charges, or any suit at law, the right to a fair and public hearing before a competent, independent and impartial court or tribunal established by law.

The Rules would promote the right to a fair trial and hearing by:

- continuing the existing regime for restricting the disclosure of hearing material and derivative material that was obtained under the LEIC Act (section 13); and
- ensuring persons have access to financial assistance in relation to applications for judicial review (section 73).

Disclosure of hearing material and derivative material

The LEIC Act and NACC Act have similar, but slightly different, regimes for how evidence obtained during a corruption investigation may subsequently be used, and to whom it may be disclosed.

The key differences between the two regimes are the circumstances in which investigation or hearing material can be disclosed to prosecutors of a witness, and the type of information which may be disclosed. Under the NACC Act, investigation material (defined at section 99) can be disclosed to prosecutors of a witness in a broader range of circumstances than hearing material under the LEIC Act (defined at section 8A). This includes where a witness is charged with or suspected of committing a broader range of offences than the offences included for the purposes of the LEIC Act. This largely reflects the difference between the definitions of hearing material under section 8A of the LEIC Act and investigation material under section 99 of the NACC Act. Investigation material under the NACC Act includes information, documents or things given as required by a notice to produce, which is not included in the LEIC Act definition of hearing material.

Section 13 would provide that subdivision EAA of Division 2 of Part 9 of the LEIC Act continues to apply to hearing material and derivative material within the meaning of the LEIC Act. This ensures that hearing material and derivative material obtained under the LEIC Act continues to be subject to the use and disclosure provisions under the LEIC Act. It is appropriate that hearing and derivative material obtained under the LEIC Act can only be used and disclosed in the same circumstances as applied when it was originally obtained under the LEIC Act, rather than applying the less restrictive framework under the NACC Act. This ensures that those who are the subject of a corruption investigation under the LEIC Act and a subsequent criminal trial are not disadvantaged as a result of the LEIC Act being repealed.

Legal financial assistance

The Rules would also promote the right to a fair trial by allowing persons to access financial assistance for an application for judicial review of a matter arising under the LEIC Act (section 73).

Section 73 would provide that, after the transition time, a person may apply for financial assistance for an application to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) in accordance with the regulations made for the purposes of section 280 of the NACC Act. This would apply regardless of whether the application arises in relation to a matter under the LEIC Act or the NACC Act. As ACLEI will be abolished and its functions, powers, duties and resources will be transferred to the NACC at the transition time, this section would maintain the availability of financial assistance for matters arising under the LEIC Act after this time. This would promote the right to a fair trial as it would ensure that a person who cannot afford to pay their legal costs is not denied an opportunity to seek review of a decision made under the LEIC Act.

The prohibition on interference with privacy contained in article 17 of the ICCPR

Article 17 of the ICCPR prohibits unlawful or arbitrary interference with a person's privacy, family, home and correspondence, and prohibits unlawful attacks on a person's reputation. The United Nations Human Rights Committee has interpreted the right to privacy as comprising freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

A number of measures in the Rules would engage the right to privacy, in that they continue existing arrangements for:

- powers and mechanisms to obtain information, including personal information (sections 5 and 25);
- information-sharing mechanisms allowing for the disclosure of personal information (for example, sections 36, 59, 65, 66 and 67); and
- reporting mechanisms allowing for the publication of personal information (sections 61 and 62).

The right to privacy may be limited where the limitation is lawful and not arbitrary. The use of the term 'arbitrary' means that any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted 'reasonableness' to imply that any limitation must be proportionate and necessary to achieve a legitimate objective.

Powers and mechanisms to obtain information

The Rules may limit the right to privacy by giving the NACC Commissioner, the Inspector of the NACC, and NACC authorised officers certain powers to collect personal information to investigate corruption issues that may involve serious or systemic corrupt conduct.

For example, section 5 of the Rules would enable NACC authorised officers to exercise the powers, and perform the functions and duties, of ACLEI authorised officers for an investigation continued under the LEIC Act after transition under Schedule 2 to the Consequential and Transitional Act. This would include coercive information-gathering powers that would allow the NACC to collect personal information.

Section 25 would enable the NACC Commissioner to apply for an order to retain personal items seized under a search warrant or during an emergency search without a warrant in accordance with section 225 or 251 of the *Proceeds of Crime Act 2002* (POC Act).

The LEIC Act information-gathering powers continued under the Rules would be critical to enabling the NACC to continue incomplete ACLEI investigations after the transition time, where the investigation does not meet the required serious or systemic threshold for the NACC Commissioner to issue a transition determination under item 3 in Schedule 2 to the Consequential and Transitional Act.

Investigating and making findings and recommendations in relation to corrupt conduct are legitimate objectives. This would enable relevant persons to address any corrupt conduct found, including by prosecuting or taking disciplinary or other administrative action against public officials and other persons involved.

These provisions are reasonable and necessary to provide the NACC continued access to a suite of powers necessary to continue and complete investigations under the LEIC Act after the transition time. Persons engaged in corruption often take steps to conceal their conduct, and falsely represent their conduct and motivations. Enabling the NACC to exercise powers to receive all relevant information is critical for making findings of fact in relation to corruption issues, identifying risks and vulnerabilities in Commonwealth agencies, and making robust recommendations directed at preventing corruption or mitigating against any adverse consequences of corruption. The Rules would assist the NACC to obtain information that would not otherwise be available once the LEIC Act is repealed at the transition time.

There would be safeguards in place to limit the powers of authorised officers, and ensure any impact on the right to privacy is proportionate and not arbitrary. For example, any personal information gathered through the exercise of coercive powers would be subject to certain confidentiality requirements intended to protect sensitive information. Section 61 of the Rules would provide that for the purposes of the operation of the LEIC Act after the transition time, the confidentiality requirements under Division 5 of Part 13 of the LEIC Act continue to apply. This would preserve the confidentiality requirements imposed upon former ACLEI staff, including with respect to information obtained in the course of exercising information-gathering powers.

The Rules also ensure that cancellations of authorities to exercise powers under the Crimes Act issued before the transition time would continue to have effect after the transition time (sections 14, 18, and 20).

Further, the Rules ensure that the NACC's use of information-gathering powers are subject to sufficient oversight (see *Oversight of ACLEI's investigations and use of covert powers* above). Oversight through extensive reporting and record-keeping would ensure that the NACC is exercising these powers lawfully.

Information-sharing mechanisms

The Rules would further engage the right to privacy by continuing a number of existing information-sharing mechanisms between the NACC (in place of ACLEI) and relevant agencies after the transition time. Through these arrangements, personal or other information considered to fall within scope of the right to privacy may be shared.

For example, section 59 would continue existing arrangements for dealing with evidence and information obtained in an investigation or public inquiry. This includes, for example, requirements to refer evidence of an offence to the Australian Federal Police (AFP) or another authority for prosecution.

Section 36 would allow the NACC Commissioner to communicate information that ACLEI intercepted under the TIA Act before the transition time to other relevant agencies, in accordance with the requirements of the TIA Act.

Sections 65, 66 and 67 would facilitate information-sharing between the Australian Border Force, the Australian Criminal Intelligence Commission and the AFP and the NACC respectively. This would allow, for example, officers of those agencies to disclose relevant personal information to the NACC to support an incomplete ACLEI investigation the NACC Commissioner continues after the transition time under subitem 2(2) in Schedule 2 to the Consequential and Transitional Act.

The information-sharing mechanisms provided for under the Rules would be critical to supporting the functions of the NACC and other agencies, by allowing the referral of relevant information and material where appropriate.

Information-sharing is particularly necessary given the potential for the NACC's work to overlap with that of other Commonwealth integrity agencies and law enforcement agencies such as the AFP. Effective information-sharing mechanisms would necessarily depend on partially limiting the right to privacy. It would be necessary at times for agencies to share personal information, including identifying information and information regarding a person's conduct, to support each agency's anti-corruption or law enforcement functions.

Such limitations to the right to privacy would be proportionate, in that permissions to disclose personal information are targeted to anti-corruption and law enforcement purposes under the LEIC Act and other Acts of the Commonwealth. For example, the AFP may share information with the NACC where it is relevant to an incomplete ACLEI corruption investigation the NACC continues under the LEIC Act after the transition time.

Additionally, the Rules would include appropriate safeguards to protect personal information from further disclosure or inappropriate use. Personal information shared with the NACC via these information-sharing mechanisms would be subject to certain confidentiality requirements intended to protect sensitive information. For example, section 61 of the Rules would provide that for the purposes of the operation of the LEIC Act after the transition time, the confidentiality requirements under Division 5 of Part 13 of the LEIC Act continue to apply. This would preserve the confidentiality requirements imposed upon former ACLEI staff, including with respect to information obtained from other agencies.

Public reporting

The Rules further engage the right to privacy by allowing for the potential public disclosure of personal information in investigation reports if they are tabled or published.

For example, section 62 would continue the operation of section 203 of the LEIC Act in relation to reports on investigations and inquiries conducted under the LEIC Act after the transition time. Section 203 of the LEIC Act requires the Minister to table investigation or public inquiry reports from the Integrity Commissioner, and investigation reports into ACLEI corruption issues from special investigators, where one or more public hearings were held during the investigation. The Minister must remove information from the report that would not be appropriate to table.

Section 61 of the Rules would continue the operation of section 209 of the LEIC Act for the purposes of the operation of the LEIC Act after the transition time. This would allow the NACC Commissioner to disclose information to the public when satisfied it is in the public interest.

Any limitation of the right to privacy as a result of continuing existing reporting requirements would serve the legitimate objectives of public transparency and accountability, corruption prevention and education. Effectively serving these objectives necessarily depends on partially limiting the right to privacy. Limiting the right to privacy through publicly reporting information that identifies persons connected with corruption investigations will promote transparent and robust reporting of corrupt conduct in the Commonwealth public sector, educate the public on how corruption may occur, and deter persons from engaging in corrupt conduct in the future.

Robust and transparent reporting will at times require the tabling or publication of reports, particularly where the matters dealt with in the reports are already in the public domain. The disclosure of personal information in reports would be limited to circumstances where its inclusion is necessary to ensure transparency and accountability, and would be subject to strong safeguards.

For example, the LEIC Act provides for the exclusion of information from reports where it is sensitive information and the prejudicial consequences that might result from including the information in the

report outweigh the public interest that would be served by including the information (see section 54 of the LEIC Act). Sensitive information would include, in particular, information which unreasonably discloses a person's personal affairs. Such information would instead be included in a supplementary report and protected from disclosure to the public.

In addition, a number of reputational safeguards would prevent certain information from being disclosed to the public. For example, section 61 of the Rules would also continue the operation of procedural fairness requirements under section 210 of the LEIC Act where the NACC Commissioner intends to disclose information to the public under section 209.

The right to freedom of expression contained in article 19(2) of the ICCPR

Article 19(2) of the ICCPR provides that everyone has the right to freedom of expression, including the freedom to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media.

However, Article 19(3) of the ICCPR provides that the exercise of the rights provided for in article 19(2) carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary for the protection of national security and for the respect of individuals' rights or reputations.

The Rules would limit the right to freedom of expression and opinion by restricting a person's ability to disclose certain sensitive information. For example, in accordance with the Rules:

- former ACLEI staff will remain subject to the confidentiality requirements under section 207 of the LEIC Act (section 61 of the Rules); and
- Attorney-General's certificates that restrict the disclosure of particular information would remain valid after the transition time (sections 71 and 60).

Restricting a person's ability to refer and disclose certain sensitive information

In the course of exercising its functions, ACLEI may obtain a range of sensitive information that could, if released, prejudice Australia's national security, its relationships with foreign governments, and individuals' rights to privacy and reputation. These adverse consequences are avoided by restrictions under the LEIC Act on the disclosure of certain sensitive information. Section 207 of the LEIC Act creates an offence for ACLEI staff members to make a record of or disclose any information they obtained during the course of their employment or when carrying out their duties, except for authorised purposes under section 208 of the LEIC Act.

Upon the LEIC Act's repeal, these restrictions will no longer apply to protect information obtained under the LEIC Act. The Rules would ensure that sensitive information remains protected after the transition time.

Section 61 provides that for the purposes of the LEIC Act after the transition time, the confidentiality requirements under sections 207 and 208 of the LEIC Act would continue to apply.

Section 60 preserves the validity of an Attorney-General's certificate issued under the LEIC Act about the release of information, where the Attorney-General had certified that the disclosure of such information would be contrary to the public interest. Section 71 would further preserve the validity of Attorney-General's certificates issued before the transition time by preventing the disclosure of ACLEI information by the Ombudsman.

The limitations on the right to freedom of expression outlined above would serve the legitimate objective of protecting sensitive information obtained under the LEIC Act from being disclosed. This includes information that, if publicly released or handled inappropriately, could harm or prejudice Australia's national security, Australia's international relations and the privacy of individuals.

The limitations would be reasonable, necessary and proportionate to achieve this objective. These measures are particularly important given the coercive nature of the powers available under the LEIC Act to support previous and existing investigations conducted under the LEIC Act, and the sensitive nature of information obtained from entities and individuals.

These measures ensure that the same protections that applied before the transition time continue to apply following the LEIC Act's repeal, and that the limitations on the right would be subject to the same safeguards. For example, the same exceptions to the confidentiality offence under section 207 of the LEIC Act would continue to apply under section 208. These exceptions ensure that the offence is sufficiently precise and does not unnecessarily limit a person's right to freedom of expression where a disclosure is in fact permitted.

The penalty for this offence under the LEIC Act is reasonable and proportionate. In the absence of serious consequences for breaches, unauthorised disclosures of sensitive information may undermine and jeopardise the effectiveness of ACLEI or the NACC, or be detrimental to the operations of other regulated entities. In many cases, publicly releasing the information that is the subject of these protections could have serious ramifications, including for Australia's national security. The primary effect of the penalties would therefore be to deter future breaches, and reflect the serious harm that can result from inappropriate disclosures.

Conversely, these limitations on the right to freedom of expression promote the right to privacy, as they protect against the disclosure of sensitive personal information obtained by ACLEI or the NACC

in the course of a corruption investigation. Such disclosures could infringe upon a person's rights to privacy and reputation.

Conclusion

The Rules are compatible with human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. To the extent that measures in the Rules limit those rights and freedoms, such limitations are reasonable, necessary and proportionate to a legitimate objective.

NOTES ON SECTIONS

PART 1 – Preliminary

This Part would deal with a number of preliminary matters, including the commencement of the Rules, the authority under which they would be made, and definitions.

Section 1 – Name

This section would provide that the name of the Rules is the *National Anti-Corruption Commission (Consequential and Transitional Provisions) Rules 2023*.

Section 2 – Commencement

This section would provide that the Rules commence on 1 July 2023.

Section 3 – Authority

This section would provide that the Rules are made under the *National Anti-Corruption Commission (Consequential and Transitional Provisions) Act 2022*.

Section 4 – Definitions

This section would define the following terms used in the Rules.

NACC corruption issue transition notice has the same meaning as in Schedule 2 to the Consequential and Transitional Act, being a notice in writing by the Inspector of the NACC determining that the NACC Act applies to an incomplete investigation or special investigation into an ACLEI corruption issue, issued under subitem 36(4) of the Consequential and Transitional Act.

New Act means the *National Anti-Corruption Commission Act 2022*.

