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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

LAW ENFORCEMENT INTEGRITY COMMISSIONER BILL 2006

EXPLANATORY MEMORANDUM

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

OUTLINE

The Law Enforcement Integrity Commissioner Bill 2006 (the Bill) establishes the an Integrity Commissioner who will head up the Australian Commission for Law Enforcement Integrity (ACLEI), an independent body with powers to prevent, detect and investigate corruption within Australian Government law enforcement agencies, including the Australian Federal Police (AFP), the Australian Crime Commission (ACC) and any other Commonwealth agency that has a law enforcement function and is prescribed by the Regulations.

The main purpose of the Bill is to enhance the integrity of Commonwealth law enforcement agencies. The Bill will provide a framework for investigating and dealing with allegations of corruption within Commonwealth law enforcement agencies. The Integrity Commissioner may refer or recommend that criminal, civil and/or confiscation proceedings be brought for contraventions of Commonwealth laws by members and staff members of law enforcement agencies.

The Integrity Commissioner will investigate corruption issues using a combination of inquiry and investigative powers, assembling evidence to support prosecutions. The Integrity Commissioner will also have powers to make recommendations for disciplinary and/or employment action.

The Bill provides a means for detecting and investigating corruption in the Commonwealth law enforcement agencies, solely because of the role these agencies have in law enforcement, not in any way because of a view that these agencies are of any greater risk of corrupt behaviour.

The Bill provides for the appointment of an Integrity Commissioner and prescribes his or her functions and powers in investigating corrupt conduct and corruption issues within the Australian Government law enforcement agencies. The Integrity Commissioner may initiate his or her own investigations, or the Minister, the head of an agency or any person may refer any information about a corruption issue directly to the Integrity Commissioner.

The Integrity Commissioner will have jurisdiction to investigate allegations of corruption made against, or relating to, State and Territory law enforcement officers who are seconded to a Commonwealth Government agency. The ACLEI and the States will share the oversight of State and Territory officers. The Bill will not impact on the role of the State and Territory integrity agencies but will preserve their existing powers and functions. The Bill also creates a Parliamentary Joint Committee to oversee the operation of the ACLEI, to ensure that the Integrity Commissioner is accountable to Parliament.

The Integrity Commissioner will be a statutory office holder appointed by the Governor-General. He or she will be responsible for the investigation and reporting of corruption matters or alternatively, referring certain matters to another agency for investigation. The Integrity Commissioner will then manage, oversee or review the investigation where appropriate. Further, the Bill will provide for information sharing between agencies to ensure effective and efficient investigations.

The Attorney-General is authorised under the Bill to prevent the disclosure of information which would be contrary to public or national interest. The Attorney-General may issue a certificate prohibiting the disclosure of specific information by specific methods. A certificate may also impact on information sharing between agencies, and the mandatory reporting provisions.

The Integrity Commissioner is given discretion to choose a particular method of dealing with each corruption issue based on the most suitable approach to each individual matter, subject to the Minister's power to order a public inquiry. The Bill provides the Integrity Commissioner with powers to conduct a Royal Commission style investigation. Many provisions of the Bill mirror the provisions contained in the *Royal Commissions Act 1902* and the *Australian Crime Commission Act 2002*. The Integrity Commissioner may conduct public or private hearings to determine the nature and extent of a corruption issue.

The Bill requires the Integrity Commissioner to inform the Minister, the head of the agency concerned, the complainant and, where appropriate, the subject of the investigation of the initiation, progress and outcomes of the investigation. The Integrity Commissioner is required to report all findings at the conclusion of an investigation, subject to provisions contained in the Bill ensuring the confidentiality of protected information. The Integrity Commissioner may also report to the Prime Minister and Parliament if he or she believes that there is a failure by the head of an agency to take adequate remedial action.

The Integrity Commissioner will manage ACLEI, which will have the function of assisting the Integrity Commissioner in performing his or her functions. ACLEI staff will provide investigative, intelligence and administrative support to the Integrity Commissioner. For the purpose of corruption investigations ACLEI Authorised Officers will have the same powers of arrest as a constable of police and will be able to apply for and execute search warrants. The ACLEI will also draw on staff and technical resources of existing law enforcement agencies for assistance where necessary.

The Bill provides the Integrity Commissioner with the power to compel the giving of sworn testimony, overriding the privilege against self-incrimination. These are supported by criminal offences for conduct in the nature of contempt. Further, the Integrity Commissioner has the power to compel the production of documents and things. In addition, if the Integrity Commissioner holds private hearings, there are penalties for disclosure of information relating to an investigation by persons summonsed to provide evidence to the Integrity Commissioner and others legitimately consulted by such witnesses.

Finally, the Bill includes a procedure for investigating complaints of corruption issues within ACLEI (including the Integrity Commissioner). The Bill provides that the Minister may authorise a special external investigation into an ACLEI corruption issue.

FINANCIAL IMPACT STATEMENT

\$9.5m was allocated in the 2005-06 Budget. Of this, \$0.6m was allocated to the Attorney-General's Department to fund the establishment of ACLEI and \$8.9m was allocated to ACLEI. Funding for ACLEI is currently being held by the Attorney-General's Department, pending establishment of ACLEI.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1: Short Title

Clause 1 provides that the Act may be cited as the *Law Enforcement Integrity Commissioner Act 2006*.

Clause 2: Commencement

Item 1: Clause 1, clause 2 and any other provision of the Bill that is not specifically mentioned in this provision, will commence on the day on which the Bill receives Royal Assent.

Item 2: Clauses 3 to 224 are to commence on a single day to be fixed by Proclamation. However, if any of these provisions do not commence within the period of 6 months beginning on the day on which this Act receives Royal Assent, they commence on the first day after the end of that period.

Clause 3: Objects of this Act

The overall aim of the Bill is to continuously improve the integrity of the Commonwealth law enforcement agencies by establishing an independent body responsible for detecting and investigating corrupt behaviour within these agencies. The Bill aims to deter corruption by increasing the risk of detection. The Bill enables criminal offences to be prosecuted and civil penalty proceedings to be brought, where necessary following an investigation.

Clause 4: Application of Act

The Integrity Commissioner will have jurisdiction within and outside Australia and every external Territory, to enable the Integrity Commissioner to conduct hearings or investigations into officers working overseas.

The Bill contains mechanisms to enhance cooperation between ACLEI and similar organisations from State and Territory jurisdictions. For example, clause 26 allows the Integrity Commissioner to investigate a corruption issue jointly with a government agency or integrity agency of a State or Territory. Clause 195 also allows members of State or Territory police services or State or Territory integrity commissions to assist with investigations.

PART 2- INTERPRETATION

Clause 5: Definitions

This Clause defines terms and expressions used frequently throughout the Bill in order to avoid doubt and clarify the intended meaning of each word for the specific purposes of the Bill.

“ACC” means the Australian Crime Commission as established by the *Australian Crime Commission Act 2002*.

“ACLEI” means the Australian Commission for Law Enforcement Integrity which is established by clause 195 of the Bill.

“AFP” means the Australian Federal Police. Given the role the AFP has in Commonwealth law enforcement, it is appropriate to have an independent body to regulate professional standards of AFP members. The Integrity Commissioner may make arrangements for members or staff of the AFP to be seconded to ACLEI to assist the Integrity Commissioner in the performance of his or her functions (see clause 199).

“Assistant Integrity Commissioner” is the title given to an officer appointed under clause 185 of the Bill to assist the Integrity Commissioner in the performance of his or her functions under the Bill.

“Assisting officer” is a person who assists in the execution of a warrant for a person’s arrest or a search warrant. This term is used in clause 117 of the Bill. An assisting officer may be an authorised officer (see clause 149), a member or special member of the Australian Federal Police, or a person appointed by an authorised officer who is executing a warrant. This last category could, for example, include specialists such as locksmiths or IT experts.

“Australian Commission for Law Enforcement Integrity” (ACLEI) as established under clause 195. ACLEI is an independent body established to assist the Integrity Commissioner and/or any Assistant Integrity Commissioner in performing their functions.

“Authorised officer” is either the Integrity Commissioner or a person authorised under clause 140. The powers and duties of authorised officers are set out in Divisions 3 to 6 of Part 9 of the Bill.

“Civil penalty proceeding” is a proceeding commenced in respect of a contravention of a civil penalty provision. The definition covers proceedings for any civil penalty provision in Commonwealth, State or Territory law. The phrase is used in clauses 142 and 148, which deal with the types of evidence and information the Integrity Commissioner is permitted to use and/or communicate. The phrase is also used in clause 211, which deals with an exception to the general rule that ACLEI staff members are not compellable in court proceedings.

“Commonwealth Government agency” means either a Department of the Commonwealth, or a body (whether incorporated or not) established for a public purpose under a law of the Commonwealth. This definition is relevant to the definition of the term “law enforcement agency” in the Bill. One of its key usages is in clause 10, which sets out the classes of people over whom ACLEI may have jurisdiction. Subclause 10(4) includes staff members of prescribed Commonwealth government agencies.

“Confiscation proceeding” means a proceeding, other than a criminal prosecution, brought under either the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*, or any other corresponding law within the meaning of either of those Acts. For example, the clause is used in clauses 96, 142 and 211.

“Corruption investigation” is defined to mean an investigation of a corruption issue, or an investigation of an ACLEI corruption issue. “ACLEI corruption issue” is defined in clause 8.

“Criminal proceeding” is either a prosecution for an offence under a Commonwealth, State or Territory law, or a confiscation proceeding. For example, the term is used in clauses 80 and 96.

“Data” is defined by reference to section 3C of Part 1AA of the *Crimes Act 1914*, which defines the term to include:

- (a) information in any form; or
- (b) any program (or part of a program).

“Data held in a computer” is defined by reference to section 3C of Part 1AA of the *Crimes Act 1914*, which defines the term to include:

- (a) data held in any removable data storage device for the time being held in a computer; or
- (b) data held in a data storage device on a computer network of which the computer forms a part.

“Data storage device” is defined by reference to section 3C of Part 1AA of the *Crimes Act 1914* to mean a thing containing, or designed to contain, data for use by a computer.

“Disciplinary proceedings” is defined to include actions taken under Subdivision D of Division 5 of Part V of the *Australian Federal Police Act 1979* (AFP Act). This subdivision would be inserted into the AFP Act by the Law Enforcement (AFP Professional Standards and Related Measures) Bill 2006 to deal with actions relevant to performance management in the AFP, and the assessment of employment suitability in cases where there is an issue about an AFP appointee’s conduct.

“Eligible seizable item” means a dangerous item or an item that could be used to escape. The term is used in clauses 110, 112, and 113 which deal with the procedures for obtaining a search warrant.

“Engage in conduct” includes an act or an omission. Among other things, this definition gives the Integrity Commissioner power to deal with corruption that results in failure to exercise law enforcement powers as well as corruption that leads to active misconduct.

“Evidential material” includes material that is relevant to an investigation or inquiry. The term is used in Division 4 of Part 9 of the Bill, which deals with search warrants. The term is defined differently depending on whether the warrant being executed is an investigation warrant or an offence warrant.

“Frisk search” has the same meaning as is given to the term in Part 1AA of the *Crimes Act 1914*, which is:

- (a) a search of a person conducted by quickly running the hands over the person’s outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

A frisk search of a person can be authorised by either an offence warrant or an investigation warrant (see clauses 108 and 109)

“Government agency” means either, a Department of the Commonwealth or of a State or Territory, or a body established for a public purpose under law. The term is used throughout the Bill.

“Head” of government agency is either the Commissioner of the AFP, the CEO of the ACC or, in the case of a prescribed Commonwealth government agency, the person holding the office that is prescribed by the Regulations. Where the Commonwealth government agency is not a prescribed Commonwealth government agency, the head will either be the Secretary or the person holding or performing the duties of the principal officer for that body.

“Integrity agency” means an agency that is established under law for the purpose of investigating corruption in the police force of a State or Territory. This would include, but is not limited to, the Police Integrity Commission of New South Wales, the Crime and Misconduct Commission (Qld) and the Corruption and Crime Commission (WA)

“Integrity Commissioner” means the Integrity Commissioner as appointed under Clause 171 of this Bill. The Integrity Commissioner is responsible for addressing complaints of corruption, implementing investigations into corruption issues, reporting on corruption issues and providing recommendations and advice to the Minister and agencies. The Integrity Commissioner is to manage the ACLEI and, as the head of the body, he or she will report to the Minister.

“Inter-Governmental Committee” is defined by reference to the definition of that term in section 8 of the *Australian Crime Commission Act 2002* which establishes a committee consisting of:

- (a) a member to represent the Commonwealth, being the Commonwealth Minister; and
- (b) in the case of each participating State—a member to represent that State, being a Minister of the Crown of that

State nominated by the Premier of that State.

“Investigation warrant” is to be distinguished from an offence warrant. An investigation warrant is broader and may be sought, pursuant to clause 108, where there is suspicion of evidential material relevant to an investigation of a corruption issue or public inquiry.

“Issuing officer” for an investigation warrant is a Judge of the Federal Court of Australia, a Federal Magistrate or a Judge of a State or Territory. An issuing officer for an offence warrant will be a magistrate.

“Law enforcement agency” includes the AFP, the ACC, the former National Crime Authority (as principal predecessor of the ACC) and may be extended by the Regulations to include another Commonwealth government agency that has a law enforcement function. Law enforcement agencies, as defined here, are the bodies over which the Integrity Commissioner has jurisdiction.

“Law enforcement function” includes the investigation, preparation for prosecution, as well as dealing with information for the purposes of assisting the enforcement of Commonwealth laws. The term also includes activities which assist in these functions.

“Law enforcement secrecy provision” includes those provisions of the *Financial Transaction Reports Act 1988*, the *Surveillance Devices Act 2004*, and the *Telecommunications (Interception) Act 1979* that deal with secrecy obligations of, and provisions regarding access to, information gathered under each Act. The distinguishing feature of these provisions is that they provide a complete regime for the use and protection of information obtained by particular means. Law enforcement secrecy provisions have a similar status to taxation secrecy provisions. The Bill preserves the effect of these specific kinds of secrecy provisions (as opposed to general “secrecy provisions”) by providing exceptions to general rules of compellability in relation to information obtained pursuant to these provisions.

“Legal aid officer” is defined to include those working in State or Territory based organisations which provide legal aid as well as persons who might need to consider otherwise confidential information in the course of determining applications under clause 103 to the Attorney-General for legal assistance.

“Manage an investigation of a corruption issue” is defined as the Integrity Commissioner providing detailed guidance on the planning and carrying out of an investigation. This is the more stringent form of supervision the Integrity Commissioner may exercise over the investigation of a corruption issue by a law enforcement agency. The head of the agency involved must ensure that staff members co-operate with the Integrity Commissioner and adhere to any instructions provided.

“Nominated contact of a law enforcement agency” means either the head of an agency, or a nominated staff member, with whom the Integrity Commissioner will have direct contact, to whom the Integrity Commissioner will provide

information, and from whom the Integrity Commissioner will receive information, for the purpose of managing or overseeing the investigation of a corruption issue by a law enforcement agency.

“Offence warrant” is to be distinguished from investigation warrant. An offence warrant will be sought (pursuant to clause 108) where there is suspicion of evidential material relevant to a particular offence against the law of a Commonwealth.

“Official matter” means a corruption investigation, a hearing or a court proceeding. An official matter connected with a summons may be protected by a non-disclosure notation (see clauses 91 and 92).

“Ordinary search” of a person does not include a frisk search or a strip search and extends only to the removal and examination of outer garments such as coats and shoes. An ordinary search can be authorised by either an offence warrant or an investigation warrant (see clauses 108 and 109).

“Oversee” means the Integrity Commissioner provides general guidance on the planning and carrying out of an investigation. This is the less stringent form of supervision the Integrity Commissioner may exercise over the investigation of a corruption matter by a law enforcement agency. The head of the agency involved must ensure that staff members co-operate with the Integrity Commissioner and adhere to any instructions provided.

“Public inquiry” means a public inquiry into a corruption issue by the Integrity Commissioner. Part 8 of the Bill provides for the Minister to initiate public inquiries.

“Responsible Minister for a Commonwealth government agency” established by an Act will be the Minister administering for that Act and in any other case the Minister who has general responsibilities of the agency. The term is used in clauses 57 and 67 which deal with follow up and final reports on investigations.

“Seconded” means a staff member of the AFP, the ACC, the former NCA or a prescribed law enforcement agency who is identified as a seconded in subclause 10(5) or 11(2) of the Bill. Seconded are officers of other agencies (whether or not that agency is a law enforcement agency) whose services are made available to a law enforcement agency. Seconded will usually be members of State or Territory police forces or employees of government agencies. A seconded to ACLEI is a person whose services are made available to the Integrity Commissioner.

“Secrecy provision” means a provision of Commonwealth law that prohibits or purports to prohibit disclosure of the contents of a document or the production of a thing. The term is to be distinguished from the term “law enforcement secrecy provision” and a “taxation secrecy provision”. A person will not generally be able to rely on a secrecy provision in resisting disclosure or production of a document or thing however a person will be able to rely on a “law enforcement secrecy

provision” and a “taxation secrecy provision” in these circumstances (for example, see clauses 21 and 22).

“Section 149 certified information” is information that the Attorney-General has certified cannot be disclosed to, by or at the direction of the Integrity Commissioner for the reason that such disclosure would be contrary to the public interest for one or more of the reasons set out in subclause 149(2). These reasons include where disclosure would prejudice the conduct of investigations, the fair trial of a person, or the effectiveness of operational methods.

“Sensitive information” is information the disclosure of which might have a prejudicial effect on specified public and private interests. While the Integrity Commissioner is required to comply with a certificate issued by the Attorney-General under clause 149, he or she must make an independent judgment as to whether sensitive information should be disclosed in any particular case. For example, in providing copies of referred material to the Senate and House of Representatives under subclause 57(4), the Integrity Commissioner *may* exclude sensitive information from the copied material but *must* exclude clause 149 certified information. The definition of “sensitive information” is similar to, but broader than, the class of information that may be certified under clause 149 of the Bill. For example, sensitive information includes information that could prejudice the protection of public safety or would involve unreasonably disclosing a person’s personal affairs or confidential commercial information. The criteria for non-disclosure also differ between sensitive information and clause 149 certified information. In the case of clause 149 certified information, the Attorney-General needs to be satisfied that disclosure of the information *would* cause the prejudice in the listed circumstances. For sensitive information, there is always a double test, namely whether the disclosure *could* cause the prejudice, and the need to consider the balance between that possibility of prejudice and the interest served by its disclosure.

“Serious corruption” is one of two defined gradations of corrupt conduct the other being “systemic corruption”. These categories are defined to assist in administrative decisions including priorities and which entity should deal with which complaints. Clause 16 provides that the Integrity Commissioner is to give priority to complaints of serious corruption and systemic corruption. A corruption issue that relates to corrupt conduct constituting serious corruption or systemic corruption must be referred to the Integrity Commissioner for investigation (clause 20).

“Significant corruption issue” is either an issue relating to conduct that constitutes serious corruption or systemic corruption, an issue which is so prescribed by regulations or an issue that the Integrity Commissioner and a head of a law enforcement agency agrees is so under clause 17. A significant corruption issue identified by the head of a law enforcement agency must be referred to the Integrity Commissioner. The Integrity Commissioner is entitled to investigate any corruption issues but the identification of significant corruption issues is a mechanism intended to assist the Integrity Commissioner to focus on the most important cases

“Special investigation” means an external investigation authorised by the Minister under Division 4 of Part 12 of the Bill. Special investigations are only authorised if an ACLEI corruption issue arises. This is an issue concerning possible corrupt conduct within ACLEI (see clause 8).

“Special investigator” means the person authorised by the Minister to conduct a special investigation into an ACLEI corruption issue.

“State or Territory government agency” means a Department of State or Territory, or a body (whether incorporated or not) established for a public purpose under a law of a State or Territory.

“Strip search” is defined by reference to the definition given to that term in Part 1AA of the *Crimes Act 1914*, which is, a search of a person or of articles in the possession of a person that may include:

- (a) requiring the person to remove all of his or her garments; and
- (b) an examination of the person’s body (but not of the person’s body cavities) and of those garments.

The term is used in clause 114, which provides that search warrants may not authorise a strip search.

“Systematic corruption” is one of two defined gradations of corrupt conduct the other being “serious corruption”. These categories are defined to assist in administrative decisions including priorities and which entity should deal with which complaints. Clause 16 provides that the Integrity Commissioner must give priority to complaints of serious corruption and systemic corruption. A corruption issue that relates to corrupt conduct constituting serious corruption or systemic corruption must be referred to the Integrity Commissioner for investigation (clause 20)

“Taxation secrecy provision” is a secrecy provision in a “taxation law”, which is defined in section 2 of the *Taxation Administration Act 1953* to include that Act as well as any other Act generally administered by the Australian Tax Commissioner, the *A New Tax System (Australian Business Number) Act* and any regulations to these Acts. Taxation secrecy provisions have a similar status to law enforcement secrecy provisions. The Bill preserves the effect of these specific kinds of secrecy provisions (as opposed to “general” secrecy provisions) by providing exceptions to general rules of compellability in relation to information obtained pursuant to these provisions (for example, see clauses 20, 21 and 80 of the Bill)

“Thing relevant to an indictable offence” is defined by reference to the definition given to that term in Part 1AA of the *Crimes Act 1914*. Section 3C of the *Crimes Act* defines the term to mean:

- (a) anything with respect to which an indictable offence against any law of the Commonwealth or Territory has been committed or is suspected, on reasonable grounds, to have been committed or anything with respect to which a State offence that has a federal aspect, and that is an indictable offence against the law of that State, has been committed or is suspected, on reasonable grounds, to have been committed; or

- (b) anything as to which there are reasonable grounds for suspecting that it will afford evidence as to the commission of any such offence; or
- (c) anything as to which there are reasonable grounds for suspecting that it is intended to be used for the purpose of committing any such offence.