Old Act means the *Law Enforcement Integrity Commissioner Act 2006*.

Transitional Schedule means Schedule 2 to the Consequential and Transitional Act.

Transition determination has the same meaning as in Schedule 2 to the Consequential and Transitional Act, being a notice in writing by the NACC Commissioner determining that the NACC Act applies to an existing ACLEI investigation that remains incomplete as at 1 July 2023, issued under subitem 3(1) in Schedule 2 to the Consequential and Transitional Act.

Transition time has the same meaning as in Schedule 2 to the Consequential and Transitional Act, being 1 July 2023.

This section would also provide that expressions used in the Rules that are defined for the purposes of the NACC Act and the LEIC Act, and are used in relation to each of those Acts, have the same meaning as under those Acts.

Section 5 – Functions and powers under old Act

This section would provide that, for the purposes of the operation of the LEIC Act after the transition time, as provided for by the Rules in addition to Schedule 2 to the Consequential and Transitional Act (see subitem 1(4) in Schedule 2):

- the NACC Commissioner may exercise the powers, and perform the functions and duties of the Integrity Commissioner;
- the Inspector may exercise the powers, and perform the functions and duties, of a special investigator; and
- the LEIC Act applies with such further modifications as are necessary for matters under the LEIC Act to be managed by the NACC Commissioner or the Inspector, as the case requires.

The section would also provide that, for the purposes of the operation of the LEIC Act after the transition time, as provided for by Schedule 2 to the Consequential and Transitional Act and the Rules:

- an authorised officer within the meaning of the NACC Act may exercise the powers, and perform the functions and duties, of an authorised officer within the meaning of the LEIC Act; and
- a reference in section 141 of the LEIC Act to an identity card is taken to include a reference to an identity card issued under section 268 of the NACC Act.

Item 2 in Schedule 2 to the Consequential and Transitional Act enables the NACC Commissioner to continue to conduct an existing ACLEI investigation or public inquiry after the transition time under the LEIC Act as if it had not been repealed. Schedule 2 to the Consequential and Transitional Act includes a number of other transitional provisions that allow the LEIC Act to continue operating after the transition time, to assist the transfer of ACLEI's resources, powers, functions and duties to the NACC.

Item 48 in Schedule 2 to the Consequential and Transitional Act provides that where an ACLEI authorised officer was authorised immediately before the transition time, the person is taken, after the transition time, to be an authorised officer under the NACC Act. This means the person will be able to

exercise the powers and perform the functions and duties of an authorised officer under the NACC Act.

This section would ensure that, after the transition time, where the NACC Commissioner, the Inspector, or an authorised officer of the NACC exercises powers, or perform functions or duties under the LEIC Act, for the purposes of the Consequential and Transitional Act and these Rules, they are properly authorised to do so. The section would also ensure that authorised officers are able to carry and produce a valid identity card when exercising powers under the LEIC Act after the transition time.

Section 6 – Regulations under old Act

This section would provide that, for the purposes of the operation of the LEIC Act after the transition time, as provided for by Schedule 2 to the Consequential and Transitional Act and the Rules, the *Law Enforcement Integrity Commissioner Regulations 2017* (LEIC Regulations) as in force immediately before the transition time (except section 8) continue to apply as if they had not been repealed.

At the transition time, the LEIC Regulations will be repealed alongside the LEIC Act. Schedule 2 to the Consequential and Transitional Act includes transitional provisions that allow the LEIC Act to continue operating after the transition time, to assist ACLEI's transition to the NACC. However, Schedule 2 does not provide for the continuation of the LEIC Regulations.

This section would preserve regulations which are necessary to support the operation of the LEIC Act after the transition time. For example, the LEIC Regulations prescribe entities for the purpose of various definitions under the LEIC Act. This includes prescribing the head of certain Commonwealth government agencies, prescribing integrity agencies for states and territories, and prescribing staff members and secondees of prescribed law enforcement agencies. The LEIC Regulations also prescribe particulars for annual reports to be prepared in accordance with the LEIC Act.

This section would not preserve section 8 of the LEIC Regulations, which provides for allowances for travelling and other expenses to be paid to witnesses. The *National Anti-Corruption Commission Regulations 2023* provide a new framework for allowances for travelling and other expenses for witnesses. The NACC would be able to provide any allowances for witnesses required to travel for the purpose of an investigation continued under the LEIC Act in accordance with subitem 2(2) in Schedule 2 to the Consequential and Transitional Act on an administrative basis.

PART 2 – Existing investigations and inquiries

This Part would set out transitional arrangements with respect to existing ACLEI investigations and inquiries commenced but not completed before the transition time. The transitional arrangements would complement those provided for in Part 2 in Schedule 2 to the Consequential and Transitional Act.

Section 7 – Notice of making of transition determinations

This section would provide that, if the NACC Commissioner makes a transition determination, the NACC Commissioner may advise the Minister of the determination. Where the determination relates to an existing investigation of a corruption issue, the NACC Commissioner may advise the person who referred the allegation or information, or their nominated representative, that the relevant investigation has been transitioned. The NACC Commissioner may also advise the person to whom the corruption issue relates.

Item 3 in Schedule 2 to the Consequential and Transitional Act allows the NACC Commissioner, by notice in writing, to determine that the NACC Act applies to an existing investigation or an existing inquiry that commenced before the transition time – called a ‘transition determination’. The NACC Commissioner may make a transition determination where they consider it is more appropriate to progress the investigation or the inquiry under the NACC Act. In the case of an existing investigation, the corruption issue must involve corrupt conduct that meets the serious or systemic threshold required for investigation by the NACC under the NACC Act.

Subitem 3(2) in Schedule 2 to the Consequential and Transitional Act requires the NACC Commissioner to notify the head of relevant government agencies of a transition determination. However, item 3 does not require or permit the NACC Commissioner to notify any other relevant party.

Accordingly, this section would allow the NACC Commissioner to inform affected persons about a transition determination in relation to an investigation or public inquiry in appropriate circumstances, so that persons with an interest in the investigation or public inquiry would be aware of which Act applies to the investigation, and their rights and obligations under that Act. This may be particularly important for persons who are subject to coercive information-gathering powers. A decision to give notice of a transition determination would be at the discretion of the NACC Commissioner, and is not a mandatory requirement.

Section 8 – Passing on information relevant to agency investigation

This section would ensure that the NACC Commissioner passes on relevant information for the purpose of an investigation continued by law enforcement agencies or the AFP under the LEIC Act after the transition time.

Section 70 of the LEIC Act requires the Integrity Commissioner to pass on information relevant to an investigation of a corruption issue being undertaken by a government agency, where the Integrity Commissioner becomes aware of relevant information and the head of the agency does not already have the information.

Item 4 in Schedule 2 to the Consequential and Transitional Act permits the NACC Commissioner to continue to manage or oversee an investigation into a corruption issue by a law enforcement agency (including the AFP), where the Integrity Commissioner had done so before the transition time, as if the LEIC Act had not been repealed. Item 4 also requires the law enforcement agency to comply with any reporting obligations under the LEIC Act after the transition time, despite its repeal. However, item 4 does not require the NACC Commissioner to pass on relevant information to the law enforcement agency conducting the corruption investigation consistent with section 70 of the LEIC Act.

Subsection 9(2) of the Rules also applies reporting requirements under the LEIC Act to investigations conducted solely by the AFP.

Accordingly, this section would provide that section 70 of the LEIC Act continues to apply to an investigation of a corruption issue to which item 4 in Schedule 2 to the Consequential and Transitional Act applies, being an investigation by a law enforcement agency that had been commenced but not yet completed by the transition time, which was managed or overseen by the Integrity Commissioner.

Section 70 would also apply to an investigation of a corruption issue by the AFP, on a referral by the Integrity Commissioner under subparagraph 26(1)(c)(iii) of the LEIC Act, that had been commenced but not yet completed before the transition time.

Section 9 – Actions after completion of investigations of corruption issues

This section would ensure that the NACC Commissioner, the AFP and other relevant Commonwealth government agencies continue to comply with reporting requirements (including report dissemination and procedural fairness requirements) under the LEIC Act where:

- the NACC Commissioner completes an existing corruption investigation under subitem 2(2) in Schedule 2 to the Consequential and Transitional Act after the transition time; or

- the AFP had commenced, but not completed, a corruption investigation on referral from the Integrity Commissioner before the transition time; or
- a Commonwealth government agency completed an investigation into a corruption issue before the transition time but had not yet prepared a report as required by the LEIC Act.

This section would ensure that investigations of corruption issues under the LEIC Act would still be appropriately reported on, and persons affected by investigations could still be informed of the outcomes. This ensures appropriate oversight of investigations commenced by ACLEI, or other agencies, but not yet completed or fully reported on at the transition time when ACLEI will cease operations. This also allows recommendations to be made, and provides the NACC Commissioner with an opportunity to follow up action taken by agencies in response to recommendations made by the Integrity Commissioner in a report, or in response to a report prepared by another agency.

Investigations continued after transition time

Subitem 2(2) in Schedule 2 to the Consequential and Transitional Act permits the NACC Commissioner to continue an existing corruption investigation after the transition time, where the Integrity Commissioner had not yet completed it before the transition time. However, subitem 2(2) does not provide for reporting requirements for the NACC Commissioner after the investigation is complete.

This section would provide that, where an existing investigation is continued under the LEIC Act by the NACC Commissioner in accordance with subitem 2(2), the relevant reporting requirements under Subdivision B of Division 2 of Part 6 of the LEIC Act and procedural fairness requirements under section 51 continue to apply to those investigations. Section 51 would require the NACC Commissioner to give persons and government agencies an opportunity to respond before including a critical opinion or finding in a report, unless a relevant exception applies. The person, or head of the government agency, would be given a reasonable opportunity to appear before the NACC Commissioner and make submissions in relation to the opinion or finding.

Where the Integrity Commissioner referred a corruption issue to the AFP for investigation under subparagraph 26(1)(c)(iii) of the LEIC Act, and the investigation had commenced but had not been completed before the transition time, the relevant reporting requirements under Division 3 of Part 7 of the LEIC Act would continue to apply to the investigation. In such circumstances, the AFP will be able to continue the investigation in accordance with its own processes.

This section would, for example, allow the NACC Commissioner to request individual or periodic progress reports (sections 63-64), and would require the AFP to prepare a report on the investigation following its completion (section 66).

Investigations completed before transition time—investigation by Integrity Commissioner

Item 38 in Schedule 2 to the Consequential and Transitional Act requires the NACC Commissioner to prepare a report on a corruption investigation as if the LEIC Act had not been repealed, where the Integrity Commissioner had completed an investigation before the transition time, but not yet prepared the report under subsection 54(1) of the LEIC Act. However, item 38 does not provide for the NACC Commissioner's report dissemination and procedural fairness obligations after they prepare the report.

This section would provide that, for those investigations, sections 51 and 55 of the LEIC Act would continue to apply in relation to the investigation. Section 55 of the LEIC Act sets out the requirements for giving the report to certain persons. Item 38 in Schedule 2 to the Consequential and Transitional Act applies where the Integrity Commissioner had completed an investigation of a corruption issue that related to a law enforcement agency before the transition time, but had not yet prepared a report under subsection 54(1) of the LEIC Act.

If, before the transition time, the Integrity Commissioner had completed an investigation of a corruption issue that related to a law enforcement agency, sections 56 and 57 of the LEIC Act would continue to apply in relation to the investigation. Section 56 allows the head of a law enforcement agency to comment on reports that relate to the agency. Section 57 allows the Integrity Commissioner to take follow-up action with respect to a recommendation included in a report.

If, before the transition time, the Integrity Commissioner had completed an investigation of a corruption issue, but had not yet exercised the power in section 58 or 59 of the LEIC Act to advise a person of the outcome of the investigation, those powers would also remain available.

Investigations completed before transition time—investigation by other agencies

The Consequential and Transitional Act does not cover any reporting requirements for corruption investigations conducted by the AFP or other Commonwealth government agencies. If, before the transition time, a Commonwealth government agency completed an investigation of a corruption issue but the head of the agency had not yet prepared a report on the investigation under subsection 66(1) of the LEIC Act, section 66 of the LEIC Act would continue to apply in relation to the investigation. Section 66 requires the head of a Commonwealth government agency that completes an investigation of a corruption issue to cause a report on the investigation to be prepared. The report must set out the agency's findings, the evidence relied upon, action proposed to be taken and the reasons for the proposed action. The head of the agency must give a copy of the report to the NACC Commissioner, instead of the Integrity Commissioner, for the purposes of subsections 66(3) and (4) of the LEIC Act.

If, before the transition time, a Commonwealth government agency completed an investigation of a corruption issue, section 67 of the LEIC Act would continue to apply in relation to the investigation. Section 67 would allow the NACC Commissioner, in exercising the functions of the Integrity Commissioner, to make comments or recommendations on any matter relating to or arising out of the report or the investigation to which the report relates.

If, before the transition time, a law enforcement agency or a Commonwealth government agency had completed an investigation of a corruption issue, and the head of the agency had not yet exercised the power in section 68 or 69 of the LEIC Act to advise a person of the outcome of the investigation, those powers remain available.

PART 3 – Facilitating investigations and inquiries

This Part would set out transitional arrangements to facilitate existing ACLEI investigations and inquiries being completed by the NACC after the transition time. The transitional arrangements specified in this Part would complement those provided for in Part 4 in Schedule 2 to the Consequential and Transitional Act.

Section 10 – Notices to give information or produce documents or things

This section would require the NACC Commissioner to provide advice to the recipient of a notice to produce documents or things where the NACC Act applies to an existing investigation because of a transition determination.

Under subitem 9(3) in Schedule 2 to the Consequential and Transitional Act, if a transition determination applies to the investigation to which a notice to produce or notation relates, the notice or notation is taken to be given by the NACC Commissioner under subsections 58(2) or 95(1) of the NACC Act, respectively. However, subitem 9(3) does not require the NACC Commissioner to notify the person to whom the notice or notation was issued that the investigation has transitioned to the NACC Act and how that may affect them.

Accordingly, this section would require the NACC Commissioner to, as soon as practicable after making the transition determination, give the recipient a copy of the transition determination and advise the recipient in writing of the effect of subitem 9(3) in Schedule 2 to the Consequential and Transitional Act and the person's rights and obligations under the NACC Act as a consequence. This may include, for example, any changes to the person's rights and obligations relating to a non-disclosure notation included in the notice. This would ensure that people subject to a notice or a non-disclosure notation are aware of any changes to their rights and obligations after the transition time.

This section would also provide that, where a notation prohibiting the disclosure of certain information is included in a notice to which item 9 does not apply (because the notice has already been complied with), the LEIC Act continues to apply in relation to the notation. The relevant non-disclosure obligations applied by the notation would continue to apply despite the repeal of the LEIC Act and despite the notice having already been complied with.

Section 11 – Summonses

This section would require the NACC Commissioner to provide advice to the recipient of a summons to attend a hearing where the NACC Act applies to an existing investigation because of a transition determination.

Under subitem 11(3) in Schedule 2 to the Consequential and Transitional Act, if a transition determination applies to the investigation to which the summons or notation relates, that summons or notation is taken to have been issued by the NACC Commissioner under subsections 61(3) or 95(1) of the NACC Act, respectively. However, subitem 11(3) does not require the NACC Commissioner to notify the person to whom the summons or notation was issued that their investigation has transitioned to the NACC Act and how that may affect them.

This section would require the NACC Commissioner to, as soon as practicable after making the transition determination, give the recipient a copy of the transition determination and advise the recipient in writing of the effect of subitem 11(3) in Schedule 2 to the Consequential and Transitional Act and the person's rights and obligations under the NACC Act. This may include, for example, any changes to the person's rights and obligations relating to a non-disclosure notation included in the summons. This would ensure that people subject to a summons or a non-disclosure notation are made aware of any changes to their rights and obligations after the transition time.

Section 12 – Directions in relation to confidentiality

This section would provide that if subitem 12(3) in Schedule 2 to the Consequential and Transitional Act applies to a direction relating to the use or disclosure of hearing material given to a person because of a transition determination, the NACC Commissioner must, as soon as practicable after making the transition determination, give the person a copy of the transition determination and advise the person of the effect of that subitem.

Subitem 12(3) in Schedule 2 to the Consequential and Transitional Act provides that if a direction issued under subsection 90(1) of the LEIC Act relates to a hearing conducted as part of an existing investigation or public inquiry to which the NACC Act applies because of a transition determination, then the direction is deemed to have been given by the NACC Commissioner under subsection 100(1) of the NACC Act.

Subsection 100(1) of the NACC and subsection 90(1) of the LEIC impose similar, but slightly different, regimes relating to directions about the use or disclosure of investigation or hearing material.

Accordingly, this section would ensure clarity regarding the nature and extent of the confidentiality requirements applying to the person after the transition time.

Section 13 – Disclosure of hearing material and derivative material

This section would provide that Subdivision EAA of Division 2 of Part 9 of the LEIC Act continues to apply to hearing material and derivative material within the meaning of the LEIC Act.

The LEIC and NACC Acts have similar, but slightly different, regimes for how evidence obtained during a corruption investigation may subsequently be used, and to whom it may be disclosed.

The key differences between the two regimes are the circumstances in which this evidence can be disclosed to prosecutors of a witness, and the type of information which may be disclosed. Under the NACC Act, investigation material (defined in section 99) can be disclosed to prosecutors of the witness in a broader range of circumstances than hearing material under the LEIC Act (defined in section 8A). This includes where a witness is charged with or suspected of committing a broader range of offences than the offences included for the purposes of the LEIC Act. This largely reflects the difference between the definitions of hearing material under section 8A of the LEIC Act and investigation material under section 99 of the NACC Act. Investigation material under the NACC Act includes information, documents or things given as required by a notice to produce, which is not included in the LEIC Act definition of hearing material.

This section would ensure that hearing material and derivative material obtained under the LEIC Act continues to be subject to the use and disclosure provisions under the LEIC Act. It is appropriate that hearing and derivative material is used and disclosed in the same circumstances as when it was originally obtained under the LEIC Act, rather than applying the alternative framework under the NACC Act.

PART 4 – Requirements or permissions etc. under other Acts

This Part would set out transitional arrangements dealing with requirements or permissions under Acts other than the LEIC Act or the NACC Act. In particular, this Part would set out transitional arrangements for requirements or permissions under the:

- Crimes Act;
- Proceeds of Crime Act;
- SD Act; and

- TIA Act.

This Part would largely deal with obligations under these Acts that applied to the Integrity Commissioner, but that were not yet discharged at the transition time. In these circumstances, the NACC Commissioner would be required to discharge that obligation after the transition time. The transitional arrangements provided for under this Part would complement those set out in Part 5 in Schedule 2 to the Consequential and Transitional Act.

Division 1 – Crimes Act 1914

This Division would set out the transitional rules for matters relating to the Crimes Act.

Part 5 in Schedule 2 to the Consequential and Transitional Act specifies arrangements to transition the Integrity Commissioner's requirements and permissions under other Acts (including the Crimes Act) to the NACC Commissioner. However, Part 5 does not provide for all necessary transitional arrangements relating to the Crimes Act.

Accordingly, the rules under this Division would ensure cancellations of authorities to exercise powers under the Crimes Act would continue to have effect after the transition time. This Division would also set out transitional arrangements to manage any outstanding reporting and record-keeping requirements that applied to the Integrity Commissioner under the Crimes Act, where the required action was not completed before the transition time. The NACC Commissioner would be required to comply with any outstanding requirements.

Section 14 – Cancellation of controlled operation authorities

This section would provide that orders given before the transition time by ACLEI authorising officers (within the meaning of Part IAB of the Crimes Act as in force at the time of the cancellation) to cancel, at a time after the transition time, the authority to conduct a controlled operation continue to take effect after the transition time. The cancellation order would take effect at the specified time as if it had been given by a NACC authorising officer (within the meaning of Part IAB of the Crimes Act as amended by Schedule 1 to the Consequential and Transitional Act).

Section 15GY of the Crimes Act, as in force immediately before the transition time, allows ACLEI authorising officers to cancel an authority to conduct a controlled operation granted by an ACLEI authorising officer by giving a written order to the principal law enforcement officer for the controlled operation. However, amendments to the Crimes Act contained in the Consequential and Transitional Act will remove references to ACLEI authorising officers. Following the transition time, section 15GY of the Crimes Act will allow NACC authorising officers to cancel authorities.

This section would ensure that a cancellation order given by an ACLEI authorised officer that is to take effect after the transition time would continue to take effect as if it had been given by a NACC authorising officer.

Section 15 – Reports to Minister and Ombudsman in relation to controlled operations

This section would require the NACC Commissioner to include details of any controlled operations for which ACLEI was the authorising agency in the first report the NACC Commissioner is required to submit under sections 15HM and 15HN of the Crimes Act.

Section 15HM of the Crimes Act as in force immediately before the transition time requires the Integrity Commissioner as the chief officer of ACLEI (an authorising agency) to submit a report to the Ombudsman and the Minister setting out details in relation to controlled operations which the agency authorised during the previous 6 months.

Section 15HN of the Crimes Act as in force immediately before the transition time requires the Integrity Commissioner as the chief officer of ACLEI (an authorising agency) to submit an annual report to the Ombudsman and the Minister setting out details in relation to controlled operations which the agency authorised during the previous 12 months.

At the transition time, the definition of authorising agency for controlled operations in section 15GC of the Crimes Act will be amended to remove ACLEI from the definition and replace it with the NACC. This means that at the transition time, ACLEI will no longer be an authorising agency and the Integrity Commissioner will no longer be a chief officer for the purposes of the Crimes Act. If the Integrity Commissioner has not complied with their reporting obligations under section 15HM or 15HN of the Crimes Act at the transition time, those obligations would cease and nobody would be required to make the relevant reports for the final months of ACLEI's operations. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for these obligations to continue after the transition time.

This section would ensure the NACC Commissioner complies with ACLEI's outstanding reporting requirements after the transition time, and that the Ombudsman and the Minister receive information concerning controlled operations authorised by ACLEI for the final 12 months it is in operation.

Section 16 – Documents connected with controlled operations

This section would require the NACC Commissioner to keep documents and records after the transition time that were required to be kept by the Integrity Commissioner under section 15HP of the Crimes Act immediately before the transition time.

Section 15HP of the Crimes Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of an authorising agency to cause certain documents connected with controlled operations to be kept. At the transition time, the definition of authorising agency in section 15C of the Crimes Act will be amended to remove ACLEI from the definition and replace it with the NACC.

This means that after the transition time, nobody would be required to keep relevant documents and records of controlled operations for which ACLEI was the authorising agency. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for these record-keeping obligations to continue after the transition time (however, note that item 51 in Schedule 2 to the Consequential and Transitional Act provides for all existing records in the possession of the Integrity Commissioner immediately before the transition time to be transferred to the NACC Commissioner).

This section would ensure the NACC Commissioner continues to keep relevant documents and records of controlled operations for which ACLEI was the authorising agency in accordance with section 15HP of the Crimes Act.

Section 17 – General register for controlled operations

This section would provide that, from the transition time, the contents of the general register of controlled operations that the Integrity Commissioner caused to be kept in accordance with section 15HQ of the Crimes Act are to be incorporated into the general register of controlled operations that the NACC Commissioner must cause to be kept under that section.

Section 15HQ of the Crimes Act as in force immediately before the transition time requires the Integrity Commissioner as the chief officer of ACLEI (an authorising agency for controlled operations) to cause ACLEI to keep a general register of controlled operations. The register must include details regarding each application for a controlled operation authority made to authorising officers of the agency, and details regarding authorities granted by authorising officers of the agency.

At the transition time, the definition of authorising agency in section 15GC of the Crimes Act will be amended to remove ACLEI from the definition and replace it with the NACC. This means that after the transition time, there will no longer be an obligation to keep the ACLEI general register of controlled operations. While the existing register will transfer from ACLEI to the NACC under item 51 in Schedule 2 to the Consequential and Transitional Act, there is no provision under the Consequential and Transitional Act requiring the NACC to keep ACLEI's general register of controlled operations after the transition time.

This section would ensure the NACC Commissioner incorporates ACLEI's general register of controlled operations into the NACC general register of controlled operations under section 15HQ of the Crimes Act, and maintains it after the transition time.

Section 18 – Cancellation of integrity testing authorities

This section would provide that orders given before the transition time by the Integrity Commissioner, an Assistant Integrity Commissioner, or an SES employee of ACLEI to cancel, at a time after the transition time, the authority to conduct an integrity testing operation under section 15LJ of the Crimes Act, would continue to take effect after the transition time. The cancellation order would take effect at the stated time as if it had been given by the NACC Commissioner.

Section 15JL of the Crimes Act, as in force immediately before the transition time, allows the Integrity Commissioner, an Assistant Integrity Commissioner or an SES employee of ACLEI (as appropriate authorising officers for integrity testing under section 15JE of the Crimes Act) to cancel an authority to conduct an integrity testing operation by giving a written order to the responsible staff member for the operation.

At the transition time, amendments to Part IABA of the Crimes Act will replace references to ACLEI officers in the definition of appropriate authorising officer in section 15JE of the Crimes Act with references to NACC officers. If an ACLEI authorising officer had cancelled an integrity testing authority before the transition time, and the cancellation was to take effect after the transition time, there would be no basis for the cancellation order to take effect, because the person who had cancelled the authority would no longer be an appropriate authorising officer. Part 5 of the Consequential and Transitional Act does not provide for these cancellation orders to take effect after the transition.

This section would ensure that a cancellation order given by an ACLEI authorising officer that is to take effect after the transition time would take effect as if it had been given by a NACC authorising officer.

Section 19 – Annual report to Law Enforcement Minister for integrity testing operations

This section would require the NACC Commissioner to include details of any integrity testing operations authorised by ACLEI officers under Part IABA of the Crimes Act in the first annual report the NACC Commissioner is required to submit under section 15JS of the Crimes Act.

Section 15JS of the Crimes Act as in force immediately before the transition time requires the Integrity Commissioner as the chief officer of ACLEI, an integrity testing agency, to submit a report to the Law Enforcement Minister (within the meaning of the Crimes Act) setting out details in relation to integrity testing operations for which the agency authorised during the previous 12 months.

At the transition time, the definition of chief officer for an integrity testing agency in section 15JS of the Crimes Act will be amended to remove references to the Integrity Commissioner and ACLEI and replace these references with the NACC Commissioner as the chief officer and the NACC as an integrity testing agency. This means that after the transition time, if the Integrity Commissioner had not yet complied with their reporting requirements under section 15JS of the Crimes Act at the transition time, there would be no requirement to report information on ACLEI's final 12 months in operation. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for this reporting obligation to continue after the transition time.

Accordingly, this section would ensure the NACC Commissioner complies with ACLEI's outstanding reporting requirements after the transition time, and that the Law Enforcement Minister receives information concerning integrity testing operations authorised by ACLEI for the final 12 months it is in operation.

Section 20 – Cancellation of assumed identity authorities

This section would provide that orders given by the Integrity Commissioner, before the transition time, to cancel, at a day after the transition time, the authority to acquire or use an assumed identity under section 15KE of the Crimes Act continue to take effect after the transition time. The cancellation order would take effect on the stated day as if it had been given by the NACC Commissioner.

Section 15KE of the Crimes Act, as in force immediately before the transition time, allows the Integrity Commissioner, as the chief officer of a law enforcement agency, to cancel an authority to acquire or use an assumed identity granted by the Integrity Commissioner. Section 15KE of the Crimes Act further provides that the Integrity Commissioner must cancel the authority if satisfied that the use of the assumed identity is no longer necessary.

After the transition time, the definitions of chief officer and law enforcement agency in section 15K of the Crimes Act will be amended to replace references to the Integrity Commissioner and ACLEI with references to the NACC Commissioner as the chief officer and the NACC as a law enforcement agency. This means that after the transition time, if the Integrity Commissioner had previously cancelled an authority to acquire or use an assumed identity that was to take effect after the transition time, there would be no basis for the cancellation taking effect. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for these cancellations to take effect after the transition time.

This section would ensure that a cancellation order given by the Integrity Commissioner that is to take effect on or after the transition time would take effect as if it was given by the NACC Commissioner.

Section 21 – Annual report to Minister about authorities for assumed identities

This section would require the NACC Commissioner to include the details of any authorities for a person to acquire or use an assumed identity that were granted by the Integrity Commissioner in the first annual report the NACC Commissioner is required to submit under section 15LD of the Crimes Act.

Section 15LD of the Crimes Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of a law enforcement agency to submit an annual report to the Minister providing information about authorities for assumed identities granted during the previous 12 months. After the transition time, the definitions of chief officer and law enforcement agency in section 15K of the Crimes Act will be amended to replace references to the Integrity Commissioner and ACLEI with references to the NACC Commissioner as the chief officer and the NACC as a law enforcement agency. This means that after the transition time, if the Integrity Commissioner had not complied with their reporting obligations under section 15LD of the Crimes Act, there would be no requirement to report on assumed identities granted for ACLEI's last 12 months in operation. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for these reporting obligations to continue after the transition time.

This section would ensure the NACC Commissioner complies with ACLEI's outstanding reporting requirements after the transition time, and that the Minister administering the NACC Act receives information concerning assumed identity authorities granted by the Integrity Commissioner for the final 12 months ACLEI is in operation.

Section 22 – Record keeping for assumed identities

This section would require the NACC Commissioner to keep records after the transition time that were required to be kept by the Integrity Commissioner in accordance with section 15LF of the Crimes Act immediately before the transition time.

Section 15LF of the Crimes Act as in force immediately before the transition time requires the Integrity Commissioner as the chief officer of a law enforcement agency to keep appropriate records about assumed identity authorities granted, varied or cancelled in respect of the agency.

After the transition time, the definitions of chief officer and law enforcement agency in section 15K of the Crimes Act will be amended to replace references to the Integrity Commissioner and ACLEI with references to the NACC Commissioner as the chief officer and the NACC as a law enforcement agency. This means that after the transition time, there will be no ongoing obligation to keep records about assumed identity authorities granted, varied or cancelled in respect of ACLEI. While the existing records will transfer from ACLEI to the NACC under item 51 in Schedule 2 to the

Consequential and Transitional Act, there is no provision under the Consequential and Transitional Act requiring the NACC to keep ACLEI's records relating to assumed identities after the transition time.

Accordingly, this section would ensure that after the transition time the NACC Commissioner continues to keep records with respect to assumed identity authorities granted by the Integrity Commissioner.