Clause 6: Meaning of engages in corrupt conduct

This Clause provides that any act or omission which involves the abuse of office as a staff member of a law enforcement agency, or conduct which perverts, or is for the purpose of perverting the course of justice, or, having regard to the staff member's duties and powers, conduct engaged in for the purpose of corruption of any other kind, will be deemed to be engaging in corrupt conduct for the purposes of the Bill.

In circumstances where a law enforcement agency is prescribed by the Regulations, a staff member will only be engaging in corrupt conduct for the purposes of the Bill if the conduct relates to the performance of a law enforcement function of the agency.

The definition covers the main elements of significance in corruption issues and is consistent with the definitions of corruption used as a basis for forfeiture of superannuation entitlements in the *Crimes (Superannuation) Act* and Part VA of the *Australian Federal Police Act 1979*. The term "engage in conduct" is defined in clause 5 of the Bill as meaning doing an act and omitting to do an act. By including omitted acts, the Bill provides that a failure to report corrupt conduct or similar, will also be regarded as engaging in corrupt conduct. The subject conduct may also be conduct that was engaged in prior to the commencement of the Bill.

The term "staff member" is defined in clause 5 of the Bill by reference to clause 10.

The term "law enforcement agency" is defined in clause 5 of the Bill.

Clause 7: Meaning of corruption issue

The Clause provides that a corruption issue exists where a staff member of a law enforcement agency has engaged, is engaging, or may at any time in the future, engage in corrupt conduct.

The capacity to investigate cases where corrupt conduct is foreseeable in the future makes the Integrity Commissioner's role proactive in addressing corruption.

The Clause also provides for investigations to be commenced in circumstances where the identity of the staff member of the agency alleged to be engaging in corrupt conduct is unknown. This provision is to ensure that corruption issues cannot be ignored because the person concerned has not been identified at the outset.

Clause 8: Meaning of ACLEI corruption issue

An ACLEI corruption issue exists where a person who is, or has been a staff member of ACLEI has engaged, or is engaging, in corrupt conduct, or may do so in the future. Part 12 of the Bill prescribes the practices and procedures required for investigating ACLEI corruption issues.

The Clause also provides for investigations to be commenced in circumstances where the identity of the staff member alleged to be engaging in corrupt conduct is unknown. This provision is to ensure that corruption issues within ACLEI cannot be ignored because the person concerned has not been identified at the outset.

The term “staff member” of ACLEI is defined in clause 5 of the Bill by reference to clause 11 and includes secondees.

Clause 9: Corruption issue that relates to law enforcement agency

This Clause provides that a corruption issue relates to a law enforcement agency where the issue arises due to the corrupt conduct of a person in their capacity as a staff member of that agency.

The terms “staff member” is defined in clause 5 of the Bill by reference to clauses 10 and 11. The clause intends to avoid doubt in circumstances where a corruption issue relates to a secondee or contractor.

The term “law enforcement agency” is defined in clause 5 of the Bill.

Clause 10: Staff members of law enforcement agencies

The Clause identifies persons who are considered to be staff members of law enforcement agencies for the purposes of the Bill and includes staff members of the AFP, ACC, the former NCA, prescribed law enforcement agencies and any secondees to these law enforcement agencies.

The purpose of the Clause is to avoid doubt and identify the persons who are subject to the jurisdiction of the Integrity Commissioner.

Clause 11: Staff members of ACLEI

This Clause identifies persons who are considered to be staff members of ACLEI for the purposes of the Bill and includes the Integrity Commissioner, any Assistant Integrity Commissioners, Public Service Act staff, secondees, consultants, contractors and any legal practitioners appointed to assist the Integrity Commissioner.

The purpose of the Clause is to avoid doubt and identify the persons who are subject to particular provisions of the Bill, such as under Part 12 regarding the investigation of an ACLEI corruption issue.

Clause 12: Applying Act to staff member of former NCA

For the purposes of the Bill, a staff member of the former NCA will be treated as if he or she were a staff member of the ACC. The ACC was established in 2002 and effectively combined the NCA with two non-investigative entities, the Australian Bureau of Criminal intelligence and the Office of Strategic Crime Assessments. As the Bill operates retrospectively, this Clause intends to allow the previous conduct of

NCA staff members to be subjected to an investigation by the ACLEI where necessary, despite the fact that the body is no longer in existence.

Clause 13: State offences that have a federal aspect

This Clause identifies the circumstances in which a State offence will have a Federal aspect as being where an offence may fall within Commonwealth legislative power because of its elements, the circumstances in which the offence was committed, or because the Integrity Commissioner's investigation of the offence is incidental to the investigation of a corruption issue.

The Clause is based on a similar provision (section 4A) in the *Australian Crime Commission Act 2002*. The clause is necessary to give the Integrity Commissioner and ACLEI investigators the widest constitutionally permissible power to deal with corrupt activity by persons subject to the Integrity Commissioner's jurisdiction. An example of the role of this definition can be found in the definition of "things relevant to an indictable offence", which is relevant to applications for search warrants under clauses 110, 112 and 113. In applying for authority to seize things in relation to persons or premises an authorised person is required to state that he or she believes on reasonable grounds that the thing to be seized is relevant to an indictable offence. This term is defined in Clause 5 to include "anything with respect to which a *State offence that has a federal aspect*, and that is an indictable offence against the law of that State, has been committed or is suspected, on reasonable grounds, to have been committed"

PART 3 – THE INTEGRITY COMMISSIONER

Clause 14: Integrity Commissioner

The clause creates the office of the Integrity Commissioner. Provisions relating to the appointment of the Integrity Commissioner are contained in Part 13 of the Bill.

Clause 15: Functions of the Integrity Commissioner

This clause outlines the functions of the Integrity Commissioner, which include investigating and reporting on corruption issues, managing or overseeing the investigation of corruption issues by law enforcement agencies, conducting public inquiries at the request of the Minister and collecting and analysing information on corruption issues to make recommendations to the Minister.

This clause also provides for the Integrity Commissioner, on his or her own initiative or on request by the Minister, to report to the Minister on necessary or desirable, legislative or administrative, action in relation to corruption in law enforcement agencies or the integrity of staff members of law enforcement agencies. Other functions may be conferred on the Integrity Commissioner by other provisions of the Bill or by another Act.

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

In carrying out his or her functions, the Integrity Commissioner must give priority to matters involving serious or systemic corruption.

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

This clause provides for the Integrity Commissioner to enter into an agreement with the head of a law enforcement agency regarding issues such as what will constitute a significant corruption issue in relation to staff members of the particular agency, what will constitute satisfactory notification to the Integrity Commissioner of a corruption issue, the procedure for information and documents to be provided to the Integrity Commissioner and the level of detail required in the final reports at the conclusion of an investigation. Any variation or revocation of such agreements must be in writing.

PART 4 – DEALING WITH CORRUPTION ISSUES

Division 1–Referring Corruption Issues to Integrity Commissioner

This Division deals with the ways in which a corruption issue may be brought to the attention of the Integrity Commissioner by another agency or person. It creates particular obligations for heads of law enforcement agencies in relation to corruption issues that relate their agency and for custodians of prisoners who may wish to raise a corruption issue.

Clause 18: Referral of corruption issues by Minister

The Minister may refer any allegation or information raising a corruption issue to the Integrity Commissioner.

Clause 19: Notification of corruption issues by law enforcement agency heads

The head of a law enforcement agency must notify the Integrity Commissioner in writing of any allegation or information raising a corruption issue. The notification must include a description of the corruption issue and the allegation or information and must indicate whether the issue is a significant corruption issue for that agency. The notification must be in accordance with any agreement entered into under clause 17.

A database may be created, and where the Integrity Commissioner agrees, the head of a law enforcement agency can notify the Integrity Commissioner of a corruption issue as required under this Clause by entering the necessary information into the database.

Clause 20: Notification of corruption issue identified as significant corruption issue

The head of a law enforcement agency must immediately cease investigation of a significant corruption issue upon notification of the issue to the Integrity Commissioner. The Integrity Commissioner must be provided with all relevant information and documents within the agency's possession and control and the head of agency must take all reasonable steps to prevent the loss, destruction or fabrication of evidence in relation to the corruption issue. These steps reflect the presumption that the Integrity Commissioner will investigate significant corruption issues.

The head of the agency may only resume an investigation where the Integrity Commissioner refers the matter to the head of the agency, decides to investigate the corruption issue jointly with the agency or decides to take no further action pursuant to clause 31.

Clause 21: Head of law enforcement agency to pass on new information in relation to corruption issue already referred

If the head of a law enforcement agency notifies the Integrity Commissioner of a significant corruption issue, the head of the agency must give the Integrity Commissioner any relevant information or details of any relevant allegation that the agency head subsequently becomes aware of. The head of the agency is exempted from this requirement in cases where it is reasonable to assume that the Integrity

Commissioner is aware of the additional information. The requirement is subject to clause 150 in relation to clause 149 certified information, but operates despite any secrecy provisions.

Clause 22: Notification of non-significant corruption issue

If the head of a law enforcement agency notifies the Integrity Commissioner of a corruption issue but does not indicate that it is a significant corruption issue, he or she must ensure that the agency investigates the issue to completion. This requirement is subject to any action taken by the Integrity Commissioner to deal with the corruption issue. The agency head does not need to investigate the corruption issue where the matter involves a secondee who is already being investigated by his or her home agency or by a State or Territory integrity agency. Other circumstances where the agency head does not need to investigate are where the allegation or information which raises the corruption issue is frivolous, vexatious or not made in good faith or where the corrupt conduct has been, is or will be the subject of proceedings before a court. In any of these circumstances, the head of the agency must advise the Integrity Commissioner that the agency will not be investigating the corruption issue.

Clause 23: Referral of corruption issues by other people

Any person (other than the Minister) may refer an allegation or information that raises a corruption issue to the Integrity Commissioner under this clause. A person may refer allegations or information on behalf of another person, a government agency or an association.

A person can opt to refer allegations or information anonymously. This is an important feature of the Clause, because it is anticipated that people who raise corruption issues with the Integrity Commissioner may work with, or be acquainted with the persons about whom the information or allegation relates.

Clause 24: Referral under section 23 by person in custody

A person detained in custody may refer an allegation or information that raises a corruption issue to the Integrity Commissioner under Clause 23. The person must be provided with facilities to prepare a written report of the allegation or information and enclose the report in a sealed envelope. The envelope must be sent to the Integrity Commissioner without undue delay. Custodians are prohibited from opening or inspecting any documents sent between the Integrity Commissioner and the person in custody. Persons detained in custody have a similar right to make complaints or raise issues under section 7 of the *Ombudsman Act 1976* (Cth) and section 13 of the *Inspector-General of Intelligence and Security Act 1986* (Cth).

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

The Integrity Commissioner must ask a person who refers an allegation or information that raises a corruption issue to elect whether he or she wishes to be kept informed of the action taken in relation to the matter.

The function of the Integrity Commissioner is not primarily to vindicate the rights of private complainants but to pursue indications of corruption, however they arise. It is likely that many referrals of allegations or information will be in the nature of tip-offs or reports of criminal conduct. Nonetheless, this clause provides a mechanism for identifying those who may have a personal interest in a matter and wish to be treated as complainants.

Division 2–How Integrity Commissioner Deals With Corruption Issues

This Division deals the initial decision by the Integrity Commissioner as to whether he or she should directly investigate a corruption issue or the issue should be investigated by a law enforcement agency, or whether it need not be investigated at all. The Division covers both issues raised under Division 1 and issues the Integrity Commissioner initiates. It provides for the Integrity Commissioner to advise interested parties of the decision and for the possibility of changing the decision at a later stage if there is reason to do so.

Subdivision A–General

Clause 26: How Integrity Commissioner may deal with corruption issues

This Clause sets out the ways in which the Integrity Commissioner may address corruption issues. The Integrity Commissioner may conduct an investigation, either alone or jointly with another government agency or an integrity agency for a State or Territory. The Integrity Commissioner may refer a corruption issue to the AFP or other law enforcement agency for investigation, and may manage or oversee an investigation being conducted by a law enforcement agency. Subclause 29(6) provides the Integrity Commissioner with further options where the corruption issue relates to a secondee to a law enforcement agency.

Clause 27: Criteria for Deciding How to Deal with a Corruption Issue

This clause provides a list of factors that the Integrity Commissioner must consider before he or she decides how to deal with a corruption issue, or whether to take no further action in relation to a corruption issue. The Integrity Commissioner must consider the importance of fully investigating a corruption issue, the rights and obligations of the law enforcement agency to investigate the issue, the extent to which the law enforcement agency is able to co-operate in a joint investigation, and the potential significance of the issue for the law enforcement agency. The Integrity Commissioner must also ensure a balance between his or her own responsibility to investigate corruption issues, and the responsibility of law enforcement agencies to manage their agencies.

Clause 28: Dealing with multiple corruption issues

If a referral contains a number of corruption issues, the Integrity Commissioner may deal with some or all of them separately, or together. The Integrity Commissioner may deal with multiple corruption issues together, even if they are not raised in the same referral. If the Integrity Commissioner addresses multiple issues together, he or she may produce a single report of those issues. This clause provides the flexibility

for the Integrity Commissioner to deal with issues in the way that will be most effective in the circumstances.

Clause 29: How Integrity Commissioner may deal with corruption issues that relate to conduct of secondees from Government Agency

Clauses 29 and 30 look at corruption issues involving secondees to a law enforcement agency. If a corruption issue relates to the conduct of a seconded from a government agency, the Integrity Commissioner must notify the head of that agency and any relevant integrity agency, and provide any information requested about the corruption issue. The Integrity Commissioner is not required to inform the government agency and integrity agency, or provide information, if it is likely that doing so could prejudice an investigation of the corruption issue, nor is the Integrity Commissioner required to disclose information that is subject to an Attorney-General's certificate (see clauses 149 and 152). If the Integrity Commissioner does not inform the government agency or integrity agency, he or she must provide the Minister with reasons. However, if the circumstances change so that advising the head of the relevant agency of the decision on how to deal with the information would no longer prejudice the investigation, then the agency head's right to be advised would revive.

The Integrity Commissioner may deal with the corruption issue by arranging for the government agency or relevant integrity agency to conduct an investigation. Alternatively, the Integrity Commissioner may deal with the issue in any manner authorised under clause 26. Before the Integrity Commissioner reaches a decision, he or she must give due consideration to the rights and obligations of the government agency and/or integrity agency to investigate the corruption issue, the extent to which the agencies are able to co-operate in a joint investigation and the likely significance of the corruption issue for any agencies involved. This list of considerations is not meant to limit the operation of the considerations listed in clause 27.

Clause 30: Arrangements for Government Agencies and Integrity Agencies to investigate corruption issues relating to conduct of secondees

The Integrity Commissioner may arrange for corruption issues involving the conduct of secondees to be investigated by the government agency from which the seconded comes, or a relevant State or Territory integrity agency. In this case, the government agency or integrity agency may investigate the issue to the full extent of its powers under Commonwealth, State or Territory laws. Alternatively, the Integrity Commissioner may conduct a joint investigation with a government agency or integrity agency.

Subdivision B—Integrity Commissioner Dealing with Corruption Issues Referred or Notified

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

This Clause applies to significant corruption issues raised by the head of a law enforcement agency under clause 19, and to corruption issues referred to the Integrity Commissioner by the Minister under clause 18 or by another person under clause 23. The Integrity Commissioner must deal with these issues in one of the ways referred to

in subclauses 26(1) and 29(6), or decide to take no further action. The Integrity Commissioner must deal with the issues unless they are already being investigated (although the Integrity Commissioner might choose to initiate his or her own investigation in this case), the referral was frivolous, vexatious or not made in good faith, or where the corruption issue is the subject of court proceedings.

Clause 32: Corruption issues notified as not being significant corruption issues under section 19

If the head of a law enforcement agency notifies the Integrity Commissioner of a corruption issue which is not significant under clause 19, the Integrity Commissioner may address the issue in one of the ways specified in subclauses 26(1) and 29(6). The Integrity Commissioner may request further information from the law enforcement agency, to help decide how best to deal with the issue.

Subdivision C—Advising Particular People of Decision About How to Deal With Corruption Issue

Clause 33: Minister

Clauses 33 and 34 ensure that the Integrity Commissioner notifies people who refer an allegation or information that raises a corruption issue of decisions made with respect to that issue. Under this Clause, if the Minister refers a corruption issue to the Integrity Commissioner under clause 18, the Integrity Commissioner must advise the Minister in writing of his or her decision about how to deal with the issue under clause 31, and the result of any reconsideration of how to deal with the corruption issue under clause 42.

Clause 34: Person who refers corruption issue

If a person refers a corruption issue to the Integrity Commissioner under clause 23 and elects to be kept informed of action taken in relation to the issue under clause 25, the Integrity Commissioner must advise the person in writing of his or her decision about how to deal with the issue under clause 31, and the result of any reconsideration of how to deal with the corruption issue under clause 42. The Integrity Commissioner does not have to notify the person if he or she is satisfied that doing so is likely to prejudice an investigation of a corruption issue. However, if circumstances change so that notifying the person would no longer prejudice the investigation, then the person's right to be advised is revived.

Clause 35: Head of law enforcement agency

If the Minister or another person refers a corruption issue which relates to a law enforcement agency, the Integrity Commissioner must advise the head of that agency in writing of his or her decision about how to deal with the issue under clause 31, and the result of any reconsideration of how to deal with the corruption issue under clause 42. The Integrity Commissioner does not have to notify the head of the law enforcement agency if he or she is satisfied that doing so is likely to prejudice an investigation of a corruption issue. If the Integrity Commissioner decides to withhold notification, he or she must provide the Minister with reasons. However, if

circumstances change so that notifying the head of the law enforcement agency would no longer prejudice the investigation, then the person's right to be advised is revived.

Clause 36: Head of home agency and integrity agency

This Clause applies if the Minister or another person refers to the Integrity Commissioner a corruption issue that relates to a person who is or has been a secondee to a law enforcement agency, and who is an employee of a government agency. In this case, the Integrity Commissioner must advise the head of the government agency and any relevant integrity agency in writing of his or her decision about how to deal with the issue under clause 31, and the result of any reconsideration of how to deal with the corruption issue under clause 42. The Integrity Commissioner does not have to notify the head of the government agency or integrity agency if he or she is satisfied that doing so is likely to prejudice an investigation of a corruption issue. If the Integrity Commissioner decides to withhold notification, he or she must provide the Minister with reasons. However, if circumstances change so that notifying the government agency or integrity agency would no longer prejudice the investigation, then the person's right to be advised is revived.

Clause 37: Staff member to whom corruption issue relates

Where the Minister, the head of a law enforcement agency or another person notifies the Integrity Commissioner of a corruption issue which relates to a person who is, or has been a staff member of a law enforcement agency, the Integrity Commissioner may advise him or her in writing of his or her decision about how to deal with the issue under Clause 31 or 32, and the result of any reconsideration of how to deal with the corruption issue under Clause 42. There is no mandatory obligation for the Integrity Commissioner to advise the staff member under this Clause, because such an obligation might preclude an effective investigation of the issue in some cases.

Subdivision D- Integrity Commissioner Dealing With Corruption Issues on Own Initiative

Clause 38: Integrity Commissioner may Deal with Corruption Issues on Own Initiative

If the Integrity Commissioner becomes aware of an allegation or information that raises a corruption issue, other than an allegation or information that is referred under Division 1 of Part 4, the Integrity Commissioner may deal with the issue in one of the ways referred to in subclause 26(1) or subclause 29(6), on his or her own initiative. This includes an allegation or information that the Integrity Commissioner becomes aware of in the course of investigating or inquiring into another corruption issue. If the Integrity Commissioner decides to deal with the corruption issue in one of the ways referred to in clause 26 or 29, the Integrity Commissioner may direct the head of the relevant law enforcement agency that the agency is not to investigate the corruption issue.

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

If the Integrity Commissioner decides to deal with a corruption issue under Clause 38 on his or her own initiative, he or she must advise the head of the relevant law enforcement agency of his or her decision to deal with the matter in that way, or any decision made following reconsideration under Clause 42. The agency head must be advised in writing and as soon as reasonably practicable after the decision is made. However, the Integrity Commissioner need not advise the head of the agency if doing so is likely to prejudice an investigation or any action taken as a result. In these circumstances, the Integrity Commissioner must inform the Minister and give reasons for not advising the agency head of the decision. If the circumstances change so that advising the head of the relevant agency of the decision on how to deal with the information would no longer prejudice the investigation, then the agency head's right to be advised is revived.

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

Clause 40 applies when the Integrity Commissioner decides to deal with a corruption issue under clause 38 on his or her own initiative and the corruption issue relates to the conduct of a person who is or has been a secondee to a law enforcement agency. The Integrity Commissioner must advise the head of the home agency of his or her decision to deal with the matter in that way, or any decision made following reconsideration under clause 42. The Integrity Commissioner must advise the head of any integrity agency for the State or Territory in the same way. The advice must be given in writing and as soon as reasonably practicable after the decision is made. However, the Integrity Commissioner need not advise the head of the home agency or the State or Territory integrity agency if doing so is likely to prejudice an investigation or any action taken as a result. In these circumstances, the Integrity Commissioner must inform the Minister and give reasons for not advising the agency head of the decision. If the circumstances change so that advising the head of the relevant agency of the decision on how to deal with the information would no longer prejudice the investigation, then the agency head's right to be advised is revived.

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

Clause 41 applies if the Integrity Commissioner decides to deal with a corruption issue on his or her own initiative and the corruption issue relates to a person who is, or has been a staff member of a law enforcement agency. The Integrity Commissioner may advise the staff member of the decision to deal with the corruption issue in that way, or any decision made following reconsideration under clause 42. There is no mandatory obligation for the Integrity Commissioner to advise the staff member under this clause, because such an obligation might preclude an effective investigation of the issue in some cases.

Subdivision E—Reconsidering How to Deal with Corruption Issue

Clause 42: Reconsidering how to Deal with Corruption Issue

The Integrity Commissioner may, at any time, reconsider how a corruption issue is to be dealt with. On that reconsideration, the Integrity Commissioner may decide to adopt a new or an alternative method of investigation under subclause 26(1) or

subclause 29(6). If a new or alternative method of investigation is adopted, the Integrity Commissioner may direct the head of the relevant law enforcement agency that the agency is not to investigate the corruption issue. If the corruption issue is already being, or will be, investigated by a law enforcement agency, a government agency or a State or Territory integrity agency, the Integrity Commissioner may decide to take no further action in relation to that issue, although an investigation by the Integrity Commissioner is not precluded in these circumstances. The Integrity Commissioner may also take no further action if the allegation or information which raises the corruption issue is frivolous, vexatious or not made in good faith or where the corrupt conduct has been, is or will be the subject of court proceedings.

PART 5 - INFORMATION SHARING WHEN DECISION MADE ABOUT HOW TO DEAL WITH CORRUPTION ISSUE

This Part provides mechanisms to ensure that the agency which is to investigate a corruption issue has access at the outset to all the available information.

Division 1- Giving Information to Head of Agency Conducting Investigation

Clause 43: Division Applies if Agency to Conduct, or Continue Conducting, Investigation of Corruption Issue

Clause 43 sets out when Division 1 applies. First, the Division applies where the Integrity Commissioner refers a corruption issue to a law enforcement agency or the AFP for investigation or a law enforcement agency has already commenced investigating a corruption issue before it is referred to the Integrity Commissioner. Secondly, the Division applies where the corruption issue relates to the conduct of a secondee of a law enforcement agency who is an employee of a Commonwealth government agency and the Integrity Commissioner arranges for the Commonwealth government agency to investigate the corruption issue. Finally, the Division applies where the corruption issue relates to the conduct of a secondee of a law enforcement agency and the secondee is an employee of a State or Territory government agency and the Integrity Commissioner arranges for the State or Territory government agency or integrity agency to investigate.

Clause 44: Integrity Commissioner to give Information or Documents to Agency Head

Clause 44 obliges the Integrity Commissioner to provide all information relevant to the corruption issue being investigated by an agency to the head of the agency investigating the corruption issue if the head of the agency does not already have the information. The Integrity Commissioner does not have to provide the information where it is certified under section 149.

Division 2–Information to be given by Law Enforcement Agency that has already Commenced Investigation

Clause 45: Division Applies if Law Enforcement Agency has Already Commenced Investigating Corruption Issue

This Division applies where the Integrity Commissioner decides to deal with a corruption issue that a law enforcement agency started, or continued to investigate, prior to the Integrity Commissioner's decision as to how to deal with the matter.

Clause 46: Integrity Commissioner may Direct Agency Head to Give Information or Documents that Relate to Corruption Issue

The Integrity Commissioner may, in writing, direct the head of an agency investigating a corruption issue to provide all information and/or documents in relation to the corruption issue that are in the possession or control of the head of the agency. The head of agency must comply unless the information is certified

information under clause 149 and the disclosure is not permitted (subclause 150(1)) or would breach a condition of the certificate (clause 151).

PART 6 – INVESTIGATIONS BY INTEGRITY COMMISSIONER

This Part sets out some basic principles governing the conduct of investigations of corruption issues by the Integrity Commissioner and sets out the powers and duties of the Integrity Commissioner in relation to reporting the progress and outcomes of such investigations and taking any necessary follow-up action.

Division 1- Investigation

Clause 47: Application of Division

The Division describes the manner in which investigations by the Integrity Commissioner should be undertaken, whether solely, or jointly with other agencies.

Clause 48: Integrity Commissioner to Determine Manner of Conducting Investigation

Clause 48 gives the Integrity Commissioner discretion to conduct the investigation in such manner as he or she thinks fit.

Part 9 of the Bill prescribes the powers available to the Integrity Commissioner for the purposes of investigating or conducting an inquiry into corrupt conduct and corruption issues.

Clause 49: Coordinating Integrity Commissioner's Investigation and Law Enforcement Agency's Operations

This clause operates where the Integrity Commissioner has informed the head of a law enforcement agency (under clause 35) or the head of a government agency (under clause 36) that the Integrity Commissioner has decided to investigate a corruption issue.

The Integrity Commissioner is required to regularly consult with the head of the relevant law enforcement agency, with a view to minimising the risk of prejudice to the agency's operations. The Integrity Commissioner may also consult with another relevant government agency (a secondee's home agency or the relevant integrity agency) where there is a risk of prejudice to its operations.

Clause 50: Information Sharing for Joint Investigation

The Integrity Commissioner may provide information and documents within the Integrity Commissioner's possession and control to the head of an agency with which the Integrity Commissioner is jointly conducting an investigation. However, the Commissioner must not disclose Clause 149 certified information contrary to the terms of the certificate (Clause 152).

Clause 51: Opportunity to be Heard

The Integrity Commissioner must not disclose any opinions or findings that are critical of a government agency or person in a report, unless the head of the agency or the person has been given an opportunity to appear, or have a representative appear

before the Integrity Commissioner to make submissions in relation to the subject matter.

Where the opinion or finding is critical of a person, the Commissioner must provide the person with a statement setting out the opinion or finding and give the person a reasonable opportunity to be heard or make submissions. Where the opinion or finding is critical of an agency, the Integrity Commissioner must provide the head of the agency with the same opportunities. The clause also provides for submissions to be made by a representative of the head of agency or person.

However, the Commissioner does not have to give a person the opportunity to be heard where the Commissioner is satisfied that a person may have committed a criminal offence, contravened a civil penalty provision or engaged in conduct which could be the subject of disciplinary proceedings or termination of employment/ appointment, and that an investigation or any related action would be compromised by giving the person the opportunity to make submissions.

Division 2- Reporting

Subdivision A- Reporting During Investigation

Clause 52: Integrity Commissioner to Keep Person who referred Corruption Issue Informed of Progress of Investigation

The Integrity Commissioner must take reasonable steps to inform a referring Minister or head of agency as to the progress of an investigation.

The Integrity Commissioner must also take reasonable steps to inform any other person who refers a matter to the Integrity Commission about the progress of the investigation if the person has elected to be kept informed under clause 25.

Clause 53: Integrity Commissioner to Keep Home Agency and Integrity Agency Informed of Progress of Investigation

Clause 53 obliges the Integrity Commissioner to take reasonable steps to keep the head of the home agency of a secondee to a law enforcement agency informed about the progress of an investigation if the Integrity Commissioner has informed the head of the home agency under subclause 29(2).

The Integrity Commissioner must keep the head of a State or Territory integrity agency similarly informed if the secondee is from the police force of a State or Territory and the Integrity Commissioner has informed the State or Territory integrity agency under subclause 29(2).

Subdivision B- Reporting at the End of Investigation

Clause 54: Report on Investigation

The Integrity Commissioner must complete a report after an investigation of a corruption issue that relates to a law enforcement agency. The report must set out the Integrity Commissioner's findings, evidence, action taken or to be taken, recommendations and reasons. The Integrity Commissioner may recommend

disciplinary action, action to rectify or mitigate the effects of the conduct or adopting measures to remedy deficiencies in policy or practice. If the Integrity Commissioner has conducted public hearing into a corruption issue, the Integrity Commissioner must not include clause 149 certified information in the report and may also exclude sensitive information (because the report must be tabled under section 203). However, that information must be included in a supplementary report.

Clause 55: Integrity Commissioner to Give Copy of Report to Certain Persons

The Integrity Commissioner must give a copy of the report and any supplementary report to the Minister. In addition, the Integrity Commissioner must provide a copy of the report to the head of the agency to which the investigation relates and may also provide any supplementary report or parts thereof in accordance with a certificate issued under Clause 149.

Clause 56: Comments by Head of Agency

The head of the agency may give the Integrity Commissioner comments on a report or supplementary report.

Clause 57: Follow-up Action on Report

The Integrity Commissioner may request details of any action that the head of the agency proposes to take in relation to the Integrity Commissioner's recommendations. The head of the agency must comply with the request. If the Integrity Commissioner is not satisfied with the response, he or she may refer the matter to the Minister and to Parliament.

Clause 58: Advising Person who Referred Corruption Issue of Outcome of the Investigation

The Integrity Commissioner must also take reasonable steps to inform a person who refers a matter to the Integrity Commission, or a nominated person, about the outcomes of the investigation if the person has elected to be kept informed under clause 25. However, if the Integrity Commissioner is satisfied that advising the person is likely to prejudice an investigation or any related action, the Integrity Commissioner can withhold advising the person until such time as the circumstances change to remove such prejudice.

Clause 59: Advising Person Whose Conduct is Investigated of Outcome of the Investigation

The Integrity Commissioner may advise a person who is, or has been, a staff member of a law enforcement agency about the outcome of the investigation where the corruption issue relates to that person. The Integrity Commissioner may provide the person with a copy of the whole or part of the report. However, the Integrity must not disclose to the person information that is the subject of a certificate issued under section 149, if to do so would contravene the terms of the certificate, and may withhold sensitive information if it is desirable to do so in the circumstances.

PART 7 – Investigations by Other Commonwealth Agencies

Paragraph 15(b) of Part 3 provides that the Integrity Commissioner may refer a corruption issue to a law enforcement agency for investigation.

Paragraph 15(c) of Part 3 provides that the Integrity Commissioner may manage, oversee or review an investigation being conducted by a law enforcement agency.

This Part sets out the process and requirements in cases where the Integrity Commissioner either refers an investigation to another agency or is managing or overseeing an investigation by another agency. It also sets out the reporting and notification requirements.

Division 1- Nominated Contact for Investigations by Law Enforcement Agencies

Clause 60: Nominating Contact for Investigation

If the Integrity Commissioner refers a corruption issue to a law enforcement agency or manages or oversees an investigation by a law enforcement agency, the head of the agency will be the contact person for the Integrity Commissioner, unless he or she nominates another person in writing.

Law enforcement agency is defined in Clause 5 of Part 2.

Division 2- Managing or Overseeing Investigations by Law Enforcement Agencies

Clause 61: Managing an Investigation

This clause sets out how the Integrity Commissioner *manages* a law enforcement agency's investigation of a corruption issue.

The Integrity Commissioner manages an investigation of a corruption issue by providing the agency's nominated contact pursuant to Clause 60, *detailed* guidance on the planning and carrying out of the investigation. The head of the agency must ensure that staff members co-operate with the Integrity Commissioner and adhere to any instructions provided.

Clause 62: Overseeing an Investigation

This clause sets out how the Integrity Commissioner *oversees* a law enforcement agency's investigation of a corruption issue.

The Integrity Commissioner oversees an investigation of a corruption issue by providing the agency's nominated contact *general* guidance on the planning and carrying out of the investigation. The head of the agency must ensure that the agency follows the Integrity Commissioner's general guidance in regards to the planning and carrying out of the investigation.

Division 3- Reporting

Subdivision A- Reporting by Law Enforcement Agencies During Investigations

Clause 63: Integrity Commissioner may Request Individual Progress Report

The Integrity Commissioner may request a progress report from the law enforcement agency conducting an investigation. This request must be in writing, specifying a date at least seven days later in which the report is due to the Integrity Commissioner and may specify matters which the report is to address. The agency must comply with the request.

Clause 64: Integrity Commissioner may Request Periodic Progress Reports

The Integrity Commissioner may request periodic progress reports from the law enforcement agency conducting an investigation. This request must be in writing, specifying the frequency with which the reports are to be given to the Integrity Commissioner and may specify matters which the reports are to address. The agency must comply with the request.

Clause 65: Head of Law Enforcement Agency to Keep Person Who Referred Corruption Issue Informed of Progress of Investigation

If the Minister refers a corruption issue to the Integrity Commissioner and the Integrity Commissioner refers the matter to a law enforcement agency for investigation, the head of that law enforcement agency must keep the Minister informed as to the progress of the investigation.

Where a person refers information or allegations of corruption issues to the Integrity Commissioner under Clause 23 and elects to be kept informed under clause 25, and the Integrity Commissioner refers that corruption issue to a law enforcement agency for investigation, the head of the agency must keep the person informed as to the progress of the investigation.

Subdivision B- Reporting by Commonwealth Government Agencies at End of Investigation

Clause 66: Final Report on Investigation

At the conclusion of an investigation, the head of the agency must prepare a report for the Integrity Commissioner including findings, evidence and any action taken, or proposed to be taken in relation to the investigation. This obligation applies to all Commonwealth agencies (including, for example, the home agency of a secondee), not just law enforcement agencies.

Where the report is prepared by the AFP in relation to another law enforcement agency the report may make recommendations to the head of the other agency. The

report must be given to the head of the other agency at the same time as it is given to the Integrity Commissioner.

Clause 67: Integrity Commissioner may Comment on Final Report

Upon receipt of the final report provided pursuant to clause 66, the Integrity Commissioner may make comments and/or recommendations in writing to the head of agency concerned, in relation to any matter arising from the report or the investigation. Depending on his or her satisfaction with the report, the Integrity Commissioner may, under clause 42, reconsider how the corruption issue should be dealt with.

The Integrity Commissioner may request details of actions that the agency plans to take in response to the Integrity Commissioner's recommendations. If the Integrity Commissioner is not satisfied with the response of the agency the Integrity Commissioner may refer the matter to the Minister responsible for the agency. The Integrity Commissioner may also provide a copy of the relevant information to Parliament and may discuss the matter with the agency head for the purpose of resolving the matter.

Certain information must be excluded from the material given to Parliament. This is certified information under clause 149. The Integrity Commissioner may also exclude other information from presentation to Parliament if he or she is satisfied that it is sensitive information that it is desirable to exclude in the circumstances.

Clause 68: Advising Person who Referred Corruption Issue of Outcome of the Investigation

If the person who refers a corruption issue elects under clause 25 to be kept informed, or nominates a person to be kept informed, of any action taken in relation to a referred corruption issue, and the Integrity Commissioner refers the corruption issue to another agency for investigation, the agency must advise the person, or the relevant nominated person, of the outcome of the investigation and may provide a copy of whole or part of the report prepared by the Integrity Commissioner under clause 54.

However, if the head of the agency is satisfied that advising the person or relevant nominated person is likely to prejudice an investigation or any related action, the head of the agency can withhold advising until such time as the circumstances change to remove such prejudice.

This clause ensures that those who are entitled to be informed, are notified of the outcome of the investigation, unless the prejudicial nature of advising him or her outweighs that entitlement.

Clause 69: Advising Person Whose Conduct is Investigated of Outcome of the Investigation

If a Commonwealth government agency investigates a corruption issue that relates to a person who is or has been a staff member of a law enforcement agency, the head of that agency *may* advise the staff member of the outcome and may provide them with a

copy of whole or part of the final report prepared by the investigating agency under clause 66.

Division 4- Integrity Commissioner to Pass on Information Relevant to Agency

Clause 70: Integrity Commissioner to Pass on Information Relevant to Agency Investigation

In circumstances where a government agency is investigating a corruption issue, the Integrity Commissioner must provide the head of agency with any relevant information he or she becomes aware of, subject to clause 152 in respect of section 149 certificated information.

PART 8- PUBLIC INQUIRIES INTO CORRUPTION ISSUES

Division 1- Conducting a Public Inquiry

Clause 71: Minister may Request Integrity Commissioner to Conduct Public Inquiry

The Minister may request the Integrity Commissioner to conduct a public inquiry into a corruption issue, corruption generally in law enforcement agencies and/or the integrity of staff members of law enforcement agencies.

For the definition of “corruption issue”, see clause 7 of the Bill.

For the definition of “law enforcement agency”, see clause 5 of the Bill;

For the definition of “corruption issue that relates to a law enforcement agency”, see clause 9 of the Bill.

The conduct of public inquiries is a function of the Integrity Commissioner under clause 15(d), and the powers available to the Integrity Commissioner for the purposes of a public inquiry are set out in Part 9 of the Bill.

Clause 72: Publicising Inquiry

This clause imposes a duty on the Integrity Commissioner to invite submissions on issues that are the subject of the public inquiry.

Division 2- Reporting

Clause 73: Report on Public Inquiry

At the end of an inquiry the Integrity Commissioner is required to submit a report to the Minister. The report must include the findings, evidence, action taken or proposed to be taken and recommendations.

The report must exclude “sensitive information” that it is desirable in the circumstances to exclude, “section 149 certified information” (see Clause 5 of the Bill for their definitions), and other information. When deciding whether to exclude sensitive information, the Integrity Commissioner must take into account the public interest that would be served by including the information in the report, and the potential prejudicial consequences that might result from including the information in the report. If information has been excluded from the report, a supplementary report must be prepared by the Integrity Commissioner with the excluded information and reasons for the exclusion.

Clause 74: Giving Report to Minister

At the conclusion of the inquiry, the Integrity Commissioner must provide the Minister with a copy of the report on the public inquiry prepared under clause 73 and any supplementary report. Under clause 203 the Minister is required to table the report in Parliament, however there is no requirement for the Minister to table a supplementary report.

PART 9- INTEGRITY COMMISSIONER'S POWERS IN CONDUCTING INVESTIGATIONS AND PUBLIC INQUIRIES

Division 1- Requiring people to give information and produce documents

Subdivision A–Requests by Integrity Commissioner

Clause 75: Request to staff member of law enforcement agency

Under clause 75, the Integrity Commissioner will be able to make requests to staff members of law enforcement agencies requiring them to provide information or produce documents or things for the purposes of investigating a corruption issue. Where the Integrity Commissioner requests information, he or she may require that the information be provided in writing.

Clause 10 of the Bill sets out the classes of persons who are considered to be staff members of law enforcement agencies for the purposes of the Bill.

All requests made under clause 75 must be made in writing, signed by the Integrity Commissioner and served on the staff member of the law enforcement agency (subclause 75(2)).

A staff member of a law enforcement agency that has a request made to him or her under clause 75 must comply with that request as soon as reasonably practicable (subclause 75(4)).

A staff member of a law enforcement agency will commit an offence if he or she fails to comply with a request made to him or her under clause 75 as soon as reasonably practicable. The offence is set out in clause 78 of the Bill.

However, a staff member must not comply with the request if to do so would involve the disclosure of documents or information that are the subject of a certificate issued by the Attorney-General under clause 149 in contravention of the terms of the certificate.

To ensure that investigations into corruption issues are conducted efficiently, effectively and fairly, it is necessary to provide the Integrity Commissioner with the power to compel the production of documents and information relevant to an investigation.

The type of documents or information that the Integrity Commissioner will be able to request under clause 75 is limited to those that are necessary for the purposes of investigating a corruption issue.

Corruption issue is a term defined in clause 7 of the Bill.

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

Under clause 76, the Integrity Commissioner will be able to make requests to any person, other than a staff member of a law enforcement agency, requiring them to

provide information or produce documents or things for the purposes of investigating a corruption issue.

The Integrity Commissioner can request that a staff member of a law enforcement agency provide documents or information or things under clause 75. Clause 76 applies only to persons who are not staff members of law enforcement agencies.

Clause 10 of the Bill sets out the classes of persons who are considered to be staff members of law enforcement agencies for the purposes of the Bill.

All requests made under clause 76 must be made in writing, signed by the Integrity Commissioner and served on the person. They must also specify the time that the person has to comply with the request. The period for compliance must be at least 14 days from the day that the request is served on the person (subclause 76(2)).

A person served with a request under clause 76 must comply with the request within the time for compliance specified in the request (subclause 76(4)).

A staff member of a law enforcement agency will commit an offence if he or she fails to comply with a request made to him or her under clause 76 within the time specified in the request. The offence is set out in clause 78 of the Bill.

However, a staff member must not comply with the request if to do so would involve the disclosure of documents or information that are the subject of a certificate issued by the Attorney-General under clause 149 in contravention of the terms of the certificate.

To ensure that investigations into corruption issues are conducted efficiently, effectively and fairly, it is necessary to provide the Integrity Commissioner with the power to compel the production of documents and information relevant to an investigation.

The type of documents or information that the Integrity Commissioner will be able to request under clause 76 is limited to those that are necessary for the purposes of investigating a corruption issue.

Corruption issue is a term defined in clause 7 of the Bill.

Clause 77: Integrity Commissioner may retain documents and things

Clause 77 allows the Integrity Commissioner to retain documents or things produced to him or her pursuant to a request made under clause 75 or 76. Under clause 77, the Integrity Commissioner will be able to:

- Take possession of a document or thing,
- Make copies of a document or thing,
- Take extracts from a document, and
- Retain possession of a document or thing for as long as necessary for the purposes of the investigation for which the document or thing was requested.

Documents or things obtained pursuant to a request made under clause 75 or 76 will not be able to be retained indefinitely. Rather, the period of time that the Integrity

Commissioner can retain documents or things under clause 77 is limited to the period for which those documents or things are necessary for the purposes of the investigation for which they were requested.