Section 23 – Annual report to the Minister about witness identity protection certificates

This section would require the NACC Commissioner to include details of any witness identity protection certificates given by the Integrity Commissioner in the first report the NACC Commissioner is required to submit under section 15MU of the Crimes Act.

Section 15MU of the Crimes Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of a law enforcement agency to submit to the Minister a report about witness identity protection certificates they gave during that year.

After the transition time, the definitions of chief officer and law enforcement agency in section 15M of the Crimes Act will be amended to replace references to the Integrity Commissioner and ACLEI with references to the NACC Commissioner as the chief officer and the NACC as a law enforcement agency. This means that after the transition time, if the Integrity Commissioner had not complied with their reporting obligations under section 15MU of the Crimes Act, there would be no requirement to report to the Minister on witness identity protection certificates for ACLEI's final 12 months in operation. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for this reporting obligation to continue after the transition time.

Accordingly, this section would ensure the NACC Commissioner complies with ACLEI's outstanding reporting requirements relating to witness identity protection certificates given by the Integrity Commissioner, and that the Minister receives all relevant information concerning certificates given by the Integrity Commissioner for the final 12 months ACLEI is in operation.

Division 2 – Proceeds of Crime Act 2002

This Division would set out the transitional rules for matters relating to the POC Act.

Part 5 in Schedule 2 to the Consequential and Transitional Act specifies arrangements to transition the Integrity Commissioner's requirements and permissions under other Acts (including the POC Act) to the NACC Commissioner. However, Part 5 does not address all necessary transitional arrangements relating to the POC Act.

Accordingly, the rules under this Division would deal with transitional arrangements for the handling of items that have been seized under the POC Act and not returned prior to the transition time. The rules would ensure the NACC Commissioner is required to comply with outstanding requirements relating to retaining and returning seized items in accordance with the POC Act.

Section 24 – Responsible custodian

This section would provide that if, immediately before the transition time, the head of ACLEI was the responsible custodian of a thing for the purposes of the POC Act, the head of the NACC would be the responsible custodian of the thing after the transition time.

Section 228 of the POC Act, as in force immediately before the transition time, allows ACLEI authorised officers to seize certain items when executing a search warrant issued under section 225. Section 251 also allows ACLEI authorised officers to seize certain items when conducting a search without a warrant in emergency situations. In such circumstances, the Integrity Commissioner, as the head of the relevant enforcement agency, will become the ‘responsible custodian’ of the thing seized (see subsection 254(2)).

Division 3 of Part 3-5 requires the responsible custodian of a thing to arrange for the thing to be kept until it is dealt with in accordance with the Act, and ensure that all reasonable steps are taken to preserve the thing while it is in the person’s custody.

At the transition time, the definition of authorised officer under section 338 of the POC Act will be amended to replace references to ACLEI officers with references to officers of the NACC. As a result, the definition of enforcement agency under section 338 will no longer apply to ACLEI and the Integrity Commissioner will no longer be the responsible custodian of a thing seized prior to the transition time under section 254.

This section would ensure that where an ACLEI authorised officer seized a thing and did not return the thing before the transition time, the NACC Commissioner, as the head of the NACC, would be the responsible custodian for the purposes of the requirements under Division 3.

Section 25 – Authorised officers

This section would provide that a reference in sections 256-258 of the POC Act to an authorised officer is taken to include a reference to the NACC Commissioner in circumstances where, before the transition time:

- a thing was seized under a search warrant or during an emergency search without a warrant in accordance with section 225 or 251 of that Act;

- the authorised officer responsible for executing the warrant or who seized the thing was the Integrity Commissioner, an Assistant Integrity Commissioner, or a staff member of ACLEI (and therefore an authorised officer by reason of paragraph (aa) of the definition of ‘authorised officer’ under section 338 of that Act); and
- immediately after the transition time, the person is no longer an authorised officer.

Section 256 of the POC Act, as in force immediately before the transition time, requires an ACLEI authorised officer who was responsible for executing a search warrant issued under section 225, or who seized a thing under section 251, to take reasonable steps to return a seized item where:

- the reason for the thing’s seizure no longer exists or it is decided that the thing is not to be used in evidence; or
- if the thing was seized without a warrant under section 251, the period of 60 days after the thing’s seizure ends.

Sections 257 and 258 allow the authorised officer to apply to a magistrate for an order for a thing to be retained for a further period.

At the transition time, the definition of authorised officer under section 338 of the POC Act will be amended to remove references to ACLEI officers and instead refer to officers of the NACC. Item 48 in Schedule 2 to the Consequential and Transitional Act provides that where an ACLEI authorised officer was authorised immediately before the transition time, the person is taken, after the transition time, to be an authorised officer under the NACC Act. This means that ACLEI authorised officers who transition to the NACC will continue to be authorised officers for the purpose of the POC Act. Therefore, a NACC authorised officer who seized a thing as an ACLEI authorised officer under the POC Act before the transition time can continue to comply with sections 256 to 258 after the transition time.

However, where a thing was seized by an ACLEI authorised officer who ceases to be an authorised officer (for example, because they do not transition to the NACC), there would be no relevant authorised officer for the purposes of sections 256 to 258 of the POC Act.

This section would ensure that where a thing is seized and not returned prior to the transition time, the NACC Commissioner would be designated the authorised officer for the purpose of complying with sections 256 to 258 in the event the authorised officer who executed the warrant or seized the thing cannot (because they have ceased to be an authorised officer). The NACC Commissioner would also be able to apply for an order to retain the thing in accordance with sections 257 and 258.

Division 3 – Surveillance Devices Act 2004

This Division would set out the transitional rules for matters relating to the SD Act.

Part 5 in Schedule 2 to the Consequential and Transitional Act specifies arrangements to transition the Integrity Commissioner's requirements and permissions under other Acts (including the SD Act) to the NACC Commissioner. However, Part 5 does not address all necessary transitional arrangements relating to the SD Act.

Accordingly, the rules under this Division would set out transitional arrangements to manage any outstanding reporting and record-keeping requirements on the Integrity Commissioner under the SD Act, where the required action was not completed before the transition time. The NACC Commissioner would be required to comply with any outstanding requirements.

Section 26 – Reports to Minister on warrants and authorisations

This section would provide that, where a warrant was issued, or an authorisation given, under the SD Act to a law enforcement officer of ACLEI, and ceased to be in force before the transition time, any requirements under section 49 of the SD Act that had not already been complied with must be complied with as if the warrant had been issued, or authorisation given, to a NACC law enforcement officer.

Section 49 of the SD Act, as in force immediately before the transition time, requires the Integrity Commissioner, as the chief officer of a law enforcement agency, to report to the Minister on warrants, emergency authorisations and tracking device authorisations issued or given to ACLEI law enforcement officers as soon as practicable after the warrant or authority ceases to be in force.

At the transition time, the definitions of law enforcement agency, chief officer and law enforcement officer under section 6A of the SD Act will be amended. The amendments will remove references to ACLEI, the Integrity Commissioner and ACLEI authorised officers and replace these with references to the NACC, the NACC Commissioner and NACC authorised officers. This means that at the transition time, ACLEI will no longer be a law enforcement agency and the Integrity Commissioner will no longer be a chief officer for the purposes of the SD Act. If the Integrity Commissioner had not complied with their reporting obligations under section 102 of the SD Act, those obligations would cease to exist.

This section would ensure that the NACC Commissioner would have an obligation to report on a warrant or authorisation where the obligation in section 49 had not been complied with. This would allow the Minister to maintain appropriate oversight of warrants and authorisations issued under the SD Act through the transition period.

Section 27 – Notification to Ombudsman in relation to warrants

This section would provide that, where:

- a warrant issued under the SD Act in response to an application by an ACLEI law enforcement officer ceased to be in force prior to the transition time, and
- subsections 49A(1) or (2) or section 49B of the SD Act applied to the Integrity Commissioner in relation to the warrant, but the Integrity Commissioner had not complied with the relevant provision prior to the transition time,

the relevant provision would apply to the NACC Commissioner as if the warrant had been issued in response to an application by a NACC law enforcement officer.

Sections 49A and 49B of the SD Act, as in force immediately before the transition time, require the Integrity Commissioner, as the chief officer of a law enforcement agency, to comply with notification requirements in relation to certain warrants issued in response to an application by an ACLEI law enforcement officer. The Integrity Commissioner must notify the Ombudsman when a Part 5.3 warrant (within the meaning of the SD Act) is issued and give the Ombudsman a copy of the warrant (subsection 49A(1)). The Integrity Commissioner must also notify the Ombudsman where ACLEI or an ACLEI law enforcement officer contravenes any of the conditions or provisions relating to the warrant listed in subsection 49A(2). The Integrity Commissioner must also notify the Ombudsman when a computer access warrant is issued and a thing mentioned in subsection 27E(7) of the SD Act was done under the warrant after the relevant 28-day period (section 49B).

At the transition time, the definitions of law enforcement agency, chief officer and law enforcement officer under section 6A of the SD Act will be amended. The amendments will remove references to ACLEI, the Integrity Commissioner and ACLEI authorised officers and replace these with references to the NACC, the NACC Commissioner and NACC authorised officers. This means that at the transition time, ACLEI will no longer be a law enforcement agency and the Integrity Commissioner will no longer be a chief officer for the purposes of the SD Act. If the Integrity Commissioner had not yet complied with any notification requirements under sections 49A and 49B of the SD Act, those obligations would cease to exist.

This section would ensure that the NACC Commissioner complies with those requirements to notify the Ombudsman about certain matters relating to warrants issued under the SD Act. This is necessary to ensure the Ombudsman can perform its oversight function over ACLEI's use of covert powers during the transition period.

Section 28 – Annual report to Minister about warrants

This section would provide that, for the first report that the NACC Commissioner is required to submit under section 50 of the SD Act, that section would apply as if the NACC Commissioner had also been the chief officer of ACLEI during the financial year to which the report relates.

Section 50 of the SD Act, as in force immediately before the transition time, requires the Integrity Commissioner, as the chief officer of ACLEI, to submit a report to the Minister setting out details in relation to powers exercised under the SD Act in respect of each financial year.

At the transition time, the definitions of law enforcement agency and chief officer under section 6A of the SD Act will be amended. The amendments will remove references to ACLEI and the Integrity Commissioner and replace these with references to the NACC and the NACC Commissioner. This means that at the transition time, ACLEI will no longer be a law enforcement agency and the Integrity Commissioner will no longer be a chief officer for the purposes of the SD Act. As the relevant reporting obligation will not accrue until after the transition time and after the position of chief officer of ACLEI has ceased to exist, this section is necessary to ensure that a report is still submitted with respect to SD Act powers exercised by ACLEI for the final financial year ACLEI is in operation.

Section 29 – Deferral of inclusion of information in annual report

This section would provide that, where information had not been included in a report tabled in Parliament because of subsection 50A(3) of the SD Act on the basis of advice given, before the transition time, by the Integrity Commissioner, then subsections 50A(4) and (5) of the SD Act would continue to apply after the transition time as if the advice had been given by the NACC Commissioner.

Section 50A of the SD Act, as in force immediately before the transition time, requires the Integrity Commissioner, as the chief officer of a law enforcement agency, to advise the Minister where certain information is Part 5.3 information (within the meaning of the SD Act) and should be excluded from an annual report before the Minister tables the report in the Parliament. If the Minister is satisfied, on the advice of the Integrity Commissioner, that the information is Part 5.3 information, the Minister must exclude the information from the report before tabling it in the Parliament.

Subsection 50A(4) of the SD Act requires the Integrity Commissioner to reconsider the status of the information for subsequent annual reports and advise the Minister where certain information is no longer Part 5.3 information and should be included in the report. If the Minister is satisfied, on the advice of the Integrity Commissioner, that the information is not Part 5.3 information, the Minister must include the information in the subsequent report before tabling it in the Parliament (subsection 50A(5) of the SD Act).

At the transition time, the definitions of law enforcement agency and chief officer under section 6A of the SD Act will be amended. The amendments will remove references to ACLEI and the Integrity Commissioner and replace these with references to the NACC and the NACC Commissioner. This means that at the transition time, ACLEI will no longer be a law enforcement agency and the Integrity Commissioner will no longer be a chief officer for the purposes of the SD Act.

As the relevant requirements to reconsider the status of Part 5.3 information for the purpose of annual reporting will not accrue until after the transition time and after the position of chief officer of ACLEI has ceased to exist, this section is necessary to ensure that the obligation is complied with where information has been excluded from the final annual report prepared by ACLEI before the transition time.

This section would ensure that relevant information originally considered by the Integrity Commissioner would be subject to reconsideration by the NACC Commissioner and inclusion in an annual report where appropriate.

Section 30 – Keeping documents connected with warrants and authorisations

This section would provide that documents the Integrity Commissioner had caused to be kept before the transition time in accordance with section 51 of the SD Act would be, from the transition time, taken to be document that the NACC Commissioner must cause to be kept in accordance with that section.

Section 51 of the SD Act, as in force immediately before the transition time, requires the Integrity Commissioner, as the chief officer of a law enforcement agency, to keep documents connected with warrants, emergency authorisations and tracking device operations.

At the transition time, the definitions of law enforcement agency and chief officer under section 6A of the SD Act will be amended. The amendments will remove references to ACLEI and the Integrity Commissioner and replace these with references to the NACC and the NACC Commissioner. This means that at the transition time, ACLEI will no longer be a law enforcement agency and the Integrity Commissioner will no longer be a chief officer for the purposes of the SD Act.

This section would ensure that the NACC Commissioner would be subject to record-keeping obligations in relation to SD Act powers exercised by ACLEI prior to the transition time.

Section 31 – Keeping other records

This section would provide that documents the Integrity Commissioner had caused to be kept before the transition time in accordance with section 52 of the SD Act would be, from the transition time,

taken to be document that the NACC Commissioner must cause to be kept in accordance with that section.

Section 52 of the SD Act, as in force immediately before the transition time, requires the Integrity Commissioner, as the chief officer of a law enforcement agency, to keep further records (in addition to the documents required to be kept under section 51) in relation to warrants, emergency authorisations and tracking device operations.

At the transition time, the definitions of law enforcement agency and chief officer under section 6A of the SD Act will be amended. The amendments will remove references to ACLEI and the Integrity Commissioner and replace these with references to the NACC and the NACC Commissioner. This means that at the transition time, ACLEI will no longer be a law enforcement agency and the Integrity Commissioner will no longer be a chief officer for the purposes of the SD Act.

This section would ensure that the NACC Commissioner would be subject to record-keeping obligations in relation to SD Act powers exercised by ACLEI prior to the transition time.

Section 32 – Register of warrants and authorisations

This section would provide that, after the transition time, the contents of the register that the Integrity Commissioner caused to be kept in accordance with section 53 of the SD Act are to be incorporated into the register required to be kept by the NACC Commissioner under that section.

Section 53 of the SD Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of a law enforcement agency to cause a register of warrants, emergency authorisations, and tracking device authorisations sought by law enforcement officers of ACLEI to be kept.

At the transition time, the definitions of law enforcement agency and chief officer under section 6A of the SD Act will be amended. The amendments will remove references to ACLEI and the Integrity Commissioner and replace these with references to the NACC and the NACC Commissioner. This means that at the transition time, ACLEI will no longer be a law enforcement agency and the Integrity Commissioner will no longer be a chief officer for the purposes of the SD Act.