At all times while the Integrity Commissioner retains a document or thing obtained pursuant to a request made under clause 75 or 76, the Integrity Commissioner must allow persons who would otherwise be entitled to inspect or view the document or thing to inspect or view the document or thing at the times that the person would ordinarily be able to do so (subclause 76(2)). Providing a power of inspection means that the person is not completely deprived of the document or thing.

Clause 77 is necessary to enable the Integrity Commissioner to access documents and information relevant to an investigation into a corruption issue. It also preserves the chain of evidence, for example, should an investigation eventually lead to action being taken by prosecutorial authorities or regulators. This clause is similar to sections 2 and 6F of the Royal Commissions Act, section 18 of the Inspector-General of Intelligence and Security Act, sections 28 and 29 of the ACC Act, sections 9 and 13 of the Ombudsman Act and sections 18 and 19 of the Inspector-General of Taxation Act.

Subdivision B—Offence and related provisions

Clause 78: Failure to comply with Integrity Commissioner’s request

Offence by a staff member of a law enforcement agency

A staff member of a law enforcement agency commits an offence if he or she fails to comply with a request made to him or her under clause 75 as soon as reasonably practicable.

The request must have been made in writing and served on the staff member.

Clause 10 of the Bill sets out the classes of persons who are considered to be staff members of law enforcement agencies for the purposes of the Bill.

To be held criminally responsible for this offence, the staff member must also have been capable of complying with the request. A staff member will not commit the offence if subclause 150(2) applies.

Subclause 150(2) of the Bill prohibits the disclosure of documents or information that is the subject of a certificate issued by the Attorney-General under clause 149 of the Bill. The Attorney-General can only issue a certificate under clause 149 if disclosure of the document or information would be contrary to the public interest and one of the grounds in subclause 149(2) is satisfied. In summary, the grounds for non-disclosure set out in subclause 149(2) are where disclosure would:

- Prejudice national security, defence of international relations of the Commonwealth,
- Prejudice Commonwealth/State relations,
- Involve the disclosure of a Cabinet decision or Cabinet deliberations,
- Prejudice an investigation into whether a criminal offence has been committed or a civil penalty provision has been contravened,

- Prejudice a fair trial,
- Reveal a confidential source of information relevant to the enforcement of a criminal offence or a civil penalty provision,
- Prejudice the effectiveness of operational methods, or investigative practices or techniques,
- Prejudice the proper performance of ACC functions, or
- Endanger a person's life or physical safety.

A staff member of a law enforcement agency is not excused from complying with a request made under clause 75 on grounds that production of the information or documents requested could incriminate them. The privilege against self-incrimination is abrogated in clause 80 of the Bill.

The maximum penalty for the offence is 2 years imprisonment.

Offence by a person other than a staff member of a law enforcement agency

A person, other than a staff member of a law enforcement agency, commits an offence if he or she fails to comply with a request made to him or her under clause 76 within the time period specified in the request.

Clause 10 of the Bill sets out the classes of persons who are considered to be staff members of law enforcement agencies for the purposes of the Bill.

The request must have been made in writing and served on the person.

The request must have also specified the time for compliance, and this period must have been at least 14 days from the day that the request was served on the person.

To be held criminally responsible for this offence, the person must also have been capable of complying with the request. A staff member will not commit the offence if subclause 150(2) applies.

Subclause 150(2) of the Bill prohibits the disclosure of documents or information that is the subject of a certificate issued by the Attorney-General under clause 149 of the Bill. The Attorney-General can only issue a certificate under clause 149 if disclosure of the document or information would be contrary to the public interest and one of the grounds in subclause 149(2) is satisfied. In summary, the grounds for non-disclosure set out in subclause 149(2) are where disclosure would:

- Prejudice national security, defence of international relations of the Commonwealth,
- Prejudice Commonwealth/State relations,
- Involve the disclosure of a Cabinet decision or Cabinet deliberations,
- Prejudice an investigation into whether a criminal offence has been committed or a civil penalty provision has been contravened,
- Prejudice a fair trial,
- Reveal a confidential source of information relevant to the enforcement of a criminal offence or a civil penalty provision,
- Prejudice the effectiveness of operational methods, or investigative practices or techniques,

- Prejudice the proper performance of ACC functions, or
- Endanger a person's life or physical safety.

A person is not excused from complying with a request made under clause 75 on grounds that production of the information or documents requested could incriminate them. The privilege against self-incrimination is abrogated in clause 80 of the Bill.

The maximum penalty for the offence is 2 years imprisonment.

Clause 79: Legal Practitioner not required to disclose privileged communications

If the Integrity Commissioner makes a request to a legal practitioner under clause 76, clause 79 provides that the legal practitioner can refuse to provide the documents or information or things requested if doing so would disclose privileged communications made by, or to, the legal practitioner in his or her capacity as a legal practitioner.

This means that where disclosure by a legal practitioner would disclose privileged communications, the legal practitioner cannot be held criminally responsible for the offence in clause 78 for failing to comply with a request made under clause 76. That is, if clause 79 applies it will operate as an exception to the offence in clause 78.

The excuse in clause 79 (that is, where production of information, documents or things would disclose privileged communications) will not be available to the legal practitioner if the person to whom or by whom the privileged communication was made agrees to the legal practitioner providing the information or document or thing.

Where the excuse in clause 79 is available (that is, where the privilege has not been waived by the person to whom or by whom the communication was made) and the legal practitioner refuses to give information or produce documents or things on that basis, that is, on grounds that doing so would disclose privileged communications, the Integrity Commissioner may request the legal practitioner to provide the name and address of the person by, or to, whom the communication was made (subclause 79(4)). A legal practitioner must comply with such a request from the Integrity Commissioner.

Clause 79 does not affect the law relating to legal professional privilege.

Clause 80: Self-incrimination etc.

The privilege against self-incrimination is abrogated in clause 80 of the Bill. This means that a staff member of a law enforcement agency, or a person, requested to provide information, documents or things under clause 75 or 76 cannot refuse to produce the document, information or things on grounds that doing so could incriminate him or her.

The privilege is not completely abrogated; rather, a use immunity is provided (see subclauses 80(2) and (4)). However the use immunity is not available in five specified circumstances (see subclause 80(4)).

The use immunity operates where a staff member of a law enforcement agency, or a person other than a staff member of a law enforcement agency, prior to producing

information or documents or things pursuant to a request under clause 75 or 76 (respectively) claims that doing so may tend to incriminate or expose them to a penalty, the information or documents or things will not be admissible as evidence against the person in criminal proceedings or any other proceedings for the imposition or recovery of a penalty. There are five circumstances where this use immunity will not be available.

The use immunity will not be available, meaning that the information or documents or things will be able to be used in evidence, in:

- (a) Proceedings for an offence against clause 78 of the Bill – failure to provide information, documents or things requested by the Integrity Commissioner under clause 75 or 76 of the Bill,
- (b) Confiscation proceedings – this term is defined in clause 5 of the Bill to mean proceedings under the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*, or a corresponding law within the meaning of either of those Acts, but does not include a criminal prosecution for an offence under either of those Acts or a corresponding law,
- (c) Proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* – being offences for providing false or misleading statements or documents,
- (d) Proceedings for an offence against section 149.1 of the *Criminal Code* – being an offence for obstructing a Commonwealth public official, or
- (e) Disciplinary proceedings against the person if the person is a staff member of a law enforcement agency – ‘disciplinary proceedings’ is a term defined in clause 5 of the Bill and extends to proceedings taken under a law of the Commonwealth, a State or a Territory. This exclusion will only apply if the disciplinary proceedings are against a staff member of a law enforcement agency. That is, the use immunity will not be abrogated in respect of disciplinary proceedings that could be taken in respect of another profession (for example, the use immunity will exist for information, documents or things produced by a doctor so that they could not be used in disciplinary proceedings that might be taken by an medical professional association against that doctor, for example, for medical negligence).

Immunity on public interest grounds

A person is not excused from answering a question or providing information or documents or things when requested under clause 75 or 76, on the grounds that answering the question, or producing the information or documents or things would disclose:

- Legal advice given to a Minister or Commonwealth Government Agency, or
- A communication between another officer of a Commonwealth government agency and another person, if that disclosure is protected by legal professional privilege.

Commonwealth government agency is a term defined in clause 5 of the Bill.

Similarly, a person is not excused from answering a question or providing information or documents or things when requested under clause 75 or 76, on the grounds that

answering the question, or producing the information or documents or things would breach a secrecy provision.

There is an exception however if disclosure would breach a taxation secrecy provision or a law enforcement secrecy provision. This means that if answering the question or disclosing the information or document or thing would breach a taxation secrecy provision or a law enforcement secrecy provision, the person will not be required to answer the question or disclose the information or document or thing and hence could not be held criminally responsible under clause 78 for failing to comply with a request made under clause 75 or 76.

‘Taxation secrecy provision’ and ‘law enforcement secrecy provision’ are terms defined in clause 5 of the Bill.

If a person answers a question or provides documents or information or things in response to a request made of him or her under clause 75 or 76, and that answer or disclosure constitutes a breach of a secrecy provision (other than a taxation secrecy provision or a law enforcement secrecy provision), subclause 80(7) provides that the person cannot be liable to a penalty for an offence of breaching the secrecy provision.

Clause 80 also provides that it is no excuse for a person to refuse or fail to comply with a request made under clause 75 or 76 to answer a question or produce information or documents or things on grounds that doing so would be contrary to the public interest.

Even though clause 80 provides that legal professional privilege is no excuse for refusing or failing to comply with a request made under clause 75 or 76, this does not impact on any other claim of legal professional privilege that another person may wish to make in relation to the information or document or thing.

It is necessary to abrogate the privilege against self-incrimination to ensure that the Integrity Commissioner can be given access to information, documents and things relevant to an investigation into a corruption issue. The inclusion of a use immunity in all but five limited cases provides a safeguard to persons that are required to answer questions or produce documents or information or things under a request made under clause 75 or 76 that compliance with that request cannot be used against them in criminal proceedings or proceedings for the imposition or recovery of a penalty (this includes civil penalty proceedings).

“Corruption issue” is a term defined in clause 7 of the Bill.

It is necessary to not provide a use immunity for proceedings for an offence against clause 78 of the Bill (failure to comply with a request under clause 75 or 76 of the Bill), confiscation proceedings (defined in clause 5 of the Bill), proceedings for an offence of providing false or misleading information (sections 137.1 and 137.2 of the *Criminal Code*), proceedings for an offence of obstructing a Commonwealth public official (section 149.1 of the *Criminal Code*) or disciplinary proceedings because the nature of these proceedings is that they rely on evidence of the contravention.

Clause 81: Protection of person required to give information and produce documents

A person who gives information or documents to the Integrity Commissioner in response to a request made under clause 75 or 76 of the Bill has the same protection as a witness in proceedings of the High Court.

For example, witnesses will be afforded protections against threatening behaviour, intimidation, injury and violence. These protections arise from existing offences, such as those for threatening, intimidating and inflicting injury or violence upon a witness in Part III of the *Crimes Act*. Further, no action lies in relation to the evidence given by the witness in respect of words he or she uses in the course of the proceedings before the Integrity Commissioner.

Division 2—Conducting Hearings

Subdivision A—General Provisions

Clause 82: Integrity Commissioner may hold hearings

Clause 82 confers powers on the Integrity Commissioner to hold a hearing for the purpose of investigating a corruption issue or conducting a public inquiry.

“Corruption issue” is a term defined in clause 7 of the Bill.

“Public inquiry” is defined to mean an inquiry conducted by the Integrity Commissioner pursuant to Part 8 of the Bill.

The Integrity Commissioner has a general power to regulate the conduct of proceedings at a hearing as he or she sees fit. This is similar to subsection 25A(1) of the ACC Act.

Hearing in relation to an investigation into a corruption issue

Subclause 82(3) confers power on the Integrity Commissioner to hold the whole, or part of, a hearing into a corruption issue in public or in private. In determining whether to hold a hearing into a corruption issue in public or in private, subclause 82(4) requires the Integrity Commissioner to have regard to whether:

- Evidence that may be given, or a matter that could arise, in the hearing is of a confidential nature, or relates to the commission (whether real, alleged or suspected) of an offence,
- A person’s reputation could be unfairly prejudiced if the hearing is held in public, and
- It is in the public interest for the hearing to be held in public.

In making the decision whether a hearing into a corruption issue should be held in public or private, the Integrity Commissioner is also required to consider any other relevant matters.

Even where the Integrity Commissioner determines that a hearing into a corruption issue is to be held in public, under clause 89 a witness can still request that his or her

evidence be taken in private. Under subclause 89(3) the Integrity Commissioner can allow evidence in a public hearing to be given in private if he or she considers it appropriate.

Hearing in relation to a public inquiry

Subclause 82(5) requires that a hearing into a public inquiry be held in public, however it also confers a discretion on the Integrity Commissioner to direct that part of a hearing into a public inquiry be held in private.

It is necessary for the Integrity Commissioner to have the discretion to hold part of a hearing into a public inquiry in private because subclause 89(1) of the Bill provides that certain evidence can only be given in private. Subclause 89(1) requires evidence to be given in private if the evidence would disclose:

- Legal advice given to a Minister or Commonwealth Government Agency, or
- A communication between another officer of a Commonwealth government agency and another person, if that disclosure is protected by legal professional privilege.

Subclause 89(1) also requires that evidence be given in private if giving the evidence would breach a secrecy provision.

There is an exception to the requirement to give evidence at all if disclosure would breach a taxation secrecy provision or a law enforcement secrecy provision. If answering the question or disclosing information or a document or thing would breach a taxation secrecy provision or a law enforcement secrecy provision, the person will not be required to answer the question or disclose the information or document or thing. This also means that the person could not be held criminally responsible under clause 78 for failing to comply with a request made under clause 75 or 76. 'Taxation secrecy provision' and 'law enforcement secrecy provision' are terms defined in clause 5 of the Bill.

If a person answers a question or provides documents or information or things in response to a request made of him or her under clause 75 or 76, and that answer or disclosure constitutes a breach of a secrecy provision (other than a taxation secrecy provision or a law enforcement secrecy provision), subclause 80(7) provides that the person cannot be liable to a penalty for an offence of breaching the secrecy provision.

Lastly, if the evidence involves the disclosure of information that is the subject of a certificate issued by the Attorney-General under clause 149, the evidence will also need to be given in private in order to comply with the terms of the certificate.

Record of a hearing

Subclause 82(6) requires the Integrity Commissioner to make a record of each hearing he or she conducts. Subclause 82(7) sets out certain matters that the Integrity Commissioner must cause to be included in a record of a hearing. These are:

- Any document produced to the Integrity Commissioner at the hearing, and
- Description of any thing (other than a document) produced to the Integrity Commissioner at the hearing.

However, the Integrity Commissioner will not be required to include these matters in the record of a hearing if he or she directs otherwise under subclause 82(7). A direction given by the Integrity Commissioner under subclause 82(7) is not a legislative instrument.

The Integrity Commissioner holds the discretion as to whether a hearing into a corruption issue will be heard in public or in private.

Clause 83: Integrity Commissioner may summon person

Clause 83 confers power on the Integrity Commissioner to summon a person. Under subclause 83(1) the Integrity Commissioner can serve a summons on a person to attend a hearing at a time and place specified in the summons for the purpose of giving evidence or producing documents or things specified in the summons. The summons must be in writing, signed by the Integrity Commissioner and served on the person required to attend the hearing (subclause 83(2)).

If the hearing is held for the purpose of investigating a corruption issue and the summons requires the person to give evidence at the hearing, the summons must set out, to the extent that is reasonably practicable, the general nature of the matters that Integrity Commissioner intends to question the person on (subclause 83(3)). The Integrity Commissioner will not be required to set out the matters if he or she is satisfied that doing so would be likely to prejudice the investigation into the corruption issue, or any action that could be taken as a result of the investigation into the corruption issue (as examples, disciplinary action, criminal prosecution, or proceedings for a contravention of a civil penalty provision).

Although a summons requiring a person to attend a hearing to answer questions should set out the matters that the Integrity Commissioner intends to question a person on, subclause 83(4) provides that if the matters are listed in the summons, the matters listed will not limit the ability of the Integrity Commissioner to question the person on aspects of any corruption issue (whether or not it is the corruption issue that the hearing relates to).

Clause 103 provides that a person can apply for legal and financial assistance in respect of his or her attendance at a hearing.

Subclause 83(6) provides that a person that is summoned under clause 83 to appear as a witness at a hearing is entitled to be paid allowances for travel and other expenses. The regulations will prescribe the allowances. It is necessary for the allowances to be prescribed in the regulations so that the allowances can be adjusted in a timely manner to respond to changes in market conditions. This is similar to section 8 of the Royal Commissions Act and sections 26 and 27 of the ACC Act.

Failure to comply with a summons issued under clause 83 is an offence under clause 93 of the Bill.

It is also an offence for a person to disclose the existence of a summons, or information about a summons (see clause 92 of the Bill).

A person may not be able to comply with a summons issued under clause 83 because of the operation of subclause 150(2) which prohibits the disclosure of documents or information that are the subject of a certificate issued by the Attorney-General under clause 149 of the Bill. In such cases, the person cannot be held to be criminally responsible for the offence in clause 93 for failing to comply with the summons.

Clause 84: Integrity Commissioner may take evidence outside Australia

If there are arrangements in place between Australia and another country that allow evidence to be taken in that other country for the purposes of a hearing held under Division 2 of Part 9 of the Bill, the Integrity Commissioner may take evidence on oath or by affirmation in that country. Provided that use of the evidence is in accordance with Australia's arrangement with the other country, the Integrity Commissioner can use the evidence for the purposes of performing his or her functions, or exercising his or her powers, under the Bill.

This clause is necessary because many staff members of Commonwealth law enforcement agencies perform operations and duties outside Australia. This clause enables the Integrity Commissioner to obtain evidence from these persons even though they are not located in Australia at the relevant time. This clause is similar to section 7B of the Royal Commissions Act.

Subdivision B—Procedure at Hearing

Clause 85: Who may be represented at a hearing

Those providing evidence at a hearing are entitled to be represented by a legal practitioner. Those not providing evidence at a hearing are also entitled to be represented by a legal practitioner if special circumstances exist and they have consent from the Integrity Commissioner.

Clause 86: Who may be present at a hearing

Subclause 86(1) provides that, for a private hearing, the Integrity Commissioner may determine the people who can be present during all, or part of the hearing. A determination made by the Integrity Commissioner under subclause 86(1) is not a legislative instrument.

In any case however, apart from the discretion conferred on the Integrity Commissioner under subclause 86(10), the Integrity Commissioner must allow all legal practitioners representing a person giving evidence to be present when the evidence is being given.

The Integrity Commissioner can also consent to a legal practitioner representing a person not giving evidence to be present.

If a witness is giving evidence at a hearing and there is another person present who is neither a staff member of ACLEI nor a legal practitioner representing a person at the hearing, the Integrity Commissioner must inform the witness that the person is present and give the witness an opportunity to comment on the person's presence. This is similar to subsections 25A(4), (5), (7), (8) and (14) of the ACC Act.

Staff member of ACLEI is a term defined in clause 11 of the Bill.

For the avoidance of doubt, subclause 86(4) provides that even if a witness makes an adverse comment about the presence of a person at a hearing, the person is still entitled to be there if the Integrity Commissioner has made a determination under subclause 86(1) that he or she can be present at the hearing.

Subclause 86(4) also provides, for the avoidance of doubt, that even if the Integrity Commissioner fails to inform the witness that a person, who is neither a staff member of ACLEI nor a legal practitioner representing a person at the hearing, is present at the hearing, or the Integrity Commissioner does not give the witness the opportunity to comment on the person's presence at the hearing, the person is still entitled to be present at the hearing if the Integrity Commissioner has determined this to be the case under subclause 86(1).

Subclause 86(5) creates a criminal offence. The offence applies if a person is present while evidence is being given in private at a hearing and the person is not authorised to be there. The only time a person can be taken to be authorised to be there is where:

- The person is giving evidence, or
- The person is a legal practitioner representing a person giving evidence,
- The person is a legal practitioner and even though he or she is not representing a person giving evidence, the Integrity Commissioner has consented to him or her being present,
- The Integrity Commissioner has determined under subclause 86(1) that the person can be present.

The offence is punishable by a maximum penalty of 12 months imprisonment.

Subdivision C–Taking Evidence at Hearing

Clause 87: Evidence on oath or by affirmation

The Integrity Commissioner may require a witness at a hearing to take an oath or affirmation. Clause 87 confers power on the Integrity Commissioner to administer an oath or affirmation to a witness.

The consequence of the power of the Integrity Commissioner under subclause 87(1) to compel a witness to take an oath or affirmation is that hearings held by the Integrity Commissioner under the Bill are characterised as 'judicial proceedings' under Part III of the Crimes Act. This means that the offences attaching to judicial proceedings as set out in Part III of the Crimes Act are applicable to hearings conducted under the Bill. For example, offences for giving false testimony, fabricating evidence, intimidation of witnesses, corruption of witnesses, deceiving witnesses, destroying evidence etc are available.

If the Integrity Commissioner is taking evidence from a witness overseas, as he or she is authorised to do under clause 84 of the Bill, the Integrity Commissioner is empowered by subclause 87(2) to administer an oath or affirmation on the witness. If the Integrity Commissioner does administer an oath or affirmation on a witness overseas, subclause 87(2) requires the Integrity Commissioner to ensure that the oath or affirmation is administered in accordance with the arrangement made between

Australia and the other country for the taking of that evidence (this is the same ‘arrangement’ referred to in clause 84 of the Bill) and in accordance with the laws of that other country. Provided that use of the evidence is in accordance with Australia’s arrangement with the other country, clause 84 provides that the Integrity Commissioner can use the evidence for the purposes of performing his or her functions, or exercising his or her powers, under the Bill.

An oath or affirmation administered by the Integrity Commissioner under clause 87 is an oath or affirmation that the evidence the witness will give will be true.

Under subclause 87(4) the Integrity Commissioner has a discretion to allow a person who is attending a hearing who has been sworn or has made an affirmation to give evidence at the hearing by tendering a written statement and verifying it by oath or affirmation.

Failure to take an oath or make an affirmation if requested by the Integrity Commissioner is an offence under clause 93 of the Bill. The offence is punishable by a maximum penalty of two years imprisonment. Clause 96 of the Bill abrogates the privilege against self-incrimination for this offence.

Conferring power on the Integrity Commissioner to compel a witness to take an oath or affirmation ensures the efficacy of evidence given in a hearing.

Clause 88: Examination and cross-examination of witnesses

The Integrity Commissioner can allow for a witness to be examined and cross-examined during a hearing. However the only persons who the Integrity Commissioner can authorise to conduct examination and cross-examination are:

- Counsel assisting the Integrity Commissioner generally,
- Counsel assisting the Integrity Commissioner in the investigation or public inquiry to which the hearing relates,
- Persons summoned, or otherwise authorised under the Bill, to appear before the Integrity Commissioner, and
- Legal practitioners representing a person at the hearing.

This clause provides for a way for evidence of a witness to be adduced and tested during a hearing. It is similar to section 6FA of the Royal Commissions Act and subsections 25A(2) and (6) of the ACC Act.

Clause 89: Giving evidence in private

Certain evidence must be given in private

Subclause 89(1) of the Bill provides that certain evidence can only be given in private. Subclause 89(1) requires evidence to be given in private if the evidence would disclose:

- Legal advice given to a Minister or Commonwealth Government Agency, or
- A communication between another officer of a Commonwealth government agency and another person, if that disclosure is protected by legal professional privilege.

Subclause 89(1) also requires that evidence be given in private if giving the evidence would breach a secrecy provision.

There is an exception to the requirement to give evidence at all if disclosure would breach a taxation secrecy provision or a law enforcement secrecy provision. If answering the question or disclosing information or a document or thing would breach a taxation secrecy provision or a law enforcement secrecy provision, the person will not be required to answer the question or disclose the information or document or thing. This also means that the person could not be held criminally responsible under clause 78 for failing to comply with a request made under clause 75 or 76. 'Taxation secrecy provision' and 'law enforcement secrecy provision' are terms defined in clause 5 of the Bill.

If a person answers a question or provides documents or information or things in response to a request made of him or her under clause 75 or 76, and that answer or disclosure constitutes a breach of a secrecy provision (other than a taxation secrecy provision or a law enforcement secrecy provision), subclause 80(7) provides that the person cannot be liable to a penalty for an offence of breaching the secrecy provision.

Lastly, if the evidence involves the disclosure of information that is the subject of a certificate issued by the Attorney-General under clause 149, the evidence may also need to be given in private in order to comply with the terms of the certificate.

Person may request that certain evidence be given in private

Under subclause 89(2), a witness who is giving evidence at a public hearing can request that the evidence be given in private if the evidence relates to the profits or financial position of a person and the taking of the evidence in public would be unfairly prejudicial to the interests of that person.

Under subclause 89(3) the Integrity Commissioner has the discretion to allow the evidence to be given in private if he or she considers it appropriate.

Clause 90: Directions in relation to confidentiality

Prohibition of limitation on publication

Subclause 90(1) confers power on the Integrity Commissioner to issue a direction limiting or preventing the publication of evidence, documents and descriptions of things produced to the Integrity Commissioner during a hearing. Under subclause 90(1) the Integrity Commissioner can also prevent or limit the publication of information that could enable the identification of a person who has given evidence at a hearing, or the fact that the person has given, or may be about to give, evidence at the hearing.

The Integrity Commissioner has a discretion whether to issue a direction under subclause 90(1) unless the hearing is being held in private and the Integrity Commissioner is satisfied that failure to give a direction might prejudice a person's safety or reputation, or the fair trial of a person who has been or may be charged with an offence. In such cases, subclause 90(2) removes the Integrity Commissioner's

discretion and requires him or her to issue a direction under subclause 90(1). The Integrity Commissioner's discretion as to whether to issue a direction under subclause 90(1) is also removed so that the Integrity Commissioner must issue a direction where the evidence, document, information or thing might lead to the publication of information that is the subject of a certificate issued by the Attorney-General under clause 149 of the Bill.

Failure to comply with a direction issued by the Integrity Commissioner under subclause 90(1) is an offence under subclause 90(6), punishable by a maximum penalty of 12 months imprisonment.

Under subclause 90(3) the Integrity Commissioner has a limited ability to vary or revoke a direction given under subclause 90(1). The Integrity Commissioner cannot vary or revoke a direction if the Integrity Commissioner is satisfied that doing so might prejudice a person's safety or reputation or the fair trial of a person who has been or may be charged with an offence, or could lead to the publication of information that is the subject of a certificate issued by the Attorney-General under clause 149 of the Bill.

Any variation to, or revocation of, a subclause 90(1) direction must be given in writing.

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

Where a person has been charged with an offence, before a federal court or a court of a State or Territory, and the Court considers it to be desirable in the interests of justice that particular evidence that is the subject of a direction given by the Integrity Commissioner under subclause 90(1) be made available to the person or a legal practitioner representing the person, the Court is empowered to give the Integrity Commissioner a certificate to that effect. If the Integrity Commissioner is given a certificate by a court under subclause 90(4), he or she must make the evidence available to the Court.

If the Integrity Commissioner provides evidence to a Court pursuant to a certificate issued by the Court under subclause 90(4), the Court may, after examining the evidence, make the evidence available to the person charged with the offence concerned, or to a legal practitioner representing the person, provided that the court is satisfied that the interests of justice so require (subclause 90(5)). The Court makes the final determination whether the evidence should be passed to the defendant, or the defendant's legal practitioner.

Offence

Subclause 90(6) makes it an offence for a person to contravene a direction given to him or her by the Integrity Commissioner under subclause 90(1).

The offence is punishable by a maximum penalty of 12 months imprisonment.

Subdivision D–Prohibitions against disclosing information about a summons and offences

Clause 91: Disclosure of summons may be prohibited

If a summons has been served on a person under clause 83 requiring the person to attend a private hearing, under subclause 91(2) the Integrity Commissioner has a general discretion (limited by subclauses 91(3)-(5)) to include a notation in the summons preventing or limiting disclosure of information about the summons or any official matter connected with the summons.

‘Official matter’ is defined in clause 5 of the Bill.

Under subclause 91(3) the Integrity Commissioner will be required to include a notation (no discretion) if the Integrity Commissioner is satisfied that failure to include a notation would reasonably be expected to prejudice the safety, reputation or fair trial of a person, or an investigation or action taken as a result of an investigation, whether that investigation relates to the hearing or another corruption issue.

If the Integrity Commissioner has a discretion whether to include a notation in a summons (that is, subclause 91(3) does not apply), subclause 91(4) provides that the Integrity Commissioner can only include the notation if satisfied that failure to do so might prejudice the safety, reputation or fair trial of a person, or an investigation or action taken as a result of an investigation, whether that investigation relates to the hearing or another corruption issue, or would otherwise be contrary to the public interest. If none of these factors are present, subclause 91(5) provides that the Integrity Commissioner cannot include a notation in a summons.

Written statement to accompany notation

If a notation is included in a summons, subclause 91(6) requires that the summons must be accompanied by a written statement that sets out the rights and obligations conferred and imposed by clause 92 of the Bill.

Cancellation of a notation

Subclause 91(7) provides that a notation to a summons is cancelled if the Integrity Commissioner concludes the subject investigation and any criminal proceedings resulting from the investigation have commenced.

If a notation is cancelled, subclause 91(8) requires the Integrity Commissioner to advise the person that was served the summons of the cancellation in writing.

This Clause is designed to prevent a disclosure which could lead to the destruction, or alteration of evidence, intimidation of witnesses etc. Disclosing the mere existence of an investigation may prompt actions of those under investigation, detrimentally affecting the Integrity Commissioner’s outcome. However, a specified circumstance allowing disclosure is likely to be in order to obtain legal advice.

Relationship of notation with Privacy Act

Subclause 91(9) provides that where a notation has been made on a summons, credit reporting agencies are prohibited from making a note about any disclosure of personal information they make about an individual unless the notation is cancelled. This is relevant because credit reporting agencies would otherwise be required to make a note about that disclosure in the individual's credit information file (subsection 18(5) of the Privacy Act).

Clause 92: Offences of disclosure

Offence

Subclause 92(1) creates a criminal offence where a person who has been served with a summons (under clause 83 of the Bill) that includes a notation (included on the summons under clause 91 of the Bill) and the person discloses the existence of, or any information about, the summons or any official matter connected with the summons. The elements of the offence will only be satisfied if the prosecution can prove that the notation was not cancelled by subclause 91(7) and five years has not passed since the summons was served on the person.

Official matter is defined in clause 5 of the Bill.

The offence is punishable by a maximum penalty of 12 months imprisonment.

Defence

Subclause 92(2) provides a defence to the offence in subclause 92(1) where the disclosure was made:

- In circumstances permitted by the terms of the notation,
- To a legal practitioner for the purpose of obtaining legal advice or representation in relation to the summons,
- To a legal aid officer for the purpose of obtaining assistance in relation to the summons,
- Where the person is a body corporate—to an officer or agent of the body corporate for the purpose of ensuring compliance with the summons, or
- Where the person is a legal practitioner—for the purpose of obtaining the agreement of another person to allow the legal practitioner to answer questions or produce documents or things at a hearing.

If a defendant wishes to rely on the defence in subclause 92(2), he or she will bear an evidentiary burden in relation to the matters set out in subclause 92(2). This is because of the operation of section 13.3 of the Criminal Code. It is appropriate for the defendant to bear the burden of proving these matters because they are matters that, by their nature, are within the knowledge of the defendant.

Offence

Subclause 92(3) creates a criminal offence where a person who has been served with a summons (under clause 83 of the Bill) that includes a notation (included on the summons under clause 91 of the Bill) and the person discloses the existence of, or any

information about, the summons or any official matter connected with the summons. The elements of the offence will only be satisfied if the prosecution can prove that the notation was not cancelled by subclause 91(7) and five years has not passed since the summons was served on the person.

Official matter is defined in clause 5 of the Bill.

The offence is punishable by a maximum penalty of 12 months imprisonment.

Defence

Subclause 92(4) provides a defence to the offence in subclause 92(3) where the disclosure was made:

- if the person is an officer or agent of a body corporate referred to in paragraph (2)(d):
 - to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons,
 - to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the summons, or
 - to a legal aid officer for the purpose of obtaining assistance under section 103 in relation to the summons, or
- if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or obtaining assistance in relation to the summons, or
- if the person is a legal aid officer—for the purpose of obtaining legal advice or representation in relation to the summons.

If a defendant wishes to rely on the defence in subclause 92(4), he or she will bear an evidentiary burden in relation to the matters set out in subclause 92(4). This is because of the operation of section 13.3 of the Criminal Code. It is appropriate for the defendant to bear the burden of proving these matters because they are matters that, by their nature, are within the knowledge of the defendant.

Offence

Subclause 92(5) creates a criminal offence where a person who has been served with a summons (under clause 83 of the Bill) that includes a notation (included on the summons under clause 91 of the Bill) and the person makes a record of, or discloses the existence of, or any information about, the summons or any official matter connected with the summons. The elements of the offence will only be satisfied if the prosecution can prove that the notation was not cancelled by subclause 91(7) and five years has not passed since the summons was served on the person.

The restrictions of disclosure are imposed to ensure the quality of investigations and to protect the nature of any proceedings. The offences are aimed at preventing investigative work from being compromised by the disclosure of information that could infer the identity of a witness or the existence of an investigation.

Subclause 92(6) provides that a reference in clause 92 to disclosing the existence of something extends to the disclosure of information from which a person could reasonably be expected to infer its existence.

Subdivision E—Offences in relation to hearings

Clause 93: Offences

This Clause outlines various offences for failing to comply with a summons served by the Integrity Commissioner.

Offence for failure to attend hearing

Subclause 93(1) makes it is an offence for a person to fail to attend or report from day to day at a hearing if required to do so under a summons.

There is an exception to this offence where the defendant can prove that the Integrity Commissioner excused him or her from attending the hearing. The defendant will bear an evidentiary burden to prove that he or she was excused if he or she wishes to rely on this exception. The defendant bears the evidentiary burden because of the operation of section 13.3 of the Criminal Code.

The offence is punishable by a maximum penalty of 12 months imprisonment.

Failure to swear an oath or make an affirmation

Subclause 93(2) makes it an offence for a person who is served with a summons to attend a hearing to fail to be sworn or make an affirmation at the hearing.

The offence is punishable by a maximum penalty of 2 years imprisonment.

Under clause 80, the privilege against self-incrimination is abrogated, but certain use immunities apply.

Failure to answer questions

Subclause 93(2) also makes it an offence for a person who is served with a summons to attend a hearing to fail to answer questions that the Integrity Commissioner requires the person to answer at the hearing.

This offence is subject to the operation of clause 95 and 150 of the Bill.

This offence is punishable by a maximum penalty of 2 years imprisonment.

Under clause 80, the privilege against self-incrimination is abrogated, but certain use immunities apply.

Failure to produce a document or thing

Subclause 93(4) makes it an offence for a person to fail to produce a document or thing the person was required to produce under a summons served on them by the Integrity Commissioner.

This offence is subject to the operation of clause 95 and 150 of the Bill.

This offence is punishable by a maximum penalty of 2 years imprisonment.

Under clause 80, the privilege against self-incrimination is abrogated, but certain use immunities apply.

Clause 94: Contempt

Clause 94 creates three types of offences that support the Integrity Commissioner's power to control the proceedings of hearings and address improper behaviour. The offences will preserve the integrity and due conduct of proceedings.

Subclause 94(1) makes it an offence for a person to insult, disturb or use insulting language toward another person where that other person is the Integrity Commissioner. The offence will only be made out if the person can prove that the person knew that the other person was the Integrity Commissioner, and was holding a hearing in the performance of his or her functions, or the exercise of his or her powers, as the Integrity Commissioner. This offence is punishable by a maximum penalty of 6 months imprisonment.

Subclause 94(2) makes it an offence for a person to create a disturbance or take part in creating or continuing a disturbance in or near a place where a hearing is being held for the purpose of investigating a corruption issue or conducting a public inquiry. The offence will only be made out if the prosecution can prove that the person knew that the place is a place where a hearing is being held for the purpose of investigating a corruption issue or conducting a public inquiry. This offence is punishable by a maximum penalty of 6 months imprisonment.

Subclause 94(3) makes it an offence for a person to interrupt a hearing that is being held for the purpose of investigating a corruption issue or conducting a public inquiry. It is also an offence under subclause 94(3) for a person to do an act or thing that, if the hearing were being held in a court of record, would constitute contempt of that Court. This offence is punishable by a maximum penalty of 6 months imprisonment.

Clause 95: Legal Practitioner not required to disclose privileged communications

If the Integrity Commissioner summons a legal practitioner under clause 83 to attend a hearing and asks a legal practitioner to answer questions, provide information or produce a document or thing to the Integrity Commissioner at a hearing, the legal practitioner can refuse to answer the question or provide the documents or information or thing requested if doing so would disclose privileged communications made by, or to, the legal practitioner in his or her capacity as a legal practitioner.

This means that where disclosure by a legal practitioner would disclose privileged communications, the legal practitioner cannot be held criminally responsible for failing to answer the question or provide the documents or information or thing under a summons.

The exception to the requirement to answer a question or provide documents or information or things provided in clause 95 (that is, where production of information,

documents or things would disclose privileged communications) will not be available to the legal practitioner if the person to whom or by whom the privileged communication was made agrees to the legal practitioner providing the information or document or thing (subclause 95(3)).

Where the exception in clause 95 is available (that is, where the privilege has not been waived by the person to whom or by whom the communication was made) and the legal practitioner refuses to give information or produce documents or things on that basis, that is, on grounds that doing so would disclose privileged communications, the Integrity Commissioner may request the legal practitioner to provide the name and address of the person by, or to, whom the communication was made (subclause 95(4)). A legal practitioner must comply with such a request from the Integrity Commissioner.

Clause 95 does not affect the law relating to legal professional privilege.

Clause 96: Self-incrimination etc.

The privilege against self-incrimination is abrogated in clause 96 of the Bill. This means that a person, summoned under clause 83 to answer questions, provide information, documents or things at a hearing cannot refuse to produce the document, information or things on grounds that doing so could incriminate him or her.

The privilege is not completely abrogated; rather, a use immunity is provided (see subclauses 96(2) and (4)). However the use immunity is not available in five specified circumstances (see subclause 96(4)).

The use immunity operates where a person, prior to producing information or documents or things pursuant to a summons, claims that doing so may tend to incriminate or expose them to a penalty, the information or documents or things will not be admissible as evidence against the person in criminal proceedings or any other proceedings for the imposition or recovery of a penalty. There are five circumstances where this use immunity will not be available.

The use immunity will not be available, meaning that the information or documents or things will be able to be used in evidence, in:

- (i) Proceedings for an offence against clause 93 of the Bill – failure to comply with a summons issued by the Integrity Commissioner under clause 83 of the Bill,
- (ii) Confiscation proceedings – this term is defined in clause 5 of the Bill to mean proceedings under the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002*, or a corresponding law within the meaning of either of those Acts, but does not include a criminal prosecution for an offence under either of those Acts or a corresponding law,
- (iii) Proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* – being offences for providing false or misleading statements or documents,
- (iv) Proceedings for an offence against section 149.1 of the *Criminal Code* – being an offence for obstructing a Commonwealth public official, or

- (v) Disciplinary proceedings against the person if the person is a staff member of a law enforcement agency – ‘disciplinary proceedings’ is a term defined in clause 5 of the Bill and extends to proceedings taken under a law of the Commonwealth, a State or a Territory. This exclusion will only apply if the disciplinary proceedings are against a staff member of a law enforcement agency. That is, the use immunity will not be abrogated in respect of disciplinary proceedings that could be taken in respect of another profession (for example, the use immunity will exist for information, documents or things produced by a doctor so that they could not be used in disciplinary proceedings that might be taken by a medical professional association against that doctor, for example, for medical negligence).

Immunity on public interest grounds

A person is not excused from answering a question or providing information or documents or things when summoned under clause 83, on the grounds that answering the question, or producing the information or documents or things would disclose:

- Legal advice given to a Minister or Commonwealth Government Agency, or
- A communication between another officer of a Commonwealth government agency and another person, if that disclosure is protected by legal professional privilege.

Commonwealth government agency is a term defined in clause 5 of the Bill.

Similarly, a person is not excused from answering a question or providing information or documents or things when summoned under clause 83, on the grounds that answering the question, or producing the information or documents or things would breach a secrecy provision.

There is an exception however if disclosure would breach a taxation secrecy provision or a law enforcement secrecy provision. This means that if answering the question or disclosing the information or document or thing would breach a taxation secrecy provision or a law enforcement secrecy provision, the person will not be required to answer the question or disclose the information or document or thing and hence could not be held criminally responsible under clause 93 for failing to comply with a summons issued under clause 83.

‘Taxation secrecy provision’ and ‘law enforcement secrecy provision’ are terms defined in clause 5 of the Bill.

If a person answers a question or provides documents or information or things in response to a summons served on him or her under clause 83 of the Bill, and that answer or disclosure constitutes a breach of a secrecy provision (other than a taxation secrecy provision or a law enforcement secrecy provision), subclause 96(7) provides that the person cannot be liable to a penalty for an offence of breaching the secrecy provision.

Clause 96 also provides that it is no excuse for a person to refuse or fail to comply with a summons issued under clause 83 to answer a question or produce information

or documents or things on grounds that doing so would be contrary to the public interest.

Even though clause 96 provides that legal professional privilege is no excuse for refusing or failing to comply with a summons issued under clause 83, this does not impact on any other claim of legal professional privilege that another person may wish to make in relation to the information or document or thing.

It is necessary to abrogate the privilege against self-incrimination to ensure that the Integrity Commissioner can be access to information, documents and things relevant to an investigation into a corruption issue. The inclusion of a use immunity in all but five limited cases provides a safeguard to persons that are required to answer questions or produce documents or information or things under a summons cannot be used against him or her in criminal proceedings or proceedings for the imposition or recovery of a penalty (this includes civil penalty proceedings).

Corruption issue is a term defined in clause 7 of the Bill.

It is necessary to not provide a use immunity for proceedings for an offence against clause 93 of the Bill (failure to comply with a summons), confiscation proceedings (defined in clause 5 of the Bill), proceedings for an offence of providing false or misleading information (sections 137.1 and 137.2 of the *Criminal Code*), proceedings for an offence of obstructing a Commonwealth public official (section 149.1 of the *Criminal Code*) or disciplinary proceedings because the nature of these proceedings is that they rely on evidence of the contravention.