This section would ensure that the NACC Commissioner would be subject to record-keeping obligations in relation to SD Act powers exercised by ACLEI prior to the transition time.

Section 33 – Evidentiary certificates

This section would provide that, for the purposes of an appropriate authorising officer of the NACC issuing a written certificate under section 62 of the SD Act, a person who was a law enforcement officer of ACLEI would be taken to have been a law enforcement officer of the NACC.

Section 62 of the SD Act, as in force immediately before the transition time, allows an appropriate authorising officer of ACLEI, or person assisting the officer, to issue a written certificate signed by a law enforcement officer or person, setting out any facts considered relevant. Relevant facts may include facts with respect to actions in connection with the execution of a warrant, emergency authorisation or tracking device authorisation or the use of disclosure of information obtained. A certificate issued under this section is admissible in evidence in any proceedings as prima facie evidence of the matters stated in the certificate.

At the transition time, the definitions of law enforcement agency, law enforcement officer and appropriate authorising officer under section 6A of the SD Act will be amended. The amendments will remove references to ACLEI, ACLEI authorised officers and ACLEI senior officers and replace these with references to the NACC, NACC authorised officers and NACC senior officers. This means that at the transition time, ACLEI staff will no longer be a law enforcement officers and ACLEI officers will no longer be appropriate authorising officers the purposes of the SD Act.

This means that, if no evidentiary certificate with respect to actions taken by ACLEI officers had been issued by an appropriate authorising officer of ACLEI before the transition time, there would be no basis for issuing the certificate after the transition time. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for NACC officers to issue these certificates after the transition time.

This section would ensure that after the transition time, if necessary, the NACC Commissioner and senior NACC officers would be able to issue evidentiary certificates in relation to activities undertaken before the transition time by ACLEI officers.

Division 4 – Telecommunications (Interception and Access) Act 1979

This Division would set out the transitional rules for matters relating to the TIA Act.

Part 5 in Schedule 2 to the Consequential and Transitional Act specifies arrangements to transition the Integrity Commissioner's requirements and permissions under other Acts (including the TIA Act) to the NACC Commissioner. However, Part 5 does not address all necessary transitional arrangements relating to the TIA Act.

Accordingly, the rules under this Division would set out transitional arrangements to manage any outstanding reporting and record-keeping requirements on the Integrity Commissioner under the TIA Act, where the required action was not completed before the transition time. The NACC Commissioner would be required to comply with any outstanding requirements.

Section 34 – Notifications to Ombudsman in relation to Part 5.3 warrants

This section would provide that, where a warrant under Part 5.3 of the TIA Act was issued to the Integrity Commissioner and ceased to be in force before the transition time, the NACC Commissioner must comply with the notification obligations in section 59B of the TIA Act after the transition time as if the warrant had been issued to the NACC Commissioner.

Section 59B of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of a Commonwealth agency to notify and give a copy of a Part 5.3 warrant to the Ombudsman within 6 months of its being issued. After the transition time, the definitions of chief officer and Commonwealth agency in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner and ACLEI with the NACC Commissioner and the NACC. This means that after the transition time, if the Integrity Commissioner had not yet complied with their obligations under section 59B of the TIA Act with respect to a Part 5.3 warrant, there would be no requirement to notify the Ombudsman. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for this obligation to continue after the transition time.

This section would ensure that the NACC Commissioner complies with any outstanding ACLEI notification obligations relating to Part 5.3 warrants and ensures the Ombudsman is able to maintain appropriate oversight of warrants issued, but not reported upon, prior to the transition time. A similar provision is not needed in relation to warrants that are still in force, as these warrants are continued under item 32 in Schedule 2 to the Consequential and Transitional Act, and associated obligations are therefore transferred to the NACC Commissioner by that item.

Section 35 – Evidentiary certificates

This section would provide that, for the purposes of a NACC certifying officer issuing an evidentiary certificate under subsection 61(4) of the TIA Act after the transition time, someone who was an officer or staff member of ACLEI is taken to be an officer or staff member of the NACC.

Section 61 of the TIA Act, as in force immediately before the transition time, permits the Integrity Commissioner, Assistant Integrity Commissioners and other authorised SES officers of ACLEI (as certifying officers of an agency) to issue written evidentiary certificates setting out relevant facts with respect to actions taken by officers or staff members of an agency in executing Part 2-5 warrants and in using information obtained by the warrants. These certificates are prima facie evidence of the

matters contained in them in certain proceedings. After the transition time, the definition of certifying officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner and Assistant Integrity Commissioners with the NACC Commissioner and NACC Deputy Commissioners. The definitions of officer and staff member of ACLEI will also be amended or repealed as relevant, to replace references to staff members of ACLEI with staff members of the NACC.

This means that, if no evidentiary certificate with respect to actions taken by ACLEI officers or staff members in executing a Part 2-5 warrant had been issued by an ACLEI certifying officer before the transition time, there would be no basis for issuing the certificate after the transition time. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for NACC certifying officers to issue these certificates after the transition time.

This section would ensure that after the transition time, if necessary, the NACC Commissioner or Deputy Commissioners would be able to issue evidentiary certificates in relation to activities undertaken before the transition time by officers or staff members of ACLEI.

Section 36 – Dealing with intercepted information

This section would provide that, for the purposes of dealing with lawfully intercepted information and interception warrant information under section 67 of the TIA Act, a warrant issued to ACLEI before the transition time is taken to have been issued to the NACC. This section would also provide that, for the purposes of dealing with or communicating lawfully intercepted information and interception warrant information under sections 67 and 68 of the TIA Act, information that was obtained by ACLEI and then transferred to the NACC after the transition time would be taken to have been originally obtained by the NACC.

Section 67 of the TIA Act, as in force immediately before the transition time, permits officers and staff members of ACLEI to communicate to another agency, make use of, or make a record of lawfully intercepted information and information warrant information for a permitted purpose.

A permitted purpose in the case of ACLEI, as defined in section 5 of the TIA Act as in force immediately before the transition time, is a purpose connected with a corruption investigation by ACLEI or report on such an investigation. After the transition time, the definition will be amended to replace references to ACLEI corruption investigations and reports to NACC corruption investigations and reports.

Section 68 of the TIA Act, as in force immediately before the transition time, permits the Integrity Commissioner as the chief officer of an agency to communicate some lawfully intercepted information to other specified Commonwealth agencies in limited circumstances (for example, if the

information concerns a criminal offence or an integrity-related matter affecting that agency). After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner.

Item 51 in Schedule 2 to the Consequential and Transitional Act will transfer lawfully intercepted information and interception warrant information held by ACLEI to the NACC after the transition time. This means that after the transition time, the NACC will hold lawfully intercepted information and interception warrant information obtained by ACLEI. However, the Consequential and Transitional Act does not include arrangements to enable NACC staff members to deal with it in the circumstances permitted by section 67 of the TIA Act, or the NACC Commissioner to communicate it in the circumstances permitted by section 68. This section would permit the NACC Commissioner and NACC staff members to deal with lawfully intercepted information and interception warrant information for a permitted purpose in accordance with section 67 of the TIA Act. This section would also permit the NACC Commissioner to communicate information lawfully intercepted by ACLEI before the transition time in accordance with section 68 of the TIA Act.

It is not necessary for this section to save the definition of permitted purpose as it applied to ACLEI so that it continues to operate after the transition time. Where the information is being dealt with under section 67 of the TIA Act for the purpose of a continued LEIC Act investigation (as provide for by subitem 2(2) in Schedule 2 to the Consequential and Transitional Act), paragraph 1(4)(d) in Schedule 2 to the Consequential and Transitional Act will apply to the amendments. This means the definition of permitted purpose may be read as if it had not been amended to refer to the NACC, if the information is being dealt with under section 67 for the purpose of a continued LEIC Act investigation.

It is also not necessary for this section to save the operation of paragraph 68(db) of the TIA Act. That provision, as in force immediately before the transition time, allows the chief officer of an agency to communicate lawfully intercepted information to the Integrity Commissioner if it relates, or appears to relate, to a corruption issue or ACLEI corruption issue within the meaning of the LEIC Act. After the transition time, this provision will be amended to allow the information to be communicated to the NACC Commissioner if it relates to a corruption issue or NACC corruption issue within the meaning of the NACC Act. The amendment to this provision will not prevent the NACC from dealing with lawfully intercepted information for a permitted purpose under section 67 of the TIA Act after the transition time, including as provided for by this section.

Section 37 – Keeping documents connected with issue of warrants

This section would provide that documents connected with the issue of warrants kept by the chief officer of ACLEI, and transferred to the chief officer of the NACC at the transition time, would be

taken to be records kept by the chief officer of the NACC for the purposes of section 80 of the TIA Act.

Section 80 of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to keep documents connected to the issue of warrants in ACLEI's records. After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. This means that after the transition time, there will be no ongoing obligation to keep records about warrants issued in respect of ACLEI. While the existing records will transfer from ACLEI to the NACC under item 51 in Schedule 2 to the Consequential and Transitional Act, there is no provision under the Consequential and Transitional Act for the NACC to keep ACLEI's records relating to warrants after the transition time.

This section would ensure that after the transition time, the NACC Commissioner would continue to keep records in respect of ACLEI under section 80 of the TIA Act.

Section 38 – Keeping other records in connection with interceptions

This section would provide that documents connected with interceptions of information kept in ACLEI's records, and transferred to the NACC at the transition time, would be taken to be records kept in the NACC for the purposes of section 81 of the TIA Act.

Section 81 of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to keep certain documents connected with interceptions in ACLEI's records. After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. This means that after the transition time, there will be no ongoing obligation to keep the other documents connected with interceptions in respect of ACLEI. While the existing records will transfer from ACLEI to the NACC under item 51 in Schedule 2 to the Consequential and Transitional Act, there is no provision under the Consequential and Transitional Act for the NACC to keep ACLEI's records of other interception-related information after the transition time.

This section would ensure that after the transition time, the NACC Commissioner would continue to keep ACLEI's documents connected with interceptions under section 81 of the TIA Act.

Section 39 – Reports to Minister regarding telecommunications service warrants

This section would provide that, where a warrant was issued to the Integrity Commissioner, and ceased to be in force before the transition time, the reporting obligations in subsection 94(2) of the

TIA Act would continue to apply after the transition time as if the warrant had been issued to the NACC Commissioner.

Subsection 94(2) of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to give the Minister a written report about a telecommunications service warrant within 3 months after it ceases to be in force. After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. As the reporting requirements do not require a report immediately upon the cessation of a warrant, it is possible that relevant warrants will not yet have been reported to the Minister at the time of transition. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for the NACC Commissioner to comply with any outstanding reporting obligations under subsection 94(2). This means that after the transition time, if the Integrity Commissioner had not yet complied with their obligations under subsection 94(2) of the TIA Act, there would be no requirement for anyone to give the report to the Minister for any outstanding ACLEI telecommunications service warrants.

This section would require the NACC Commissioner to comply with any outstanding reporting obligations relating to the Integrity Commissioner under subsection 94(2) of the TIA Act after the transition time, and would ensure that the Minister would still receive information and be able to exercise appropriate oversight of these warrants.

Warrants that are still in force at the time of transition are continued under item 32 in Schedule 2 to the Consequential and Transitional Act, and associated obligations will apply to the NACC Commissioner by virtue of that item.

Section 40 – Reports to Minister regarding named person warrants

This section would provide that, where a named person warrant was issued to the Integrity Commissioner, and ceased to be in effect before the transition time, the reporting obligations in section 94B of the TIA Act would continue to apply after the transition time as if the warrant had been issued to the NACC Commissioner.

Section 94B of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to give the Minister a written report about any action taken under a named person warrant within 3 months after it ceases to be in force. After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. As the reporting requirements do not require a report immediately are not immediate upon the cessation of a warrant, it is conceivable possible that relevant warrants will not yet have been reported upon to the Minister at the time of

transition. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for the NACC Commissioner to comply with any outstanding reporting obligations under section 94B. This means that after the transition time, if the Integrity Commissioner had not yet complied with their obligations under section 94B of the TIA Act, there would be no requirement for anyone to give the report to the Minister for any outstanding ACLEI named person warrants.

This section would require the NACC Commissioner to comply with any outstanding reporting obligations relating to the Integrity Commissioner after the transition time, ensuring that the Minister would still receive information and be able to exercise appropriate oversight of these warrants.

Warrants that are still in force at the time of transition are continued under item 32 in Schedule 2 to the Consequential and Transitional Act, and associated obligations are therefore transferred to the NACC Commissioner by that item.

Section 41 – Annual report by Minister about Part 2-5 warrants

This section would provide that, for the first report that the Minister must cause to be prepared after the transition time in accordance with Division 2 of Part 2-8 of the TIA Act, that Division would continue to apply as if ACLEI continued to be a Commonwealth agency.

Division 2 of Part 2-8 of the TIA Act, as in force immediately before the transition time, requires the Minister to prepare an annual report containing information and statistics about Part 2-5 warrants issued to Commonwealth agencies (including ACLEI) during that year. After the transition time, the definition of Commonwealth agency in section 5 of the TIA Act will be amended to replace ACLEI with the NACC. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for the Minister's reporting obligation in respect of ACLEI to continue after the transition time. This means that after the transition time, if the Minister had not yet complied with their obligation to prepare a report in respect of ACLEI, they would not be required to report on Part 2-5 warrants for ACLEI's last 12 months in operation, because ACLEI would not be a Commonwealth agency.

This section would ensure that the Minister's first annual report after the transition time includes information on ACLEI's final 12 months in operation.

Section 42 – Deferral of inclusion of information in Ministerial report – interceptions

This section would deem advice given by the Integrity Commissioner to the Minister under subsection 103B(2) of the TIA Act before the transition time to have been given by the NACC Commissioner after the transition time, for the purpose of complying with subsections 103B(4) and (5).

Subsection 103B(4) of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to reconsider whether information about Part 2-5 warrants excluded from the Minister's annual report from the previous year should be excluded from the next annual report. The Integrity Commissioner must consider whether the information may reveal (directly or indirectly) that there is a Part 5.3 warrant in force in relation to a telecommunications service or specific person. The Integrity Commissioner must advise the Minister whether the information would still have that effect if it were included in the annual report.

Subsection 103B(5) of the TIA Act, as in force immediately before the transition time, requires the Minister to notify the Integrity Commissioner and include the information in the next annual report, if they are satisfied (based on the Integrity Commissioner's advice given under subsection 103B(4)) that it would not reveal that there is a relevant Part 5.3 warrant in force.

After the transition time, the definition of chief officer in section 5 of the TIA will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for this obligation to continue after the transition time. This means that after the transition time, if the Integrity Commissioner had previously advised the Minister that information should be excluded from the annual report, there would be no requirement for anyone to reconsider whether the information should be included in the next annual report.

This section would ensure that the NACC Commissioner reconsiders whether relevant information excluded from the Minister's annual report on the Integrity Commissioner's advice should be included in the next annual report.

Section 43 – Annual report to Minister about destruction of records

This section would provide that the first annual report that the NACC Commissioner is required to give the Minister under subsection 150(2) of the TIA Act must set out the extent to which information and records in the possession of ACLEI were destroyed in accordance with subsection 150(1).