Subdivision F—Court Orders for Delivery of Witness' Passport and Witness' Arrest

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

Clause 97 gives the Integrity Commissioner standing to apply to a Judge of the Federal Court for an order that a person deliver his or her passport to the Integrity Commissioner. The Integrity Commissioner can only apply to the Judge if:

- (i) the person has been served with a summons under clause 83 of the Bill to attend a hearing into a corruption investigation or public inquiry, or the person has already attended a hearing in relation to a corruption investigation or public inquiry to give evidence or produce documents or things, and
- (ii) there are reasonable ground for believing that the person may be able to give evidence that is relevant to the investigation or public inquiry, and
- (iii) there are reasonable grounds for suspecting that the person has, in his or her possession, custody or control, a passport issued to him or her, and
- (iv) there are reasonable grounds for suspecting that the person intends to leave Australia.

In applying for an order under subclause 97(1), subclause 97(2) requires that the Integrity Commissioner give the Judge the information on oath or by affirmation.

This Clause is aimed at preserving the evidence of witnesses by assuring their attendance at a hearing to provide information, documents, things or testimony where there is a reasonable suspicion that the witness may leave Australia before providing that evidence.

Clause 98: Court Orders

This Clause allows the Federal Court make an independent decision about whether a person's passport should be submitted to the Integrity Commissioner.

Court order for a witness to appear before the court

If a Judge of the Federal Court, while sitting in Chambers, is satisfied on the evidence that the requirements set out in subclause 97(1) are met, that is, the Judge is satisfied that:

- (i) a person has been served with a summons under clause 83 of the Bill to attend a hearing into a corruption investigation or public inquiry, or the person has already attended a hearing in relation to a corruption investigation or public inquiry to give evidence or produce documents or things, and
- (ii) there are reasonable ground for believing that the person may be able to give evidence that is relevant to the investigation or public inquiry, and
- (iii) there are reasonable grounds for suspecting that the person has, in his or her possession, custody or control, a passport issued to him or her, and
- (iv) there are reasonable grounds for suspecting that the person intends to leave Australia,

subclause 98(1) confers power on the Judge to make an order that requires the person to appear before the Federal Court on a specified date, and at a specified time and place, to show cause for why he or she should not be ordered to deliver his or her passport to the Integrity Commissioner.

Offence

Subclause 98(2) makes it an offence for a person to leave Australia if he or she has been served with a copy of an order made by a Judge of the Federal Court under subclause 98(1) requiring him or her to appear before the Federal Court on a specified date, and at a specified time and place, to show cause for why he or she should not be ordered to deliver his or her passport to the Integrity Commissioner.

Subclause 98(3) provides an exception to the offence in subclause 98(2) where the defendant can prove that he or she appeared before the Federal Court as required by the order. A defendant bears an evidential burden if he or she wishes to rely on this exception in subclause 98(3). The burden shifts to the defendant because of the operation of section 13.3 of the Criminal Code. It is appropriate that the defendant bear the evidential burden for this matter as it is a matter that is, by its nature, peculiarly within the knowledge of the defendant.

Subclause 98(3) creates a second exception to the offence in subclause 98(2) where the court makes an order under subclause 98(4)(a) that the defendant complied with the terms of the order made under subclause 98(1) and any passport delivered to the Integrity Commissioner was returned to the person. A defendant bears an evidential burden if he or she wishes to rely on this exception in subclause 98(3). The burden shifts to the defendant because of the operation of section 13.3 of the Criminal Code. It is appropriate that the defendant bear the evidential burden for this matter as it is a matter that is, by its nature, peculiarly within the knowledge of the defendant.

The offence in subclause 98(2) is punishable by a maximum penalty of 2 years imprisonment.

Court order that a witness deliver passport to the Integrity Commissioner

Subclause 98(4) grants the Federal Court the authority to make an order, if it thinks fit, requiring a person to deliver a passport issued to him or her, or in his or her possession, custody or control, to the Integrity Commissioner. The Court may also order that the Integrity Commissioner can retain the passport for a period not exceeding one month from the date the order is made. This period can however be extended under subclause 98(5).

The Federal Court can only make an order under subclause 98(4) if the person has appeared before the court pursuant to an order made by a Judge of the Federal Court under subclause 98(1).

Extension of period that the Integrity Commissioner may retain passport

Under subclause 98(5) the Integrity Commissioner can apply to the Federal Court to extend the period for which the Integrity Commissioner can retain a passport delivered to the Integrity Commissioner pursuant to an order made under subclause 98(4).

Under subclause 98(5) the Federal Court may, on application by the Integrity Commissioner, extend the period for which the Integrity Commissioner can retain a passport delivered to the Integrity Commissioner pursuant to an order made under subclause 98(4), for a further period or periods not exceeding one month in each case. However, the total period for which the Integrity Commissioner can retain a passport delivered to him or her pursuant to an order made under subclause 98(4) is 3 months. That is, the Federal Court cannot extend the period for which the Integrity Commissioner can retain the passport beyond a cumulative total period of 3 months.

Revocation of court order

Subclause 98(6) provides that if the Federal Court makes an order authorising the Integrity Commissioner to retain a passport issued to a person, the person may apply to the Federal Court for the order to be revoked.

Subclause 98(7) provides that if the Federal Court revokes the order, the Integrity Commissioner must return the passport to the person immediately.

Jurisdiction of the Federal Court

Subclause 98(8) provides the Federal Court with jurisdiction in respect of matters that arise out of the operation of clause 98 of the Bill.

Definition

Subclause 98(9) defines 'Australia', for the purposes of the operation of clause 98 of the Bill, to include its external territories.

Clause 99: Applying for a warrant to arrest witness

Subclause 99(1) confers power on an authorised officer to apply to a Judge of the Federal Court of Australia, or of the Supreme Court of a State or Territory, for a warrant to arrest a person. An authorised officer can only make an application to a Court under subclause 99(1) if he or she has reasonable grounds to believe that the person falls within one of the three categories that follow:

- (i) The person has been ordered to deliver his or her passport to the Integrity Commissioner (whether or not the person has complied with the order) and is likely to leave Australia for the purpose of avoiding giving evidence at a hearing before the Integrity Commissioner, or
- (ii) The person has been served with a summons issued under clause 83 and has either absconded or is likely to abscond, or is otherwise attempting, or likely to attempt, to evade service of the summons, or
- (iii) The person has committed an offence under subclause 93(1) or is likely to do so.

‘Authorised officer’ is a term defined in clause 5 of the Bill.

In making an application under subclause 99(1), subclause 99(2) requires that the authorised officer give the Judge the information required in subclause 99(1) either on oath, or by affirmation.

Clause 100: Warrant for arrest

Issue of warrant

If a Judge, while sitting in Chambers, is satisfied on the evidence that there are reasonable grounds for believing that the matters set out in subclause 99(1)(a) or 99(1)(b) or 99(1)(c) are met, that is, either:

- (i) The person has been ordered to deliver his or her passport to the Integrity Commissioner (whether or not the person has complied with the order) and is likely to leave Australia for the purpose of avoiding giving evidence at a hearing before the Integrity Commissioner (subclause 99(1)(a)), or
- (ii) The person has been served with a summons issued under clause 83 and has either absconded or is likely to abscond, or is otherwise attempting, or likely to attempt, to evade service of the summons (subclause 99(1)(b)), or
- (iii) The person has committed an offence under subclause 93(1) or is likely to do so (subclause 99(1)(c)),

subclause 100(1) confers power on the Judge to issue a warrant authorising the authorised officer to arrest the person.

‘Authorised officer’ is a term defined in clause 5 of the Bill.

The test as to whether there are reasonable grounds for believing that the matters set out in subclause 99(1)(a) or 99(1)(b) or 99(1)(c) are met is an objective test.

Execution of warrant

Subclause 100(2) provides that, for the purpose of executing a warrant issued under subclause 100(1), if the authorised officer executing the warrant, or an assisting officer, believes on reasonable grounds that the person to whom the warrant relates is on certain premises, the authorised officer or assisting officer is authorised to break into, and enter, those premises.

The test in subclause 100(2) as to whether there are reasonable grounds for believing that the person to whom the warrant relates is on the premises is an objective test.

However, if the premises are a dwelling house, subclause 100(3) limits the ability of the authorised officer or assisting officer to enter the premises. Subclause 100(3) prohibits the authorised officer executing the warrant, or assisting officer, from entering a dwelling house at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the authorised officer or assisting officer believes on reasonable grounds that it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time.

‘Authorised officer’ and ‘assisting officer’ are terms defined in clause 5 of the Bill.

The test in subclause 100(3) as to whether there are reasonable grounds for believing that it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time is an objective test.

In arresting a person under a warrant issued under subclause 100(1), subclause 100(4) prohibits the authorised officer executing the warrant, or assisting officer, from using more force, or subjecting the person to greater indignity, than is necessary and reasonable to make the arrest or to prevent the escape of the person after the arrest.

Under subclause 100(5) a warrant issued under subclause 100(1) can be executed even if the authorised officer does not have a copy of the warrant in his or her possession at the time that the warrant is executed.

Subclause 100(6) requires the authorised officer executing a warrant issued under subclause 100(1), or an assisting officer who arrests the person to whom the warrant relates, to inform the person, at the time of the arrest, of the reason for which he or she is being arrested. For the purposes of informing the person under subclause 100(6), subclause 100(7) provides that it is sufficient if the person is informed of the substance of the reason. That is, it is not necessary that this be done in language of a precise or technical nature.

There is an exception to the requirement on an authorised officer or assisting officer under subclause 100(6) to inform the person, at the time of the arrest, of the reason for which he or she is being arrested. Subclause 100(8) provides that the requirement on an authorised officer or assisting officer under subclause 100(6) to inform the person, at the time of the arrest, of the reason for which he or she is being arrested does not apply if:

- the person should, in the circumstances, know the substance of the reason for which he or she is being arrested, or

- the person's actions make it impracticable for the authorised officer executing the warrant (or an assisting officer making the arrest) to inform the person of the reason for which he or she is being arrested.

Subclause 100(9) provides that nothing in clause 100 prevents the arrest of a person in accordance with any other law (such as the Crimes Act).

Definitions

Subclause 100(10) sets out particular definitions for the terms 'dwelling house' and 'Judge' for the purposes of the operation of clause 100.

Subclause 100(10) provides that, for the purposes of clause 100, 'dwelling house' includes a conveyance, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

Subclause 100(10) provides also that, for the purposes of clause 100, 'Judge' means a Judge of the Federal Court of Australia, or a Judge of the Supreme Court of a State or Territory.

Clause 101: Powers of Judge in relation to person arrested

Subclause 101(1) provides that a person who is arrested under a warrant issued under clause 100 must be brought before a Judge as soon as practicable after the arrest.

Following the person being brought before the Judge in accordance with subclause 101(1), subclause 101(2) confers power on the Judge to:

- Grant the person bail on such security as the Judge thinks fit and on such conditions as the Judge thinks are necessary to ensure that the person appears as a witness at a hearing before the Integrity Commissioner, or
- Order that the person continue to be detained for the purpose of ensuring that the person appears as a witness at a hearing before the Integrity Commissioner, or
- Order that the person be released.

Where a person is detained under subclause 101(2)(b), subclause 101(3) requires that the person must be brought before a Judge within the time fixed by the Judge on the person's last appearance before a Judge, or if a Judge has not fixed a time, within 14 days after the person was last brought before a Judge.

Subclause 101(4) provides a particular definition of 'Judge' for the purposes of the operation of clause 101. Subclause 101(4) provides that, for the purposes of clause 101, 'Judge' means a Judge of the Federal Court of Australia, or a Judge of the Supreme Court of a State or Territory.

Subdivision G–Miscellaneous

Clause 102: Integrity Commissioner may retain documents or things

Clause 102 allows the Integrity Commissioner to retain documents or things produced to him or her pursuant to a summons issued under clause 83. Under clause 102, the Integrity Commissioner will be able to:

- Take possession of a document or thing,
- Make copies of a document or thing,
- Take extracts from a document, and
- Retain possession of a document or thing for as long as necessary for the purposes of the investigation or public inquiry for which the document or thing was requested.

Documents or things obtained pursuant to a summons issued under clause 83 will not be able to be retained indefinitely. Rather, the period of time that the Integrity Commissioner can retain documents or things under clause 102 is limited to the period for which those documents or things are necessary for the purposes of the investigation or public inquiry for which they were requested.

At all times while the Integrity Commissioner retains a document or thing obtained pursuant to a summons issued under clause 83, the Integrity Commissioner must allow persons who would otherwise be entitled to inspect or view the document or thing to inspect or view the document or thing at the times that the person would ordinarily be able to do so (subclause 102(2)). Providing a power of inspection means that the person is not completely deprived of the document or thing.

Clause 102 is necessary to enable the Integrity Commissioner to access documents and information relevant to an investigation into a corruption issue. It also preserves the chain of evidence, for example, should an investigation eventually lead to action being taken by prosecutorial authorities or regulators. This clause is similar to sections 2 and 6F of the Royal Commissions Act, section 18 of the Inspector-General of Intelligence and Security Act, sections 28 and 29 of the ACC Act, sections 9 and 13 of the Ombudsman Act and sections 18 and 19 of the Inspector-General of Taxation Act.

Clause 103: Person may apply for legal and financial assistance

Under subclause 103(1), a person who is summoned under clause 83 to attend a hearing may apply to the Attorney-General for assistance in respect of his or her attendance at the hearing, or his or her representation at the hearing by a legal practitioner.

A person summoned to appear as a witness at a hearing is also entitled to be paid allowances for travelling and other expenses. These allowances are to be prescribed by regulations so that they reflect current market conditions (see subclause 83(5)).

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

Under subclause 103(2), a person who is not giving evidence at a hearing before the Integrity Commissioner; and is being represented at the hearing by a legal practitioner with the consent of the Integrity Commissioner, may apply to the Attorney-General for assistance in respect of that representation.

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

Under subclause 103(3), the Attorney-General can authorise the Commonwealth to provide a person who has applied for assistance under subclause 103(1) or (2) with financial or legal assistance in respect of the person's attendance at the hearing or the person's representation at the hearing by a legal practitioner, if the Attorney-General is satisfied that it would involve substantial hardship to the person to refuse the application or the circumstances of the case are of such a special nature that the application should be granted.

Subclause 103(4) provides that Legal or financial assistance may be given unconditionally or subject to such conditions as the Attorney-General determines.

Subclause 103(5) provides that an instrument that determines the conditions on which legal or financial assistance may be given is not a legislative instrument.

Clause 104: Protection of Integrity Commissioner etc.

Under clause 104, the Integrity Commissioner and any Assistant Integrity Commissioner have the same protection and immunity as a Justice of the High Court whilst performing their duties, obligations and exercising their powers. A legal practitioner assisting the Integrity Commissioner or representing a person and witnesses before the Integrity Commissioner have the same protection as the respective roles appearing in the High Court.

A witness granted the same protections as a High Court witness, also assumes the same liabilities (for example, in relation to perjury and contempt). The protections to witnesses are supported by general offences such as offences for threatening a witness, intimidating a witness or inflicting injury or violence upon a witness in Part III of the Crimes Act.

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

Clause 105: Power to enter places occupied by law enforcement agencies

Under clause 105 the Integrity Commissioner and authorised officers are granted certain powers to enter places occupied by law enforcement agencies.

Under subclause 105(1), the Integrity Commissioner or an authorised officer may:

- (a) enter any place occupied by a law enforcement agency at any reasonable time of the day; and
- (b) carry on the investigation of the corruption issue at that place; and

- (c) inspect any documents relevant to the investigation that are kept at that place; and
- (d) make copies of, or take extracts from, any documents so inspected; and
- (e) for the purpose of making a copy of, or taking an extract from, a document, remove the document from that place; and
- (f) seize things found at that place if the Integrity Commissioner (or the authorised officer) believes on reasonable grounds that:
 - (i) the thing is relevant to an indictable offence; and
 - (ii) seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an indictable offence.

‘Authorised officer’ is a term defined in clause 5 of the Bill.

Under subclause 105(2), while the Integrity Commissioner (or authorised officer) retains a document or thing, he or she must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

Subclause 105(3) provides that subclause 105(1) does not authorise a person to enter, or carry on an investigation at:

- (a) a place referred to in paragraph 80(c) of the *Crimes Act 1914*; or
- (b) a place that is a prohibited place for the purposes of the *Defence (Special Undertakings) Act 1952* under section 7 of that Act; or
- (c) an area of land or water, or an area of land and water, that is declared under section 14 of the *Defence (Special Undertakings) Act 1952* to be a restricted area for the purposes of that Act;
- (d) unless:
- (e) the Minister administering that Act (or another Minister acting for and on behalf of that Minister) has approved the person entering the place or area; and
- (f) the person complies with any conditions imposed by the Minister giving the approval in relation to:
 - (i) his or her entering that place or area; and
 - (ii) the manner in which his or her investigation is to be conducted at that place or area.

Subclause 105(4) confers power on the Attorney-General if he or she is satisfied that conducting an investigation at a place might prejudice the security or defence of the Commonwealth, to, by written notice to the Integrity Commissioner, declare the place to be a place to which this subsection applies.

Subclause 105(5) provides that while a declaration made under subclause 105(4) is in force, subclause 105(1) does not authorise a person to do anything at the place unless:

- (a) a Minister specified in the declaration (or another Minister acting for and on behalf of that Minister) has approved the person entering the place; and

- (b) the person complies with any conditions imposed by the Minister giving the approval in relation to:
 - (i) his or her entering that place; and
 - (ii) the manner in which his or her investigation is to be conducted at that place.

Subclause 105(6) provides that a declaration made by the Attorney-General under clause 105 is not a legislative instrument.

Clause 106: Receipts of things seized under warrant

Subclause 106 requires that if a thing is seized, or removed from a place, under clause 105, the Integrity Commissioner (or an authorised officer) must provide a receipt for the thing. Subclause 106(2) further provides that if 2 or more things are seized or moved, they may be covered by the one receipt.

Division 4–Search Warrants

Subdivision A–Preliminary

Clause 107: Application to things under the control of a person

This Clause prescribes that the persons subject to search warrants under the Division will be the “possessor”- a person who has the control of a thing in any place, even if someone else has actual possession or custody of the thing.

Subdivision B–Applying for a Search Warrant

Clause 108: Authorised officer may apply for a search warrant

Clause 108 sets out the process for applications for warrants to search premises and persons. The clause makes a distinction between applications for an investigation warrant and applications for an offence warrants.

The terms “investigation warrant” and “offence warrant” are defined in clause 5. An investigation warrant is broader reaching than an offence warrant. An investigation warrant will be sought where there is suspicion of evidential material relevant to an investigation of a corruption issue or public inquiry. Along similar lines to section 4 of the *Royal Commissions Act 1902*, subparagraph 108(1)(b) provides that an investigation warrant to search premises will only be available where the authorised officer has reasonable grounds for believing that if a person was served with a summons to produce the evidential material it would be concealed, mutilated, lost or destroyed.

An offence warrant will be sought in more definitive circumstances where there is suspicion of evidential material relevant to a particular offence against the law of a Commonwealth.

The term “authorised officer” is defined in clause 5 and will be either the Integrity Commissioner or a person authorised pursuant to clause 140. The clause anticipates that an authorised officer might require assistance from an “assisting officer” which

term is also defined in clause 5. An assisting officer does not have to be an authorised officer but might be required because of special skills, for example a locksmith or a person qualified in the operation of electronic equipment (see, for example, clause 123). Subclause 117(3) provides that a person who is not an Authorised Officer must not take part in searching or arresting any person.

An Authorised Officer may apply for a warrant to search premises, carry out an ordinary search or a frisk search of a person. The terms “ordinary search” and “frisk search” are defined in clause 5. Note that strip searches of a person are prohibited by clause 114.

An Authorised Officer must give information on oath or affirmation of particulars of applications and outcomes of previous warrants sought or executed on the subject persons or premises in addition to, the grounds of their suspicions and beliefs. The Authorised Officer must also give information on oath or by affirmation, if and why he or she believes that it may be necessary to use firearms in the execution of the warrant.

The definition of “authorised officer” is a delegation by the Integrity Commissioner of the power to apply for a search warrant to other persons. For this reason, the strict criteria of requiring detailed information on oath or affirmation in relation to the application is necessary.

Information required regarding previous warrants applied for and/or executed in relation to the same people alerts the Issuing Officer to a situation of possible harassment and/or lack of reasonable grounds.

Subdivision C—Issue of a Search Warrant

Clause 109: When search warrants may be issued

The issuing officer may issue a warrant if he or she is satisfied that the Authorised Officer has reasonable grounds to suspect that there is or will be within 72 hours, evidential material on the premises or person which may be concealed, lost, mutilated or destroyed.

The term “issuing officer” is defined in clause 5 and will differ according to the nature of the warrant being applied for. An issuing officer for an investigation warrant will be a Judge of the Federal Court of Australia, a Federal Magistrate or of a court of State or Territory. An issuing officer for an offence warrant will be a magistrate. The term magistrate is defined in section 16C of the *Acts Interpretation Act 1901*.

Clause 110: Content of warrants

This clause sets out the information that is required to be included in a warrant which must include a statement as to whether the warrant is an investigation warrant or an offence warrant. If it is an investigation warrant the warrant must state the corruption issue or public inquiry to which it relates. If it is an offence warrant, the warrant must state the offence to which the warrant relates.

In both cases the warrant must contain a description of the premises or the name and description of the person to be searched, the kinds of evidentiary material that are to be searched for, the name of the Authorised Officer responsible for execution of the warrant, the period in which the warrant remains in force (which can be no longer than seven (7) days, yet successive warrants may be issued) and the particular hours in which the warrant may be executed. If the warrant is in relation to premises, it must also include authorisation for the necessary seizure of things found to prevent concealment, loss, destruction or use, and whether an ordinary or frisk search of a person at, or near the premises is authorised. Where the warrant is in relation to a person, it must also include whether an ordinary or frisk search is authorised and the authority for the necessary seizure of things found in the person's possession, or in an aircraft, vehicle or vessel the subject person had operated or occupied within 24 hours before the search to prevent the concealment, loss, destruction or use.