Section 150 of the TIA Act requires the chief officer of an agency to destroy information obtained by accessing a stored communication if they are satisfied it is not likely to be required for a specified purpose. Subsection 150(2) of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to give the Minister annually a written report setting out the extent to which information and records were destroyed in compliance with section 150. After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for this obligation to

continue after the transition time. This means that after the transition time, if the Integrity Commissioner had not yet given the Minister a report, there would be no requirement for anyone to report on the destruction of stored communication information and records for ACLEI's final 12 months in operation.

This section would ensure that the NACC Commissioner's first annual report after the transition time includes information on information or records destroyed during ACLEI's final 12 months in operation.

Section 44 – Keeping records relating to stored communications

This section would provide that documents listed in section 151 of the TIA Act kept in the records of ACLEI, and transferred to the records of the NACC at the transition time, would be taken to be records kept by the NACC Commissioner for the purposes of that provision.

Section 151 of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of a criminal law-enforcement agency to keep records about preservation notices, stored communication warrants, requests for international assistance, evidentiary certificates, the destruction of records and other documents. After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. The definition of criminal law-enforcement agency in section 110A of the TIA Act will also be amended to replace the reference to ACLEI with the NACC. This means that after the transition time, while the ACLEI records kept under section 151 will transfer to the NACC under item 51 in Schedule 2 to the Consequential and Transitional Act, there will be no ongoing obligation for the NACC to keep those records.

This section would ensure that the NACC Commissioner continues to keep ACLEI records under section 151 of the TIA Act after the transition time.

Section 45 – Annual report by Minister about stored communications warrants

This section would provide that, for the first report that the Minister must prepare under Division 2 of Part 3-6 of the TIA Act, that Division would apply as if ACLEI continued to be a criminal law-enforcement agency.

Division 2 of Part 3-6 of the TIA Act, as in force immediately before the transition time, requires the Minister to prepare an annual report about stored communication warrants for criminal law-enforcement agencies (including ACLEI). After the transition time, the definition of criminal law-enforcement agency in section 110A of the TIA Act will be amended to replace references to ACLEI with the NACC. Part 5 in Schedule 2 to the Consequential and Transitional Act will not

provide for this obligation to continue after the transition time. This means that after the transition time, if the Minister had not yet prepared their annual report, they would not be required to include information about stored communication warrants from ACLEI's final 12 months in operation because ACLEI would not be a criminal law-enforcement agency.

This section would ensure that the Minister's first report after the transition time contains information about ACLEI stored communication warrants in its final 12 months of operation.

Section 46 – Retention of authorisations for access to information

This section would provide that authorisations retained by the Integrity Commissioner would be taken to have been retained by the NACC Commissioner after the transition time.

Section 185 of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the head of an enforcement agency to retain authorisations for permitted access to telecommunications data made under Division 4 of Part 4-1 of the TIA Act for 3 years after they were made. After the transition time, the definition of criminal law-enforcement agency in section 110A of the TIA Act will be amended to replace references to ACLEI with the NACC; this change will flow through to the definition of enforcement agency in section 176A, referred to in section 185. This means that after the transition time, while the authorisations will transfer from ACLEI to the NACC under item 51 in Schedule 2 to the Consequential and Transitional Act, there will be no requirement for the NACC Commissioner to retain them after the transition time.

This section would ensure that the NACC Commissioner retains ACLEI authorisations after the transition time, and would mean the 3 year retention period can continue to run without interruption or unnecessarily restarting.

Section 47 – Annual report to the Minister about authorisations for access to information

This section would provide that, for the first report that the NACC Commissioner is required to submit under section 186 of the TIA Act, that section would apply as if the NACC Commissioner had also been the head of ACLEI during the year ending on 30 June to which the report relates.

Section 186 of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the head of an enforcement agency to give the Minister a written report about authorisations for access to telecommunications data. After the transition time, the definition of criminal law-enforcement agency in section will be amended to replace references to ACLEI with the NACC; this change will flow through to the definition of enforcement agency in section 176A, referred to in section 186. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for this obligation to continue after the transition time. This means that after the transition

time, if the Integrity Commissioner had not yet provided a report to the Minister, there would be no requirement for anyone to report to the Minister on authorisations made during ACLEI's final 12 months in operation.

This section would ensure that the NACC Commissioner includes information on authorisations from ACLEI's final 12 months in operation in the first report they must submit after the transition time.

Section 48 – Keeping records relating to authorisations for access to information

This section would provide that records relating to authorisations for access to information kept in ACLEI's records are taken to be kept in the NACC's records for the purposes of section 186A.

Section 186A of the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of an enforcement agency to keep records relating to authorisations for access to telecommunications data for a period of 3 years. After the transition time, the definitions of chief officer in section 5 and criminal law enforcement agency in section 110A (which affects the meaning of enforcement agency in section 186A) will be amended to replace references to the Integrity Commissioner and ACLEI with the NACC Commissioner and the NACC. This means that after the transition time, while the existing records will transfer from ACLEI to the NACC under item 51 in Schedule 2 to the Consequential and Transitional Act, there would be no ongoing obligation for the NACC Commissioner to keep the ACLEI records.

This section would ensure the NACC Commissioner continues to keep ACLEI's records after the transition time, in accordance with section 186A of the TIA Act.

Section 49 – Notifications to Ombudsman in relation to international production orders

This section would provide that, where an international production order (IPO) under Schedule 1 to the TIA Act was issued in response to an application by ACLEI, and ceased to be in force before the transition time, the notification obligations in clause 81 in Schedule 1 to the TIA Act would continue to apply after the transition time as if the IPO had been issued in response to an application by the NACC.

Clause 81 in Schedule 1 to the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of a Part 5.3 IPO agency (ACLEI) to notify the Ombudsman that an IPO has been issued on application by ACLEI within 3 months of its being issued. After the transition time, the definitions of chief officer in section 5 and Commonwealth agency in section 5 (which affects the meaning of Part 5.3 IPO agency in clause 81) will be amended to replace references to the Integrity Commissioner and ACLEI with the NACC Commissioner and the NACC. This means that after the transition time, if the Integrity Commissioner had not notified

the Ombudsman of an IPO, there would be no requirement to notify the Ombudsman because the Integrity Commissioner would not be the chief officer of a Part 5.3 IPO agency. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for this obligation to continue after the transition time.

This section would ensure that the NACC Commissioner complies with any outstanding ACLEI notification obligations after the transition time, and that the Ombudsman is able to maintain appropriate oversight of pre-transition ACLEI IPOs.

Section 50 – Annual report to Minister about international production orders

This section would provide that, for the first report that the NACC Commissioner is required to give the Minister under clause 128 in Schedule 1 to the TIA Act, the reporting obligations in that clause would continue to apply after the transition time to the NACC Commissioner as if they had also been the chief officer of ACLEI for the relevant period.

Clause 128 in Schedule 1 to the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to give the Minister an annual report setting out matters related to IPOs. After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for this obligation to continue after the transition time. This means that after the transition time, if the Integrity Commissioner had not yet submitted a report to the Minister, there would be no requirement for anyone to provide an annual report about IPOs in respect of ACLEI's last 12 months in operation because the Integrity Commissioner would not be a chief officer.

This section would ensure that after the transition time, the NACC Commissioner reports to the Minister on IPOs in respect of ACLEI's final 12 months of operation when they submit their first annual report under clause 128 in Schedule 1 to the TIA Act.

Section 51 – Deferral of inclusion of information in a Ministerial report – international production orders

This section would deem advice given by the Integrity Commissioner to the Minister under subclause 132(2) in Schedule 1 to the TIA Act before the transition time to have been given by the NACC Commissioner after the transition time, for the purpose of complying with subclauses 132(4) and (5).

Subclause 132(4) in Schedule 1 to the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to reconsider whether information

about IPOs excluded from the Minister's annual report from the previous year should be excluded from the next annual report. The Integrity Commissioner must consider whether the information may reveal (directly or indirectly) that an IPO under Part 3 in Schedule 1 to the TIA Act is likely or not likely to be in force, or that an IPO is or is not likely to be in force against a particular person.

Subclause 132(5) of the TIA Act, as in force immediately before the transition time, requires the Minister to notify the Integrity Commissioner and include the information in the next annual report, if they are satisfied (based on the Integrity Commissioner's advice given under subclause 132(4)) that it would not reveal that an IPO is or is not likely to be in force.

After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. This means that after the transition time, if the Integrity Commissioner had previously advised the Minister that information should be excluded from the annual report, there would be no requirement for anyone to reconsider whether the information should be included in the next annual report. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for this obligation to continue after the transition time.

This section would ensure that the NACC Commissioner considers whether relevant information excluded from the Minister's annual report on the Integrity Commissioner's advice should be included in the next annual report.

Section 52 – Keeping documents associated with international production orders

This section would provide that documents listed in clause 133 in Schedule 1 to the TIA Act kept in the records of ACLEI, and transferred to the records of the NACC at the transition time, would be taken to be records kept by the NACC Commissioner for the purposes of that provision.

Clause 133 in Schedule 1 to the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to keep records about IPOs within ACLEI's records. After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. This means that after the transition time, while the ACLEI records kept under clause 133 will transfer to the NACC under item 51 in Schedule 2 to the Consequential and Transitional Act, there will be no ongoing obligation for the NACC to keep these records.

This section would ensure that the NACC Commissioner continues to keep ACLEI records under section 151 of the TIA Act after the transition time.

Section 53 – Keeping other records associated with international production orders

This section would provide that records connected with IPOs listed in clause 134 in Schedule 1 to the TIA Act kept by the Integrity Commissioner in the records of ACLEI would be taken to be records kept by the NACC Commissioner for the purposes of that provision.

Clause 134 in Schedule 1 to the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to keep a record of certain information associated with IPOs (for example, the outcome of each application for an IPO). The Integrity Commissioner is required to keep those records for a period of 3 years, or until the Ombudsman gives a report to the Minister under clause 150 in Schedule 1 to the TIA Act, whichever is earlier. After the transition time, the definition of chief officer in section 5 of the TIA Act will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. This means that after the transition time, while the ACLEI records kept under section 151 will transfer to the NACC under item 51 in Schedule 2 to the Consequential and Transitional Act, there will be no ongoing obligation for the NACC to keep those records.

This section would ensure the NACC Commissioner continues to keep ACLEI records under clause 134 in Schedule 1 to the TIA Act after the transition time, without the mandatory 3 year retention period being interrupted or unnecessarily restarting.

Section 54 – Destruction of records relating to international production orders

Where records relating to interceptions and stored communications are made available to ACLEI under an IPO before the transition time, and those records are transferred to the NACC after the transition time, this section would ensure the NACC Commissioner complies with the records destruction obligations in clause 140 in Schedule 1 to the TIA Act, despite amendments removing references to the Integrity Commissioner as the chief officer of ACLEI.

The section would provide that, for the purposes of the application of clause 140 in Schedule 1 to the TIA Act to records or copies in the NACC's possession after the transition time, a reference in paragraph (1)(a) or (3)(a) in clause 140 to an application made by a relevant agency is taken to include a reference to an application made by ACLEI. This would ensure that the NACC Commissioner as the chief officer of the NACC destroys records of interceptions and stored communications under an IPO in accordance with subclauses 140(1) and 140(3) in Schedule 1 to the TIA Act, even though the IPO was originally issued in response to an application from ACLEI before the transition time.

The section would also provide that, for the purpose of the application of clause 140 in Schedule 1 to the TIA Act to records or copies in the NACC's possession after the transition time, records or copies of documents relating to interceptions or stored communications made available to ACLEI under an

IPO are taken to have been made available to the NACC. This would ensure the NACC Commissioner as the chief officer of the NACC destroys records or copies of documents relating to interceptions and stored communications under an IPO, even though the documents were made available to ACLEI before the transition time.

Clause 140 in Schedule 1 to the TIA Act, as in force immediately before the transition time, requires the Integrity Commissioner as the chief officer of ACLEI to destroy information relating to interception activities or stored communications obtained under an IPO. The Integrity Commissioner is required to destroy the information if they are satisfied that the information is not likely to be required for a purpose under clauses 153, 157 and 158 in Schedule 1 to the TIA Act, which outline when protected information may be used, recorded or disclosed.

After the transition time, the definition of chief officer will be amended to replace references to the Integrity Commissioner with the NACC Commissioner. The definition of Commonwealth agency (which affects the meaning of relevant agency in clause 140 in Schedule 1 to the TIA Act) will also be amended to replace references to ACLEI with the NACC. This means that after the transition time, there would be no requirement for those records to be destroyed, because the Integrity Commissioner would not be the chief officer of a relevant agency. Part 5 in Schedule 2 to the Consequential and Transitional Act does not provide for these obligations to continue after the transition time.

This section would ensure the NACC Commissioner complies with the destruction obligations in clause 140 in Schedule 1 to the TIA Act with respect to ACLEI documents in the NACC's possession after the transition time.

PART 5 – ACLEI corruption issues

This Part would set out transitional arrangements relating to ACLEI corruption issues. Transitional arrangements set out under this Part would complement those provided for under Part 6 in Schedule 2 to the Consequential and Transitional Act.

Section 55 – Inspector to give certain persons copy of NACC corruption issue transition notice

This section would provide that, where the Inspector decides to take over an existing investigation into an ACLEI corruption issue, the Inspector must give a copy of the NACC corruption transition notice to the Minister as soon as reasonably practicable. The Inspector must also give a copy to a person who provided the relevant allegation or information to the Minister under section 154 of the LEIC Act, and who elected to be kept informed under section 155 of the LEIC Act, as soon as reasonably practicable.

Subitem 36(4) in Schedule 2 to the Consequential and Transitional Act permits the Inspector to determine in writing (via the NACC corruption issue transition notice) that the NACC Act applies to an investigation or special investigation into an ACLEI corruption issue after the transition time, where:

- it is more appropriate to investigate the ACLEI corruption issue under the NACC Act; and
- the ACLEI corruption issue could involve corrupt conduct that is serious or systemic.

This section would ensure that the Minister and other affected persons are kept informed regarding the status of an ACLEI corruption issue, including the Act under which it is being investigated.

Section 56 – Providing information in relation to previous investigations of ACLEI corruption issues

This section would ensure the Inspector receives all information relevant to an existing ACLEI corruption issue they have decided to investigate after the transition time by issuing a NACC corruption issue transition notice under subitem 36(4) in Schedule 2 to the Consequential and Transitional Act.

Subitem 36(4) in Schedule 2 to the Consequential and Transitional Act permits the Inspector to determine in writing that the NACC Act applies to an investigation or special investigation into an ACLEI corruption issue after the transition time, where:

- it is more appropriate to investigate the ACLEI corruption issue under the NACC Act; and
- the ACLEI corruption issue could involve corrupt conduct that is serious or systemic.

This subitem allows the Inspector to take over an existing investigation into an ACLEI corruption issue from the Integrity Commissioner or a special investigator after the transition time.

However, subitem 36(4) does not specify any requirements for the NACC Commissioner or special investigator to provide any relevant information to the Inspector.

Accordingly, this section would provide that, if the Inspector gives a copy of a NACC corruption issue transition notice to the NACC Commissioner or a special investigator in relation to the investigation of an ACLEI corruption issue or a special investigation of an ACLEI corruption issue, respectively, the NACC Commissioner or special investigator must give the Inspector all information in their possession or control.

This would ensure that the Inspector would have access to all relevant material held by the NACC Commissioner or special investigator for the purposes of an investigation into an ACLEI corruption issue.