Clause 111: Application by telephone etc. and issue of warrant

An Authorised Officer may apply for a warrant by telephone, fax, e-mail or other electronic means where there is urgency or where a delay would in some way frustrate the effective execution of the warrant. These applications must contain all necessary information required from an ordinary warrant application and an application made by these means must be where there is a belief that evidentiary material is, or will be on the subject premises or person within 48 hours (any time longer, up to 72 hours will require an ordinary application). The Authorised Officer must, no later than the day after either the warrant expires or is executed, whichever is earlier, provide the completed form of a warrant and the information duly sworn or affirmed containing the reasonable grounds for belief to the Issuing Officer. If the form of a warrant signed by the Issuing Officer is not produced, it will be assumed that the exercise of power was not duly authorised unless proved otherwise.

This Clause acknowledges that in practice there may be circumstances where there is a need for urgency and therefore provides for faster process.

Clauses 134, 135 and 136 create offences relating to the process for applying for telephone warrants under this clause.

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

Clauses 112 and 113 set out the powers of an authorised officer in executing a warrant in relation to premises and persons respectively.

In the case of a warrant executed on premises an Authorised Officer or Assisting Officer is allowed to enter and search the subject premises and record fingerprints and take samples for forensic purposes. The authorised officer can also seize what is believed to be eligible seizeable items (which is defined in clause 5), the types of evidential material specified in the warrant and any other things found if there is a belief that seizure is necessary to prevent concealment, loss, destruction or use of what may be evidentiary material. If the warrant allows, the Authorised Officer may also conduct an ordinary or frisk search of a person who is at, or near the premises. Note that strip searches of a person are prohibited by clause 114. A person who is not an Authorised Officer must not take part in searching any person.

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

A search warrant executed in relation to a person allows an Authorised or Assisting Officer to search the person in the manner specified in the warrant, being either a frisk or ordinary search as defined in clause 5 of the Bill. The Authorised or Assisting Officer may search all things found in the person's possession, any aircraft, vessel or vehicle operated or occupied by the person within the 24 hours before the search, seize things specified in the warrant, take and record fingerprints and forensic samples, seize other things found if there is a belief that it is evidentiary material and the seizure is necessary to prevent concealment, loss, destruction or use. The search of the person must **not** be different from that authorised in the warrant.

Note that strip searches of a person are prohibited by clause 114 and that clause 117 provides that a person who is not an Authorised Officer must not take part in searching any person.

Clause 114: Restrictions on personal searches

A warrant may not authorise a strip or body cavity search as the procedure is too invasive and not necessary for the investigations predicted to be undertaken by the Integrity Commissioner. This Clause protects a person who may be subject to an investigation and subsequently a search under a warrant.

Subdivision F (clauses 130 to 136) sets out specific provisions in relation to executing a warrant in relation to a person.

Clause 115: When warrant may be executed etc.

The Clause further imposes the obligation to adhere to the conditions of the warrant. A warrant must not be executed outside hours specified in the warrant. Items seized may be made available to officers of other government agencies, if necessary for the purpose of investigating or prosecuting an offence.

This Clause extends the information sharing Clauses of the Bill and promotes co-operation amongst the law enforcement agencies. It will also reduce the duplication in work and minimise delays in investigations should evidence not be accessible from other agencies.

Subdivision D—General Provisions About Executing a Search Warrant

Clause 116: Announcement before entry

Prior to entering premises under a warrant, an Authorised Officer must announce that he or she is authorised to enter, and provide any person at the premises with the opportunity to allow the entry. Announcement of entry will not, however, be required if the Authorised Officer believes that immediate entry is required to ensure either the safety of a person, or the effective execution of the warrant.

This Clause ensures the person is given notice and provided with an opportunity to co-operate with the Authorised Officer in the search. A search with co-operation is often more successful and professional. The occupier of the premises is also entitled to be made aware of the situation.

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

An Authorised or Assisting Officer may obtain the assistance necessary and use a reasonable amount of force whilst executing a warrant. A person who is not an Authorised Officer must not take part in searching or arresting any person.

The Authorised Officer is given the discretion to use the necessary force needed which allows for the Authorised Officer to protect him or herself and others assisting in the execution of a warrant. The requirement of having only Authorised Officers taking part in searches and arrests is to ensure that these procedures are carried out by only those who have been provided with training and fulfilled the requirements to ensure that care, professionalism and due diligence are present.

Subdivision E—Specific provisions about executing a warrant relating to premises

Clause 118: Application

This is a formal provision providing that the subdivision applies where a warrant is executed at premises.

Clause 119: Copy of warrant to be shown to occupier etc.

If an occupier or someone representing the occupier is present at the premises, the Authorised Officer must identify him or herself to the person and make a copy of the warrant available to that person, and/or a person being searched under the warrant.

The person has the right to be informed and it clarifies that the search is legal and all requirements have been fulfilled to allow the procedure to take place.

Clause 120: Occupier entitled to watch search

The occupier or someone representing the occupier, is entitled to watch the search, or part thereof (more than one area may be searched at a time), but such right ceases when he or she impedes the search in any way.

This Clause provides the occupier with rights but those rights shall not conflict with a search. In circumstances where an occupier can assist in the search by providing instructions as to how to operate a device etc. it will be useful for the Authorised Officer to have him or her present.

Clause 121: Specific powers available to person executing a warrant

An Authorised or Assisting Officer may take photographs or video recordings at the premises for a purpose incidental to the execution of the warrant, or with the written consent of the occupier. The Authorised and Assisting Officers may temporarily stop the search and leave the premises for up to one (1) hour (or longer with the written consent of the occupier) and then return to the premises and complete the search, only if the warrant is still in force. If the execution of a warrant is stopped by a Court Order which is later revoked or reversed on appeal, the execution may be completed only if the Warrant is still in force.

This Clause ensures that under no circumstances should a warrant be executed unless it is valid and in force, regardless of partial execution or Court proceedings delaying etc. It prescribes the Authorised Officer with the onus to re-apply for a new warrant where an existing warrant expires for any reason. The strict provision of this Clause is to ensure the admissibility of evidence obtained and further, to protect the Commonwealth from being exposed to an action for damages in relation to premises and persons searched and items seized.

Clause 122: Use of equipment to examine or process things

An Authorised or Assisting Officer may bring any equipment necessary to examine and process things to determine if they may be seized under the warrant. If it is not practicable to examine or process things on the premises, or if the occupier consents, things may be moved to another place. If things are moved, the Authorised Officer must advise the occupier of the time and place of any examination or processing, and allow him, her or a representative to attend. An Authorised Officer may operate equipment (other than electronic equipment) to examine or process things to determine if they may be seized, only where the Authorised or Assisting Officer believe the examination or processing can be carried out without damaging the equipment or thing.

In circumstances where there may be a large amount of data, searching through it all for evidentiary material whilst at the premises will be time consuming. The *Cybercrime Act 1995* provides that it is practical to move items where it will be faster or less costly to search for evidentiary material. It is often the case that computers and other electronic equipment hold a large amount of data which is protected by complex security measures such as encryption and passwords. Many experts may be required to decipher multi levels of password protection which are often designed to delete or alter data if the correct password is not used. It is practical to operate the equipment to see if evidentiary material is present, if so, move the equipment and examine or process off the premises. The initial check for the existence of evidentiary material is to ensure that equipment is not unnecessarily seized. It is also important to engage experts to ensure that valuable evidence is not lost or deleted, again, exposing the Commonwealth to an action for damages.

Clause 123: Use of electronic equipment at premises without expert assistance

An Authorised or Assisting Officer may operate electronic equipment to see if evidentiary material is accessible, if he or she believes that it can be operated without damage. If evidentiary material is found, the equipment may be seized with any disk, tape or associated device, only if it is not practicable to document, or copy the evidentiary material, or if the possession of such equipment constitutes an offence.

This Clause permits an Authorised Officer to copy all data held on a storage device if some of the data contains evidentiary material. In circumstances where it is not practical to make copies such as a computer where the hard drive contains a large amount of data, an Authorised Officer is not required to search through all the data during the execution of the warrant at the premises, and copy only the evidentiary material found at this time. Rather this Clause allows the Authorised Officer to copy all of the data where an initial search uncovers some evidentiary material or where the Authorised Officer believes it may contain evidentiary material. For example, the

most effective way to search a large amount of data may be to load it all to a single device and develop a program to search the data.

Clause 124: Use of electronic equipment at premises with expert assistance

If an Authorised or Assisting Officer believes that an expert may access evidential material from electronic equipment found at the premises, and the material may be destroyed, altered or interfered with if action is not taken to secure the equipment, the Authorised or Assisting Officer may, after notifying the occupant in writing, take steps necessary to secure the equipment, for up to 24 hours to allow it to be operated by an expert. An Authorised or Assisting Officer may apply to an Issuing Officer for an extension of time if it is believed that an expert will not be available within 24 hours. The occupant must be notified of the application for an extension and is entitled to be heard.

This Clause allows the Authorised Officer to follow a procedure which adequately considers the occupier's rights, and allows for evidentiary material to be preserved until processed or examined.

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

An Authorised Officer may apply to an Issuing Officer for an Order requiring a specified person to provide information or assistance necessary to access data from a computer on warrant premises. The Issuing Officer may grant the Order where there are reasonable grounds to suspect that the specified person can access evidentiary material from the computer, if he or she is suspected of committing the offence stated in the warrant, if he or she is the owner or the lessee, or the employee of the owner or lessee of the computer, and has the relevant knowledge of the computer or the network and the measures applied to protect the data held, or accessible from the computer. A person that fails to comply with such Order is liable to six (6) months imprisonment.

This Clause intends to secure the access and value of evidentiary material stored in computers on warrant premises. Developments in technology allow computers to store large amounts of data and have complex security measures such as encryption and passwords to protect information. Multi-level password protection is often programmed to delete or alter data when an incorrect password is provided and this Clause provides for assistance to ensure that relevant data is not erased or altered by misuse.

Clause 126: Accessing data held on other premises—Notification to occupier of those premises

When data accessed under Clause 123(1) is held on premises other than the warrant premises, the Authorised Officer must, if it is practicable to do so, notify the occupier of the premises in relation to which the warrant is in force. If the authorised officer intends to continue to access data on premises other than the warrant premises then this information must also be conveyed to the occupier.

As most business computers are networked to other computers, files on one computer are often accessible by another computer. Accordingly, it is critical that the Authorised Officers executing a search warrant are able to search material accessible from the warrant premises, irrespective of where the material is physically located. This Clause mirrors that of *Section 3LB* of the *Crimes Act 1914* and includes the term practicable as a discretionary tool for the Authorised Officer to evaluate the circumstances and consequences of advising the third party.

Clause 127: Compensation for damage to electronic equipment

If insufficient care is exercised when either operating, or choosing a person to operate equipment, the Commonwealth must pay reasonable compensation to the owner if the equipment, data or programs are damaged. In determining reasonable compensation, consideration will be given to whether or not the owner, user, their agents or employees provided any appropriate warnings or guidance for the operation of the equipment. If an agreement on reasonable compensation cannot be reached, the owner or user may institute proceedings in the Federal Court.

This Clause provides, that in circumstances where the Authorised or Assisting Officers are negligent, compensation for damage is due to the owner. The *Cybercrime Act 2001* requires assistance to be provided by an occupier when executing a warrant, to access data etc. Non-compliance is an offence punishable by six (6) months imprisonment.

Clause 128: Copies of seized things to be provided

If a document, film, computer file or other thing that can be readily copied is seized, the Authorised Officer must provide a copy to the occupier if requested. This won't apply where the authorised officer believes that the data might constitute evidential material (which is defined in clause 5) or if the data is, at the premises, rendered into documentary form.

This Clause allows the person to obtain legal advice in relation to copies of material seized while ensuring there can be no dispute as to the state of evidence.

Clause 129: Receipts of things seized under warrant

A receipt for items seized or moved under a warrant must be provided by the Authorised or Assisting Officer to ensure the proper handling and returning of evidence when it is no longer required. This clause ensures there will be no dispute as to an item not being returned as well as keeping records of evidentiary material.

Subdivision F—Specific provisions about executing a warrant relating to a person

Clause 130: Copy of warrant to be shown to person

An Authorised Officer must identify themselves to a person being searched and a copy of the warrant must be made available to him or her. The person has a right to be informed of the situation, prior to a search commencing. This identification offers an opportunity for the person to co-operate as they are less likely to resist with the officers which will make the search easier on all involved.

Clause 131: Conduct of an ordinary search or a frisk search

The terms “ordinary search” and “frisk search” are defined in clause 5.

If practicable, an ordinary or frisk search of a person is to be conducted by a person of the same sex. This is preferable, but not required. This Clause will make the person being searched, and the Authorised or Assisting Officer less uncomfortable or embarrassed.

Subdivision G–Offences

Clause 132: Making false statements in warrants

A person (ie an authorised officer) commits an offence if he or she knowingly makes a false or misleading statement in applying for a search warrant and will be liable to two (2) years imprisonment.

This Clause intends to ensure that all warrants executed are granted by a Judge or Magistrate on correct information. The reasonable grounds to believe that evidentiary material may be obtained stated in the application must be honest and accurate.

Clause 133: Offence for stating incorrect names in telephone warrants

A person commits an offence if he or she states a name of a Judge or Magistrate on the form of search warrant that differs to that of the Judge or Magistrate who approved the telephone application and will be liable to two (2) years imprisonment.

This Clause is to ensure that the approval of a search warrant is in all ways true and correct.

Clause 134: Offence for unauthorised form of warrant

In circumstances where a person makes an application for a search warrant by telephone, he or she commits an offence if a matter is stated on the form of search warrant which he or she knows to be a departure from the authority given by the Judge or Magistrate and will be liable to two (2) years imprisonment.

This Clause intends to serve as a control on the operation of telephone warrants. Potentially, telephone warrants may cause problems with confusion, misinterpretation and honest mistakes arising out of the haste at the time and this Clause will ensure that persons applying for telephone warrants do not take advantage of the process.

Clause 135: Offence for executing etc. an unauthorised form of warrant

A person commits an offence if he or she executes or presents a document purporting to be a search warrant which he or she knows has not been approved, or departs from the approval obtained from a Judge or Magistrate and will be liable to two (2) years imprisonment.

This Clause intends to prevent Authorised Officers from failing to fulfil all requirements of a valid search warrant.

Clause 136: Offence for giving unexecuted form of warrant

A person commits an offence if he or she gives a Judge or Magistrate a form of search warrant which is not the form of search warrant that he or she executed under a telephone application and will be liable to two (2) years imprisonment.

This Clause ensures that the telephone application granted is the same as the search carried out. All of these offences carry a criminal penalty making the Authorised Officer individually liable for their own actions.

Subdivision H–Miscellaneous

Clause 137: Other laws about search, arrest etc. not affected

This Division is not intended to limit or exclude the operation of another law of the Commonwealth in relation to the search of persons or premises, arrests or seizures. These include, but are not limited to, the *Cybercrime Act 2001*, the *Criminal Code Act 1995* and the *Crimes Act 1914* (Part IAA- Search Warrants and Powers of Arrest).

This Division may be used despite the existence of the power under another law.

Clause 138: Law relating to legal professional privilege not affected

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

Division 5–Powers of Arrest

Clause 139: Authorised officers may exercise powers of arrest

This clause provides that authorised Officers who are not “constables”, will still have the same powers and duties as a constable under Divisions 4 and 5 of Part IIA of the *Crimes Act 1914* for the purpose of investigating corruption issues. These powers and duties include those related to arrest as well as search. The term “constable” is defined in the Crimes Act as meaning a special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

This Clause enables Authorised Officers to invoke the powers of arrest and search that are given to constables to perform their duties in relation to assisting the Integrity Commissioner in the investigation of corruption issues. It is not always going to be practicable to get a constable for these duties considering that investigations will be involving AFP etc. and an independent officer is desirable to carry out an arrest and/or search on a person being investigated.

Division 6–Authorised Officers

Clause 140: Appointment of authorised officers

The Integrity Commissioner may appoint a person in writing to be an Authorised Officer where, the person is either a member of the AFP or, a staff member of the ACLEI *and* a member of the AFP or a State or Territory Police force (the head of that

agency must agree) and the Integrity Commissioner considers him or her to be suitable and qualified for the appointment.

This Clause seeks to ensure that Authorised Officers exercising powers and duties under the Bill possess the upmost of integrity, skills and experiences in investigations and obtaining evidence. Authorised Officers are given the powers of arrest and to apply and execute search warrants under the Bill and it is essential that they are experienced, diligent and trustworthy.

Clause 141: Identity cards

The Integrity Commissioner must issue all Authorised Officers an identity card in the form provided in the Regulations, which includes a recent photograph of the Authorised Officer, which must be returned to the Integrity Commissioner immediately upon ceasing to be an Authorised Officer, a failure to do so is punishable by one (1) penalty unit.

This Clause intends to ensure that Authorised Officers are easily identifiable. In circumstances where Authorised Officers are executing a search warrant on premises, the identity card can be displayed to occupiers to confirm their authority.

PART 10- DEALING WITH EVIDENCE AND INFORMATION OBTAINED IN INVESTIGATION OR PUBLIC INQUIRY

Division 1- Dealing with Evidence Obtained in Investigation or Public Inquiry

Clause 142: Evidence of Offence or Liability to Civil Penalty

If the Integrity Commissioner obtains admissible evidence rendering a person liable to a criminal or civil penalty under a Commonwealth, State or Territory law, the Integrity Commissioner must provide the evidence to the Commissioner of the Australian Federal Police in the case of a Commonwealth law, the head of the police force of the State or Territory in the case of a State or Territory law, or an authority or person who is authorised to prosecute the offence or commence civil penalty proceedings under a Commonwealth, State or Territory law.

Clause 143: Evidence that Could be Used in Confiscation Proceedings

If the Integrity Commissioner obtains admissible evidence rendering a person liable to proceedings under the *Proceeds of Crime Act 1987*, the *Proceeds of Crime Act 2002* or a corresponding law of a State or Territory, the Integrity Commissioner must provide the evidence to the Commissioner of the Australian Federal Police in the case of a Commonwealth law, the head of the police force of the State or Territory in the case of a State or Territory law, or an authority or a person who is authorised to commence proceedings under a Commonwealth, State or Territory law.

Clause 144: Consultation with Law Enforcement Agency Head Before Taking Action Under Section 142 or Section 143

The Integrity Commissioner must take reasonable steps to consult the head of a relevant agency prior to providing a person or authority with evidence to prosecute an evidence or commence civil or confiscation proceedings, unless it is likely that an investigation or subsequent action would be prejudiced by doing so. In these circumstances, the Integrity Commissioner must advise the Minister that the relevant person has not been consulted and the reasons for not consulting the person. If the circumstances change so that advising the head of the relevant agency of the decision on how to deal with the information would no longer prejudice the investigation, then the agency head's right to be advised is revived.

Clause 145: Notification of Action Taken Under Section 142 or Section 143

The Integrity Commissioner must inform the head of a relevant law enforcement agency, government agency or integrity agency if he or she takes under Clauses 142 or 143 in relation to a corruption issue involving a law enforcement agency. The Integrity Commissioner does not have to provide notification if it is likely that doing so would prejudice an investigation. If the Integrity Commissioner decides to withhold notification, he or she must provide the Minister with reasons. If the circumstances change so that advising the head of the relevant agency of the decision on how to deal with the information would no longer prejudice the investigation, then the agency head's right to be advised is revived.

Clause 146: Evidence of Breach of Duty or Misconduct by Staff Member

During an investigation or public inquiry, if the Integrity Commissioner obtains evidence of a breach of duty or misconduct that would justify the termination of or disciplinary action against a staff member or a secondee to a law enforcement agency, the Integrity Commissioner must notify the head of the law enforcement agency, the head of the home agency in the case of a secondee and any relevant State or Territory integrity agency.

Clause 147: Evidence of, or Information Suggesting, Wrongful Conviction

During an investigation or public inquiry, if the Integrity Commissioner obtains evidence that a person was wrongly convicted of an offence against a law of the Commonwealth, a State or Territory, he or she must notify the Minister of the evidence. The Integrity Commissioner must also notify the convicted person that the evidence has been brought to the notice of the Minister.

Division 2- Dealing with Information etc. Obtained in Investigation or Public Inquiry

Clause 148: Integrity Commissioner may Communicate Information etc.

If, in the course of an investigation or public inquiry, the Integrity Commissioner obtains information, documents or things that relate to a Commonwealth, State or Territory criminal offence, or a civil penalty provision, the Integrity Commissioner may provide them to an authority or person authorised to prosecute or commence legal proceedings.

This clause is similar to clauses 142 and 143 which also ensure that relevant authorities have an opportunity to prosecute offences or institute civil penalty proceedings in appropriate circumstances.

PART 11- ATTORNEY-GENERAL CERTIFICATES ABOUT RELEASE OF INFORMATION

Clause 149: Attorney-General's Certificate in Relation to Particular Information

The Attorney-General may determine whether particular information will be released by the Integrity Commissioner. The Attorney-General may certify that the disclosure of particular information would be contrary to the public interest because it will prejudice the security, defence or international relations of the Commonwealth, prejudice the proper performance of the ACC, an investigation, inquiry, fair trial, a person's life or physical safety or disclose the identity of a confidential source.