Section 57 – Actions after completion of investigations of ACLEI corruption issues

This section would ensure that the NACC Commissioner or any special investigator continues to comply with reporting requirements (including report dissemination and procedural fairness requirements) under the LEIC Act where:

- the NACC Commissioner or special investigator complete an investigation into an ACLEI corruption issue that had been commenced but not completed before the transition time; or
- the investigation was completed before the transition time, but had not yet been reported on.

Subitem 36(2) in Schedule 2 to the Consequential and Transitional Act permits the NACC Commissioner to continue to conduct an investigation into an ACLEI corruption issue after the transition time, if the Integrity Commissioner had commenced but not completed it before the transition time. The NACC Commissioner may conduct this investigation as if the LEIC Act had not been repealed. Similarly, subitem 36(3) in Schedule 2 to the Consequential and Transitional Act permits a special investigator to continue their investigation into an ACLEI corruption issue after the transition time, if they had commenced it before the transition time, as if the LEIC Act had not been repealed.

However, these subitems do not explicitly address the reporting, dissemination and procedural fairness requirements under the LEIC Act after the NACC Commissioner or special investigator has pursued all viable avenues of inquiry and the investigation is complete. This section would ensure those requirements continue to apply after the transition time once an ACLEI corruption issue investigation is complete.

Investigations continued after transition time

This section would provide that, where the NACC Commissioner continues an existing investigation of an ACLEI corruption issue under the LEIC Act in accordance with subitem 36(2) in Schedule 2 to the Consequential and Transitional Act, the relevant reporting requirements under sections 162 to 165 of the LEIC Act and procedural fairness requirements under section 51 (as applied by section 160) continue to apply to those investigations. Sections 162 and 163 set out the requirements for preparing reports on ACLEI corruption issues, and providing reports to the Minister. Sections 164 and 165 set out the requirements for advising persons who referred the allegation and the person whose conduct was investigated of the outcome of the investigation. Section 51 would require the NACC Commissioner to give a person an opportunity to respond before including a critical opinion or finding in a report, unless a relevant exception applies. The person would be given a reasonable

opportunity to appear before the NACC Commissioner and make submissions in relation to the opinion or finding.

This section would also provide that where a special investigation of an ACLEI corruption issue is continued under the LEIC Act by the special investigator in accordance with subitem 36(3) in Schedule 2 to the Consequential and Transitional Act, the relevant reporting provisions under sections 169 to 173 of the LEIC Act and procedural fairness requirements under section 51 (as applied by section 167) would continue to apply to those investigations. Sections 169 and 170 set out the requirements for special investigators relating to preparing reports on ACLEI corruption issues, and providing reports to the Minister and the Integrity Commissioner. Section 171 allows the Minister to direct the Integrity Commissioner to consider taking action against a person referred to in a report prepared by a special investigator. Sections 172 and 173 set out the requirements for advising persons who referred the allegation and the person whose conduct was investigated of the outcome of the special investigation.

Accordingly, this section would ensure the NACC Commissioner and any special investigator continue to comply with reporting, dissemination and procedural fairness requirements where they complete an ACLEI corruption issue investigation that commenced before the transition time.

Investigations completed before transition time—investigation by Integrity Commissioner

This section would also provide that if, before the transition time, the Integrity Commissioner had completed an investigation of an ACLEI corruption issue, but had not prepared a report on the investigation under subsection 162(1) of the LEIC Act, sections 51 (as applied by section 160), 162 and 163 of the LEIC Act would continue to apply to the investigation.

If, before the transition time, the Integrity Commissioner had completed an investigation of an ACLEI corruption issue, but had not yet given any advice required to be given by section 164 of the LEIC Act, the NACC Commissioner must advise the person who referred the allegation or information about the ACLEI corruption investigation in accordance with that section.

If, before the transition time, the Integrity Commissioner had completed an investigation of an ACLEI corruption issue, but had not yet exercised the power under section 165 of the LEIC Act to advise a person whose conduct was investigated of the outcome of the investigation, that power remains available.

Investigations completed before transition time—special investigations

This section would also provide if, before the transition time, a special investigator completed a special investigation of an ACLEI corruption issue but had not prepared a report on the investigation

under subsection 169(1) of the LEIC Act, sections 51 (as applied by section 167) and sections 169 to 171 of the LEIC Act continue to apply to the investigation.

If, before the transition time, a special investigator completed a special investigation of an ACLEI corruption issue but had not yet given any advice as required by section 172 of the LEIC Act, the special investigator must advise the person who referred the allegation or information about the ACLEI corruption investigation in accordance with that section.

If, before the transition time, a special investigator completed a special investigation of an ACLEI corruption issue but had not yet exercised the power in section 173 of the LEIC Act to advise a person whose conduct was investigated of the outcome of the investigation, that power remains available after the transition time.

This section would ensure that investigations of ACLEI corruption issues would still be appropriately reported on, and persons affected by investigations could still be informed of the outcomes.

This ensures appropriate oversight of investigations commenced by the Integrity Commissioner or a special investigator but not yet completed or fully reported on at the time of ACLEI transitioning to the NACC. This also allows recommendations to be made and appropriately actioned.

Section 58 – Dealing with ACLEI corruption issues arising after transition time

This section would ensure that ACLEI corruption issues that have not come to the Minister's attention before the transition time, and which are not NACC corruption issues, may still be dealt with under Part 12 of the LEIC Act after the transition time, despite its repeal. This would apply to ACLEI corruption issues concerning the conduct of persons who do not become NACC staff members after the transition time. It is intended to ensure those ACLEI corruption issues can be independently investigated where appropriate, consistently with Part 12 of the LEIC Act.

Item 36 in Schedule 2 to the Consequential and Transitional Act specifies transitional arrangements for investigations into ACLEI corruption issues that have already commenced, but not been completed before the transition time.

This section would apply to ACLEI corruption issues where an investigation has not commenced before the transition time because the Minister was not aware of the issue or had not yet decided how to deal with it under the relevant provisions of the LEIC Act. For the rule to apply, the ACLEI corruption issue could not also constitute a NACC corruption issue (because it would concern the conduct of a person who does not become a NACC staff member after the transition time).

In those circumstances, sections 154, 155, 157 and 158, and Divisions 3 and 4 of Part 12 of the LEIC Act would apply in relation to the ACLEI corruption issue as if the LEIC Act had not been

repealed. Additionally, section 156 of the LEIC Act would apply as if the LEIC Act had not been repealed, and a reference to the Integrity Commissioner included a reference to the NACC Commissioner.

Section 154 of the LEIC Act, as in force immediately before the transition time, allows a person to refer to the Minister an allegation, or information, that raises an ACLEI corruption issue. Section 155 requires the person to elect whether or not they would like to be kept informed of action taken in relation to the ACLEI corruption issue.

Section 156 allows the Minister to deal with an ACLEI corruption issue that is referred to the Minister, or that they otherwise become aware of, by:

- referring the issue to the Integrity Commissioner for investigation;
- authorising a person to conduct a special investigation of the issue; or
- deciding to take no further action.

For the purpose of the continued operation of section 156, the Minister would be able to refer the issue to the NACC Commissioner for investigation.

Section 157 of the LEIC Act limits the persons the Minister may authorise to conduct a special investigation to a person that is enrolled as a legal practitioner for at least 5 years.

Section 158 of the LEIC Act allows the Minister to appoint a legal practitioner to assist a special investigation as counsel in relation to the special investigation.

Division 3 of Part 12 of the LEIC Act applies to investigations undertaken by the Integrity Commissioner, and sets out powers and requirements for investigating and reporting on the ACLEI corruption issue. For the purpose of the continued operation of Division 3, these requirements would apply to the NACC Commissioner.

Division 4 of Part 12 of the LEIC Act applies to investigations undertaken by a special investigator, and sets out powers and requirements for investigating reporting on the ACLEI corruption issue.

PART 6 – Handling information

This Part would set out transitional arrangements with respect to handling information, including confidential information obtained as part of an existing or previous ACLEI investigation. The transitional arrangements under this Part would complement those provided for in Part 7 in Schedule 2 to the Consequential and Transitional Act.

Section 59 – Dealing with evidence obtained in investigation or public inquiry

This section would provide that Part 10 of the LEIC Act applies to evidence obtained in an existing investigation or public inquiry continued under subitem 2(2) in Schedule 2 to the Consequential and Transitional Act.

The section would also provide that the obligations in Part 10 apply in relation to evidence obtained in an investigation or public inquiry which was completed prior to the transition time, where the Integrity Commissioner had not yet complied with Part 10.

Part 10 of the LEIC Act provides arrangements for dealing with evidence and information obtained in an investigation or public inquiry. This includes, for example, requirements for the Integrity Commissioner to refer evidence of an offence to the AFP or another authority for prosecution.

This section would ensure that the NACC Commissioner is subject to the same requirements to refer evidence of an offence or other relevant evidence to the relevant authority, where those obligations applied to the Integrity Commissioner prior to ACLEI transitioning into the NACC.

Section 60 – Attorney-General’s certificates about release of information

This section would provide that, for the purposes of the operation of the LEIC Act after the transition time as provided for by Schedule 2 to the Consequential and Transitional Act and the Rules, Part 11 of the LEIC Act continues to apply as if the LEIC Act had not been repealed.

Part 11 of the LEIC Act allows the Attorney-General to certify that the disclosure of particular information or the contents of a document would be contrary to the public interest. The certificate may limit the information an agency head or a person subject to a notice or summons may provide to the Integrity Commissioner or another government agency. The certificate may also limit the information the Integrity Commissioner may give to the head of a government agency.

This section would ensure the protection of information that was the subject of an Attorney-General’s certificate issued before the transition time. It is appropriate that where an investigation is continued under the LEIC Act, the protection of sensitive information or documents should also be continued in accordance with the LEIC Act.

Section 61 – Confidentiality requirements under old Act

This section would provide that, for the purposes of the operation of the LEIC Act after the transition time as provided for by Schedule 2 to the Consequential and Transitional Act and the Rules, Division 5 of Part 13 of the LEIC Act continues to apply as if the LEIC Act had not been repealed.

Division 5 of Part 13 of the LEIC Act:

- imposes confidentiality requirements on ACLEI staff members (sections 207 and 208);

- allows the Integrity Commissioner to disclose information to the public when satisfied that it is in the public interest (section 209);
- creates procedural fairness requirements where the Integrity Commissioner intends to disclose information under section 209 that is critical of a government agency or person (section 210); and
- provides that ACLEI staff are generally not compellable in court proceedings (section 211).

This section would preserve, for the purposes of the operation of the LEIC Act after the transition time, the confidentiality requirements imposed upon former ACLEI staff, including the offence at section 207 of the LEIC Act and relevant exceptions to confidentiality requirements at section 208.

This section would also preserve, for the purposes of the operation of the LEIC Act after the transition time, the right of government agencies and persons to be heard where the NACC Commissioner decides to disclose information relating to an investigation that includes a finding or opinion critical of that agency or person, and intends to disclose that finding or opinion.

It would preserve the protection against the compellability of former ACLEI staff in court proceedings in relation to information or documents obtained for the purposes of the LEIC Act.

PART 7 – Reporting

This Part would set out transitional arrangements with respect to reporting on ACLEI investigations completed, but not reported on, before the transition time. The transitional arrangements set out under this Part would complement those provided for in Part 8 in Schedule 2 to the Consequential and Transitional Act.

Section 62 – Reports on investigations and public inquiries to be laid before each House of Parliament

This section would provide that section 203 of the LEIC Act continues to apply in relation to a report on an investigation or public inquiry conducted under that Act after the transition time and despite its repeal.

Section 203 of the LEIC Act requires the Minister to table investigation or public inquiry reports from the Integrity Commissioner, and investigation reports into ACLEI corruption issues from special investigators, where one or more public hearings were held during the investigation. The Minister must remove information from the report that would not be appropriate to table.

Items 38 and 39 in Schedule 2 to the Consequential and Transitional Act require the NACC Commissioner to prepare reports into investigations and public inquiries conducted by the Integrity Commissioner where those investigations had been completed, but not reported on, at the transition

time. However, these items do not cover requirements for the Minister to table the reports where this is required by section 203.

Item 36 in Schedule 2 to the Consequential and Transitional Act allows the NACC Commissioner to continue to conduct an investigation into an ACLEI corruption issue by the Integrity Commissioner as if the LEIC Act had not been repealed. Item 36 in Schedule 2 also requires special investigators, where they continue an investigation into an ACLEI corruption issue as if the LEIC Act had not been repealed, to continue the investigation under the LEIC Act. Section 57 of the Rules would continue the reporting requirements under the LEIC Act for these investigations. However, neither item 36 in Schedule 2 to the Consequential and Transitional Act nor section 57 of the Rules would cover requirements for the Minister to table the reports where this is required by section 203.

This section would ensure that the Minister tables any relevant reports where required under the LEIC Act after the transition time.

Section 63 – Annual reports for financial year ended before transition time

This section would provide that if the NACC Commissioner prepares an annual report under subitem 40(2) in Schedule 2 to the Consequential and Transitional Act, section 202 of the LEIC Act applies in relation to the annual report as if that Act had not been repealed.

Section 202 of the LEIC Act requires the Minister to give a copy of annual reports that mention the Australian Crime Commission (now the Australian Criminal Intelligence Commission (ACIC)) to the Inter-Governmental Committee established by section 8 of the ACC Act. If the Inter-Governmental Committee gives the Minister comments in writing in relation to the annual report, the Minister is required to cause a copy of those comments to be laid before each House of the Parliament within 15 sitting days.

Item 40 in Schedule 2 to the Consequential and Transitional Act requires the NACC Commissioner to prepare an annual report in accordance with the LEIC Act, where an annual report had not been prepared for the financial year before the transition time. However, that item does not cover the Minister's obligation to give a copy of the report to the Inter-Governmental Committee as required by section 202 of the LEIC Act.

This section would ensure the Minister gives a copy of an annual report concerning ACLEI's operations to the Inter-Governmental Committee if it mentions the ACIC, and to table any comments it makes, despite the report being prepared after the transition time.

Section 64 – Completion of special reports

This section would provide that, if the NACC Commissioner completes a special report under subitem 42(2) in Schedule 2 to the Consequential and Transitional Act after the transition time, the Minister must cause the special report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister. The section would further provide that section 205 of the LEIC Act applies in relation to the special report as if that Act had not been repealed.

Item 42 in Schedule 2 to the Consequential and Transitional Act allows the NACC Commissioner to prepare a special report in accordance with the LEIC Act, where the Integrity Commissioner had started preparing a special report under section 204 of the LEIC Act but had not completed the report before the transition time. Item 43 in Schedule 2 to the Consequential and Transitional Act requires the Minister to table a special report where the Integrity Commissioner had provided it under section 204 of the LEIC Act before the transition time, but the Minister had not yet tabled it. However, these items do not cover tabling requirements where the Minister receives a special report completed under the LEIC Act after the transition time.

Section 205 of the LEIC Act requires the Minister to give a copy of special reports that relate to the Australian Crime Commission (now the ACIC) to the Inter-Governmental Committee established by section 8 of the ACC Act. If the Inter-Governmental Committee gives the Minister comments in writing in relation to the special report, the Minister is required to cause a copy of those comments to be laid before each House of the Parliament within 15 sitting days. Item 42 in Schedule 2 to the Consequential and Transitional Act also does not cover the Minister's obligation to give copies of these reports to the Inter-Governmental Committee.

This section would ensure the Minister tables and gives copies of reports where appropriate to the Inter-Governmental Committee, where special reports are completed after the transition time.

PART 8 – Matters relating to other agencies

This Part would set out transitional arrangements for matters relating to other agencies. The transitional arrangements specified under this Part do not correspond to any particular Part of Schedule 2 to the Consequential and Transitional Act. This Part would set out transitional arrangements with respect to matters arising under the:

- *Australian Border Force Act 2015*;
- *Australian Crime Commission Act 2002*;
- *Australian Federal Police Act 1979*; and
- *Ombudsman Act 1976*.

Section 65 – Records or disclosure of Immigration and Border Protection information

This section would provide that, after the transition time, an entrusted person (within the meaning of the ABF Act) may make a record of, or disclose, Immigration and Border Protection information for the purposes of the operation of the LEIC Act (and regulations under the LEIC Act).

Section 43 of the ABF Act, as in force immediately before the transition time, allows the Secretary of the relevant Department, the Australian Border Force Commissioner, and Immigration and Border Protection workers to make a record of, or disclose, Immigration and Border Protection information for the purposes of the LEIC Act or the regulations under that Act. This may include, for example, disclosing information related to a corruption issue to the Integrity Commissioner for the purpose of a corruption investigation.

After the transition time, section 43 will allow information to be recorded or disclosed for the purposes of the NACC Act, or regulations under that Act.

This section would ensure that, after the transition time, entrusted persons are able to make a record of, or disclose, protected information for the purposes of the continued operation of the LEIC Act. This would include, for example, disclosing information for the purpose of providing relevant information to support an existing investigation continued under the LEIC Act by the NACC Commissioner in accordance with subitem 2(2) in Schedule 2 to the Consequential and Transitional Act.

Section 66 – Secrecy under the *Australian Crime Commission Act 2002*

This section would provide that, after the transition time, the definition of relevant Act in subsection 51(4) of the ACC Act would include a reference to the LEIC Act and regulations under that Act.

Subsection 51(2) of the ACC Act creates an offence for certain office-holders and staff of the Australian Crime Commission to make a record of, or disclose, information acquired in accordance with the Act, except for purposes in connection with a relevant Act. Section 51, as in force immediately before the transition time, defines ‘relevant Act’ to include the LEIC Act. This provides a defence for a person who makes a record of, or discloses, information for the purposes of the operation of the LEIC Act. This may include, for example, disclosing information related to a corruption issue to the Integrity Commissioner for the purpose of a corruption investigation. After the transition time, subsection 51(2) will allow information to be recorded or disclosed for the purposes of the NACC Act, or regulations under that Act.

Subsection 51(3) of the ACC Act further provides that a person to whom section 51 applies shall not be required to produce documents or disclose information in court that have been acquired in accordance with the performance of duties under the Act, except where certain exceptions apply. Before the transition time, the exceptions include where producing the document or disclosing the information is necessary for the purpose of carrying into effect the provisions of the LEIC Act. After the transition time, the exception will apply to purposes connected with carrying into effect the provisions of the NACC Act.

This section would continue the availability of the defence under section 51 after the transition time, to ensure a person to whom section 51 applies may make a record of, or disclose, protected information for the purposes of the continued operation of the LEIC Act. This would include, for example, disclosing information for the purpose of providing relevant information to support an existing investigation continued under the LEIC Act by the NACC Commissioner in accordance with subitem 2(2) in Schedule 2 to the Consequential and Transitional Act.

This section would further ensure that a person to whom section 51 applies is able to provide evidence in court for the purposes of the LEIC Act. This would include, for example, providing evidence to support proceedings relating to an investigation continued under the LEIC Act by the NACC Commissioner in accordance with subitem 2(2) in Schedule 2 to the Consequential and Transitional Act.

Section 67 – Secrecy under the *Australian Federal Police Act 1979*

This section would provide that, after the transition time, a person to whom section 60A of the AFP Act applies may make a record of any prescribed information, or divulge or communicate any prescribed information to any other person, for the purposes of the continued operation of the LEIC Act (and regulations under the LEIC Act).

Section 60A of the AFP Act creates an offence for certain office-holders and staff of the AFP to make a record of, or divulge or communicate, any prescribed information, unless an exception applies. Subsection 60A(3) defines ‘prescribed information’ to include information obtained by a person to whom section 60A applies in the course of carrying out, performing or exercising any of the person’s duties, functions or powers under the AFP Act or regulations under that Act.

Subsection 60A(2), as in force immediately before the transition time, provides an exception for a person who makes a record of, or divulges or communicates, prescribed information for the purposes of the LEIC Act or regulations under that Act. This may include, for example, disclosing information related to a corruption issue to the Integrity Commissioner for the purpose of a corruption

investigation. After the transition time, subsection 60A(2) will allow information to be recorded or communicated for the purposes of the NACC Act, or regulations under that Act.

This section would continue the availability of the defence under section 60A after the transition time, to ensure a person to whom section 60A applies may make a record of, or divulge or communicate, prescribed information for the purposes of the continued operation of the LEIC Act. This would include, for example, disclosing information for the purpose of providing relevant information to support an existing investigation continued under the LEIC Act by the NACC Commissioner in accordance with subitem 2(2) in Schedule 2 to the Consequential and Transitional Act.

Section 68 – Continuation of investigations of corruption issues under the *Australian Federal Police Act 1979*

This section would provide that if an investigation of a corruption issue under Division 3 of Part V of the AFP Act has been commenced but is not yet completed at the transition time, the investigator may continue to conduct the investigation as if the meanings of ‘corrupt conduct’, ‘corruption issue’ and ‘engages in corrupt conduct’ in the AFP Act as in force immediately before the transition time continued to apply.

Section 4 of the AFP Act, as in force immediately before the transition time, provides that ‘corrupt conduct’, ‘corruption issue’ and ‘engages in corrupt conduct’ has the same meaning as in the LEIC Act. At the transition time, the Consequential and Transitional Act will amend these definitions so that they correspond to the meaning of each term in the NACC Act.

Division 3 of Part V of the AFP Act establishes procedures for dealing with AFP conduct issues that are also corruption issues.

This section would allow investigations that commence prior to the transition time to continue after that time, despite the repeal of the LEIC Act. The AFP would be able to apply consistent definitions for ‘corrupt conduct’, ‘corruption issue’ and ‘engages in corrupt conduct’ for the purposes of the investigation.

Section 69 – Consultation on allocation of investigation of corruption issues under the *Australian Federal Police Act 1979*

This section would provide that where the Commissioner of Police has consulted with the Integrity Commissioner about the allocation of a corruption issue in accordance with subsection 40TO(7) of the AFP Act, but the investigation had not commenced before the transition time, the Commissioner of Police is taken to have consulted with the NACC Commissioner.

Section 40TO of the AFP Act specifies arrangements for the allocation of AFP investigations that relate to the conduct of a person who is a member of the unit constituted under section 40RD to undertake investigations of AFP conduct issues that are corruption issues. The section also applies where the Commissioner of Police is satisfied that it would be inappropriate, for any reason, for the issue to be allocated to a person who is a member of that unit for investigation. Subsection 40TO(7), as in force immediately before the transition time, requires the Commissioner of Police to consult with the Integrity Commissioner about the allocation of a corruption issue. After the transition time, the Commissioner of Police must instead consult with the NACC Commissioner about the allocation of a corruption issue.

The effect of this section is that the obligation under subsection 40TO(7) of the AFP Act to consult with the NACC Commissioner about the allocation of a corruption issue does not arise if consultation with the Integrity Commissioner has been completed before the transition time.

Section 70 – Complaint to Ombudsman in respect of action taken by ACLEI etc.

This section would provide that where a person makes a complaint to the Ombudsman with respect to action taken by ACLEI, the Integrity Commissioner or an Assistant Integrity Commissioner, the Ombudsman may deal with the complaint after the transition time under the Ombudsman Act as if ACLEI, the Integrity Commissioner or an Assistant Integrity Commissioner continued to be a prescribed authority.

In accordance with Part II of the Ombudsman Act, the Ombudsman's functions include investigating complaints in respect of action taken by Departments or prescribed authorities.

This section would ensure that after ACLEI is abolished, the Ombudsman is able to commence or continue an investigation into action taken by ACLEI, the Integrity Commissioner or an Assistant Integrity Commissioner. This would include where the relevant complaint is made either before or after the transition time.

The section would further provide that a reference in the Ombudsman Act to the prescribed authority to which the complaint or investigation relates is taken to include a reference to the NACC Commissioner. This means that the NACC Commissioner will be taken to be the relevant prescribed authority for the purpose of an investigation commenced or continued after the transition time relating to ACLEI, for the purpose of any requirements under Division 1 of Part II of the Ombudsman Act. For example, the requirement to inform prescribed authorities of relevant investigations and the right to appear under section 8 of the Act would will apply to the NACC Commissioner as if the NACC Commissioner is the prescribed authority.

This would also ensure the NACC Commissioner is able to comply with any outstanding reporting requirements under Division 2 of Part II of the Ombudsman Act. For example, the NACC Commissioner would be required to furnish the particulars of any action that the NACC Commissioner proposes to take with respect to the matters and recommendations included in the Ombudsman's report, if requested by the Ombudsman under subsection 15(4). The NACC Commissioner would be able to furnish comments concerning the report in accordance with subsection 15(5). For instance, the NACC Commissioner could furnish comments that it would not be reasonable or appropriate for the NACC to take action in response to recommendations made concerning action taken by ACLEI, where the relevant policies or procedures are not relevant to the NACC's operations.

Section 71 – Disclosure of ACLEI information by Ombudsman

This section would provide that section 35C of the Ombudsman Act, as in force immediately before the transition time, continues to apply in relation to a certificate given to the Ombudsman before the transition time.

Section 35C of the Ombudsman Act, as in force immediately before the transition time, allows the Attorney-General to give the Ombudsman a certificate certifying that the disclosure of ACLEI information (being information that is, or was, in the possession or under the control of the Integrity Commissioner) would be contrary to the public interest. The Ombudsman must not disclose the information by any of the methods specified in the certificate.

After the transition time, section 35C will be amended to instead allow the Attorney-General to issue certificates protecting NACC information from disclosure (being information that is, or was, in the possession or under the control of the NACC Commissioner or the Inspector). This means that after the transition time, ACLEI information that was subject to an Attorney-General's certificate would no longer be protected from disclosure.

This section would ensure ACLEI information continues to be protected after the transition time, where it was subject to an Attorney-General's certificate.

PART 9 – Miscellaneous transitional provisions

This Part would set out miscellaneous transitional arrangements. The transitional arrangements specified under this Part would complement those provided for in Part 10 in Schedule 2 to the Consequential and Transitional Act.

Section 72 – Classes of decisions that are not decisions to which section 13 of the *Administrative Decisions (Judicial Review) Act 1977* applies

This section would provide that after the transition time, paragraph (eaa) in Schedule 2 to the ADJR Act applies in relation to decisions under the LEIC Act in connection with a corruption investigation or public inquiry (within the meaning of that Act) as continued under Schedule 2 to the Consequential and Transitional Act.

Section 13 of the ADJR Act allows a person to request a statement in writing setting out the evidence relied on and reasons for a decision, where the person is entitled to make an application for review of that decision under section 5 and the class of decision is not excluded by Schedule 2 to that Act.

Schedule 2 to the ADJR Act sets out classes of decisions that are not decisions to which section 13 of the ADJR Act applies. Paragraph (eaa) in Schedule 2, as in force immediately before the transition time, excludes decisions under the LEIC Act in connection with a corruption investigation or public inquiry from the operation of section 13. At the transition time, paragraph (eaa) in Schedule 2 to the ADJR Act will be repealed.

This section would continue to exclude from the operation of section 13 of the ADJR Act decisions made under the LEIC Act in connection with a corruption investigation or public inquiry that are continued under Schedule 2 to the Consequential and Transitional Act after the transition time. This reflects the intention that a person's entitlement to seek reasons for a decision made under the LEIC Act should not be expanded after the transition time.

Section 73 – Financial assistance in relation to applications for judicial review

This section would provide that, after the transition time, a person may apply for financial assistance in accordance with the regulations made for the purposes of section 280 of the NACC Act for an application to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) under the ADJR Act in respect of a matter arising under the LEIC Act.

Item 50 in Schedule 2 to the C&T Act continues a person's right to seek judicial review in respect of a matter arising under the LEIC Act where a person was entitled to make an application immediately before the transition time. A person would also be able to seek judicial review in respect of a matter relating to an existing investigation continued under the LEIC Act after the transition time.

This section would ensure a person can access financial assistance for the purpose of seeking judicial review, regardless of whether the application arises in relation to a matter under the LEIC Act or the NACC Act.

Section 74 – Acts and practices for the purposes of the Privacy Act 1988

This section would provide that, after the transition time, a reference in the Privacy Act to an act or to a practice would not include a reference to an act done, or a practice engaged in, in relation to a record that originated with, or was received from, the Integrity Commissioner or a staff member of ACLEI (within the meaning of the LEIC Act).

Section 7 of the Privacy Act, as in force immediately before the transition time, exempts acts done and practices engaged in in relation to records originating or received from the Integrity Commissioner or ACLEI from its operation. This means records originating with or received from the Integrity Commissioner or ACLEI are exempt from the operation of the Privacy Act. At the transition time, section 7 of the Privacy Act will be amended to replace references to the Integrity Commissioner and ACLEI with the NACC Commissioner and the NACC. This means that after the transition time, records originating with or received from ACLEI would not be exempt from the operation of the Privacy Act.

Accordingly, this section would ensure that future actions in relation to records originating with or received from the Integrity Commissioner or ACLEI would continue to be exempt from the operation of the Privacy Act under section 7.

Section 75 – References to the Integrity Commissioner etc. in instruments

This section would provide that subitem 53(2) in Schedule 2 to the Consequential and Transitional Act does not apply to the *Australian Commission for Law Enforcement Integrity Enterprise Agreement 2017-2020* or the *Australian Commission for Law Enforcement Integrity Enterprise Agreement Determination 2020/1*.

The *Australian Commission for Law Enforcement Integrity Enterprise Agreement 2017-2020* has effect after the transition time as if a reference to the Integrity Commissioner were a reference to the Chief Executive Officer of the NACC, and a reference to ACLEI were a reference to the NACC, except to the extent that those references relate to the making or signing of the instrument.

The *Australian Commission for Law Enforcement Integrity Enterprise Agreement Determination 2020/1* has effect after the transition time as if a reference to ACLEI were a reference to the NACC.

Item 53 in Schedule 2 to the Consequential and Transitional Act provides that where an instrument in force immediately before the transition time refers to ACLEI or the Integrity Commissioner, the instrument will continue to have effect after the transition time as if it referred to the NACC and the NACC Commissioner respectively.

The effect of this section is to ensure the two instruments do not transition under item 53 with incorrect references to the NACC Commissioner, where the relevant functions are instead to be conferred on the Chief Executive Officer of the NACC. This is because the Chief Executive Officer (and not the NACC Commissioner) will be the Agency Head of the NACC for the purpose of the *Public Service Act 1999* (see paragraph 262(2)(b) of the NACC Act).