Clause 150: Integrity Commissioner's Access to Section 149 Certified Information

If the head of a law enforcement agency, or another person, is required to provide information to the Integrity Commissioner (Part 9, Division 1 and clauses 20, 21, 32 or 46), but the information is certified under clause 149, the person or head of the agency must not give the Integrity Commissioner the information if to do so would contravene the terms of the certificate.

Clause 151: Giving Another Agency Section 149 Certified Information

The head of a law enforcement agency must not give another agency information required by clause 46 if the information is certified under clause 149 and to do so would contravene the terms of the certificate.

Clause 152: Integrity Commissioner Giving Section 149 Certified Information to Agency Head or Special Investigator

The Integrity Commissioner must not give the head of a government agency or a special investigator information required by clauses 29(2), 44, 50, 70, 156(6) or (9) if the information is certified under clause 149 and to do so would contravene the terms of the certificate.

PART 12- DEALING WITH ACLEI CORRUPTION ISSUES

Division 1- Referring ACLEI Corruption Issues to Minister

Clause 153: Integrity Commissioner and ACLEI Staff Notifying Minister of ACLEI Corruption Issues

The Integrity Commissioner must notify the Minister in writing of any ACLEI corruption issue as soon as practicable after becoming aware of the issue. A staff member of ACLEI must notify the Minister of any ACLEI corruption issue that relates to the conduct of a person who is, or was the Integrity Commissioner. ACLEI corruption issue is defined in Section 8.

Clause 154: Referral of ACLEI Corruption Issues by Other Persons

In addition to a person's right to make a complaint to the Commonwealth Ombudsman, a person can give an allegation or information raising an ACLEI corruption issue to the Minister, anonymously if he or she wishes. This may be done orally or in writing, however the clause gives the Minister the discretion to request that the allegation or information be put in writing before he or she deals with the issue.

Clause 155: Person May Elect to be Kept Informed

The Minister must ask the person making, or referring the information or allegation raising an ACLEI corruption issue, to elect whether or not he or she wishes to be kept informed as to the action taken in relation to the matter, unless the person refers the issue anonymously. The election can be revoked by the person at any time.

Division 2- How Minister Deals with ACLEI Corruption Issues

Clause 156: How Minister may Deal with ACLEI Corruption Issues

When the Minister is notified or becomes aware of an ACLEI corruption issue, he or she may refer the ACLEI corruption issue to the Integrity Commissioner for investigation, authorise a person to conduct a special investigation, or decide to take no further action. The Minister must advise the Integrity Commissioner if he or she chooses to authorise a special investigation or take no further action. The Minister must not refer an ACLEI corruption issue to the Integrity Commissioner if the issue relates to the conduct of a current ACLEI staff member who is employed under the *Public Service Act 1999*. The role of the Integrity Commissioner is restricted in this way so as to avoid a conflict between the Integrity Commissioner's functions under the Bill and his or her role as head of a Statutory Agency for purposes of the Public Service Act.

In circumstances where a special investigator is authorised, the Integrity Commissioner must provide any document or information in relation to the ACLEI corruption issue in his or her possession or control to a special investigator as soon as practicable after he or she is authorised by the Minister. The Integrity Commissioner does not have to provide the information if it contains information certified under Clause 149 and doing so would be contrary to the public interest according to the terms of the certificate issued by the Attorney-General under Clause 149. This

ensures the protection of information which is not in the public interest to be disclosed. The Attorney-General will have discretion as to whether or not information should be shared.

Clause 157: Qualification to Conduct Special Investigation

The Minister may authorise a person to conduct a special investigation under Part 12, Division 4 of the Bill, if he or she is enrolled as a legal practitioner and has been so for at least five (5) years.

This Clause prescribes that a Special Investigator must have the same qualifications as the Integrity Commissioner, as his or her functions and duties in the special investigation of an ACLEI corruption issue are the same as that of the Integrity Commissioner in the investigation of other corruption issues.

Clause 158: Counsel assisting special investigator

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

Division 3- Investigation by Integrity Commissioner

Clause 159: Application of Division

This Division applies to investigations by the Integrity Commissioner into complaints relating to a staff member, or former staff member of the ACLEI under clause 156(2) and prescribes the practice and procedures to be followed to deal with these complaints.

Clause 160: Investigation and Investigative Powers

The clause employs a similar investigative procedure as that set out in Division 1 of Part 6 and Parts 9 and 10 for the investigation of ACLEI corruption issues. Division 1 of Part 6 of the Bill relates to investigations by the Integrity Commissioner, Part 9 relates to the Integrity Commissioner's powers in conducting an investigation or public inquiry and Part 10 relates to dealing with evidence obtained in an investigation or public inquiry.

Clause 161: Keeping Minister and Person Informed of Progress of the Investigation

The Integrity Commissioner has an obligation to take such steps as he or she considers reasonable to keep the Minister and the Complainant informed of the progress of the investigation of an ACLEI corruption issue.

Clause 162: Report on Investigation

At the conclusion of an investigation, the Integrity Commissioner must prepare a report. This report must include findings, evidence and any action taken or to be taken in relation to the complaint. This clause sets out the action the Integrity Commissioner may take in relation to the complaint. Possible action includes disciplinary or employment action, action to rectify or mitigate the effects of the

conduct subject to the investigation or to remedy deficiencies in policy or practice which allowed for the person to become a member of staff with the ACLEI and engage in corrupt conduct without being discovered.

The Integrity Commissioner must exclude information from the report if the Attorney-General has certified the disclosure would be contrary to the public interest under section 149. The Integrity Commissioner has the discretion to exclude information if he or she is satisfied that the information is sensitive information.

It is intended that the decision of whether to exclude information balance the need for the report to serve the public interest in relation to the corruption issue and the prejudicial consequences that might result from its inclusion. .

If information is excluded the Integrity Commissioner must include it in a supplementary report which sets out the information and the reasons for excluding the information. This report must be given to the Minister under clause 163.

Clause 163: Integrity Commissioner to Give Report to Minister

The Integrity Commissioner must provide the Minister with a copy of the report and any supplementary report. If a public hearing has been held the Minister is required under section 203 to table the report (but not the supplementary report) before both Houses of Parliament.

Clause 164: Advising Complainant about the Outcome of the Investigation

A person who has elected to be kept informed must be advised by the Integrity Commissioner of the outcome of the investigation unless the Integrity Commissioner is satisfied that informing the person is likely to prejudice an investigation or any related action. The Integrity Commissioner may advise the person by giving them a copy of the whole or part of the report.

When advising the person, the Integrity Commissioner must not contravene a section 149 certificate from the Attorney-General that the disclosure of the information would be contrary to the public interest. The Integrity Commissioner has the discretion to exclude information if he or she is satisfied that the information is sensitive information and it is desirable in the circumstances to exclude that information.

It is intended that the decision of whether to exclude information balance the person's need for full information in relation to the corruption issue and the prejudicial consequences that might result from its inclusion.

Clause 165: Advising Person Whose Conduct is Investigated of Outcome of the Investigation

The Integrity Commissioner may advise the person to which the complaint relates of the outcome of the investigation and may provide them with a copy of either the whole or part of the report.

When advising the person, the Integrity Commissioner must not contravene a section 149 certificate from the Attorney-General that the disclosure of the information would be contrary to the public interest. The Integrity Commissioner has the discretion to

exclude information if he or she is satisfied that the information is sensitive information.

It is intended that the decision of whether to exclude information balance the person's need for full information in relation to the corruption issue and the prejudicial consequences that might result from its inclusion.

Division 4- Special Investigation

Clause 166: Application of Part

This Division sets out the powers and procedures that the ACLEI can use when the Minister authorises a person, known as the "special investigator" to conduct a special investigation.

Clause 167: Investigation and Investigative Powers

The clause operates in substantially the same way as section 160 which deals with investigation of an ACLEI corruption issue by the Integrity Commissioner. It employs a similar investigative procedure for the special investigation as that set out in Division 1 of Part 6 and Parts 9 and 10. Division 1 of Part 6 of the Bill relates to investigations by the Integrity Commissioner, Part 9 relates to the Integrity Commissioner's powers in conducting an investigation or public inquiry and Part 10 relates to dealing with evidence obtained in an investigation or public inquiry.

Generally, the special investigator has the same powers to investigate the ACLEI corruption issues as the Integrity Commissioner has when investigating corruption issues in other law enforcement agencies.

Clause 168: Keeping Minister and Complainant Informed of Progress of Investigation

The special investigator has an obligation to keep the Minister and the Complainant informed of the progress of the investigation.

This Clause ensures the Minister is fully apprised of all investigations and has the opportunity to monitor and evaluate the special investigator's investigations. It is also important to keep the complainant informed as it may be necessary to engage the complainant's co-operation to further the investigation.

Clause 169: Report on Investigation

At the conclusion of an investigation, the special investigator must prepare a report. This report must include findings, evidence and any recommendations to the Minister in relation to the complaint and reasons for those recommendations. This clause sets out the action the special investigator may recommend the Integrity Commissioner consider. Possible recommendations include disciplinary or employment action, action to rectify or mitigate the effects of the conduct the subject of the investigation or to remedy deficiencies in policy or practice which allowed for the person to become a member of staff with the ACLEI and engage in corrupt conduct without being detected. This list of options is intended to be exhaustive.

The special investigator is bound to exclude information from the report that the Attorney-General has certified the disclosure of would be contrary to the public interest under section 149 if one or more public hearings were held. The special investigator has the discretion to exclude information if he or she is satisfied that the information is sensitive.

It is intended that the decision of whether to exclude information balance the need for the report to serve the public interest in relation to the corruption issue and the prejudicial consequences that might result from its inclusion.

If information is excluded the special investigator must include it in a special report which sets out the information and the reasons for excluding the information. This report must be given to the Minister under Clause 170.

This Clause intends to make the special investigator accountable for the investigation process and any recommendations made. It also allows a record to be made and is intended to offer some valuable recommendations regarding the corruption issue from an independent person.

Clause 170: Special Investigator to Give Report to Minister

The Special Investigator must provide the Minister with a copy of the report and any supplementary report. If a public hearing has been held the Minister is required under section 203 to table the report (but not the supplementary report) before both Houses of Parliament. The Minister must then provide a copy to the Integrity Commissioner.

Clause 171: Minister May Direct Integrity Commissioner to Consider Taking Action

The Minister may direct the Integrity Commissioner to consider whether action should be taken in relation to a person referred to in the report of the special investigator.

This clause acknowledges that some of the staff of ACLEI will be appointed or employed under the *Public Service Act 1999* and that the Integrity Commissioner must comply with section 15 of this Act when considering whether to take action.

Clause 172: Advising Complainant about the Outcome of the Investigation

A person who has elected to be kept informed must be advised by the special investigator of the outcome of the investigation unless the special investigator is satisfied that informing the person is likely to prejudice an investigation or any related action. The Integrity Commissioner may advise the person by giving them a copy of the whole or part of the report. If the circumstances change so that advising the person of the decision on how to deal with the information would no longer prejudice the investigation, then the person's right to be advised is revived.

When advising the person, the special investigator must not contravene a section 149 certificate from the Attorney-General that the disclosure of the information would be contrary to the public interest. The special investigator has the discretion to exclude

information if he or she is satisfied that the information is sensitive information and it is desirable in the circumstances to exclude that information.

It is intended that the decision of whether to exclude information balance the person's need for full information in relation to the corruption issue and the prejudicial consequences that might result from its inclusion. This is reflected by subsection 5.

Clause 173: Advising Person Whose Conduct is Investigated of Outcome of the Investigation

The special investigator may advise the person to which the complaint relates, of the outcome of the investigation and may provide a copy of either whole or part of the report.

When advising the person, the special investigator must not contravene a section 149 certificate from the Attorney-General that the disclosure of the information would be contrary to the public interest. The special investigator has the discretion to exclude information if he or she is satisfied that the information is sensitive information and it is desirable in the circumstances to exclude that information.

It is intended that the decision of whether to exclude information balance the person's need for full information in relation to the corruption issue and the prejudicial consequences that might result from its inclusion. This is reflected by subsection 4.

Division 5- Staff Members of ACLEI to Report Corrupt Conduct

Clause 174: Staff Members of ACLEI to Report Corrupt Conduct

This Clause imposes an obligation on all staff members of ACLEI to report corrupt conduct. This obligation applies to the Integrity Commissioner in relation to the conduct of staff members or former staff members and to staff members in relation to the conduct of the Integrity Commissioner or other staff members. It is intended that the Integrity Commissioner notify the Minister in writing and that ACLEI staff members notify the Integrity Commissioner in writing.

It is an offence to fail to notify unless there are reasonable ground to believe that the relevant person (the Minister or the Integrity Commissioner) has already been notified. The defendant bears an evidential onus to prove that reasonable grounds existed. The maximum penalty is 6 months imprisonment.

PART 13- ADMINISTRATIVE PROVISIONS

Division 1 - Appointment etc. of Integrity Commissioner

Clause 175: Appointment of Integrity Commissioner

This Clause provides that the Integrity Commissioner is to be appointed (or re-appointed pursuant to section 33(4A) of the *Acts Interpretation Act 1901*) by written instrument from the Governor-General on a full-time basis, for a fixed term not exceeding five (5) years. The Integrity Commissioner will be required to be a Judge or enrolled as a legal practitioner of at least five (5) years. In circumstances where the Integrity Commissioner appointed is a Judge of a State or Territory, the Governor-General may enter into an arrangement with the Governor of that State or the Administrator of that Territory, securing the Judge's services, including an arrangement for the State or Territory to be reimbursed by the Commonwealth. The Clause also provides a definition of 'Judge' for the purpose of the Clause.

The Integrity Commissioner is independently appointed by the Governor-General in order to have an equality of status with the heads of the bodies he or she oversees (the Commissioner of the APF and the CEO of the ACC are also appointed by the Governor-General).

Clause 176: Judge May be Appointed as Integrity Commissioner

This Clause provides that a Judge may be appointed as the Integrity Commissioner and his or her privileges as the holder of judicial office will remain unaffected. However, the Clause provides that a Judge appointed as the Integrity Commissioner will cease to hold office as the Integrity Commissioner if he or she is no longer a Judge.

The Clause intends to reserve privileges such as tenure of judicial office, rank, title, precedence, salary etc. for Judges appointed as the Integrity Commissioner.

Clause 177: Acting Appointment

Clause 177 provides that in circumstances where there is a vacancy in the office of the Integrity Commissioner or during any periods the Integrity Commissioner is absent from duty or Australia, the Minister may appoint a person as Acting Integrity Commissioner.

An Acting Integrity Commissioner must be enrolled as a legal practitioner, and have been so for a minimum period of five (5) years. Anything done by, or in relation to a person purporting to act as Acting Integrity Commissioner is not invalid merely because the occasion for appointment had not arisen, a defect or irregularity existed in connection with the appointment, the appointment ceased to have effect or the occasion to act had not arisen or ceased.

Clause 178: Remuneration

This clause provides that subject to the *Remuneration Tribunal Act 1973*, the Integrity Commissioner is to be paid a remuneration determined by the Remuneration Tribunal. In the absence of a determination, the Integrity Commissioner will be paid in accordance with the Regulations, which also prescribe allowances.

To avoid doubt, the clause provides that where a Judge receiving salary or annual allowance is appointed as the Integrity Commissioner, he or she will not be entitled to receive remuneration under the Bill. Clause 175 also provides that if the Judge is a Judge of a State or Territory, the Governor-General may arrange for the Commonwealth to compensate that State or Territory accordingly.

Clause 179: Leave

This clause provides that the Remuneration Tribunal will determine the Integrity Commissioner's recreation leave entitlements. Further, the Minister may grant the Integrity Commissioner a leave of absence on specified terms and conditions.

Clause 180: Outside Employment

This Clause ensures that the Integrity Commissioner does not engage in any paid employment outside the Office of the Integrity Commissioner, without consent from the Minister.

The intention of the Clause is to minimise the occurrence of a conflict of interests arising.

Clause 181: Other Terms and Conditions

This Clause provides that the Integrity Commissioner (other than a Judge) may only hold office as the Integrity Commissioner on the terms and conditions which are determined by the Governor-General in relation to matters not covered by the Bill.

Clause 182: Resignation

This Clause provides that the Integrity Commissioner may resign from their appointment as the Integrity Commissioner by providing the Governor-General with a written resignation.

Clause 183: Termination of Employment

This Clause provides that except in circumstances where the Integrity Commissioner is a Judge, the Governor-General *may* terminate the Integrity Commissioner's appointment by reason of misbehaviour or physical or mental incapacity.

The Clause further provides that the Governor-General *must* terminate the Integrity Commissioner's appointment (unless he or she is a Judge) where the Integrity Commissioner becomes bankrupt, is absent from duty (except if he or she is on leave) for 14 consecutive days or 28 days in a period of 12 months, if the Integrity

Commissioner engages in outside employment in contravention of Clause 180 of the Bill or if he or she fails to comply with the disclosure of interest provisions under Clause 184 of the Bill.

Clause 184: Disclosure of Interests

This Clause requires the Integrity Commissioner to provide written notice to the Minister where he or she has, or acquires, an interest that may conflict with the performance of his or her functions as the Integrity Commissioner.

Division 2- Appointment etc. of Assistant Integrity Commissioners

Clause 185: Appointment of Assistant Integrity Commissioners

This Clause provides that an Assistant Integrity Commissioner is to be appointed by written instrument from the Governor-General on a full-time or part-time basis, for a fixed term not exceeding five (5) years. An Assistant Integrity Commissioner is required to be a Judge or enrolled as a legal practitioner of at least five (5) years. In circumstances where an Assistant Integrity Commissioner appointed is a Judge, he or she must be appointed on a full-time basis and if he or she is a Judge of a State or Territory, the Governor-General may enter into an arrangement with the Governor of that State or the Administrator of that Territory, securing the Judge's services, including an arrangement for the State or Territory to be reimbursed by the Commonwealth. The Clause also provides a definition of 'Judge' for the purpose of the Clause.

An Assistant Integrity Commissioner is required to assist the Integrity Commissioner with the functions and duties prescribed in the Bill and he or she will be required to be familiar with the rights and obligations of those involved in investigations and hearings. Clause 219 of the Bill also authorises the Integrity Commissioner to delegate any of his or her powers (except to hold a hearing for the purpose of a public inquiry) to an Assistant Integrity Commissioner.

Clause 186: Judge may be Appointed as an Assistant Integrity Commissioner

This Clause provides that a Judge may be appointed as an Assistant Integrity Commissioner (on a full-time basis only, pursuant to Clause 185) and his or her privileges as the holder of judicial office will remain unaffected. However, the Clause provides that a Judge appointed as an Assistant Integrity Commissioner will cease to hold office as an Assistant Integrity Commissioner if he or she is no longer a Judge.

The Clause intends to reserve privileges such as tenure of judicial office, rank, title, precedence, salary etc. for Judges appointed as an Assistant Integrity Commissioner.

Clause 187: Acting Appointments

Clause 187 provides that in circumstances where there is a vacancy in the office of an Assistant Integrity Commissioner or during any periods an Assistant Integrity Commissioner is absent from duty or Australia, the Minister may appoint a person as an Acting Assistant Integrity Commissioner.

An Acting Assistant Integrity Commissioner must be enrolled as a legal practitioner, and have been so for a minimum period of five (5) years. Anything done by, or in relation to an Acting Assistant Integrity Commissioner is not invalid merely because the occasion for appointment had not arisen, a defect or irregularity existed in connection with the appointment, the appointment ceased to have effect or the occasion to act had not arisen or ceased.

Clause 188: Remuneration

This Clause provides that subject to the *Remuneration Tribunal Act 1973*, an Assistant Integrity Commissioner is to be paid a remuneration determined by the Remuneration Tribunal. In the absence of a determination, an Assistant Integrity Commissioner will be paid in accordance with the Regulations, which also prescribe allowances.

To avoid doubt, the Clause provides that where a Judge receiving salary or annual allowance is appointed as an Assistant Integrity Commissioner, he or she will not be entitled to receive remuneration under the Bill. Clause 185 also provides that if the Judge is a Judge of a State or Territory, the Governor-General may arrange for the Commonwealth to compensate that State or Territory accordingly.

Clause 189: Leave

This Clause provides that the Remuneration Tribunal will determine the recreation leave entitlements of an Assistant Integrity Commissioner appointed on a full-time basis. Further, the Minister may grant a leave of absence to an Assistant Integrity Commissioner appointed on a full-time basis, on the Minister's specified terms and conditions. The Integrity Commissioner may grant any Assistant Integrity Commissioner appointed on a part-time basis a leave of absence on the terms and conditions determined by the Integrity Commissioner.

Clause 190: Outside Employment

This Clause provides that an Assistant Integrity Commissioner appointed on a full-time basis must not engage in any paid employment outside the duties of his or her office without prior consent from the Minister. This Clause further provides that an Assistant Integrity Commissioner appointed on a part-time basis must not engage in any paid employment outside the duties of his or her office, which may conflict with the duties of an Assistant Integrity Commissioner.

Clause 191: Other Terms and Conditions

This Clause provides that an Assistant Integrity Commissioner (other than a Judge) may only hold office as an Assistant Integrity Commissioner on the terms and conditions which are determined by the Governor-General in relation to matters not covered by the Bill.

Clause 192: Resignation

This Clause provides that an Assistant Integrity Commissioner may resign from their appointment as an Assistant Integrity Commissioner by providing the Governor-General with a written resignation.

Clause 193: Termination of Employment

This Clause provides that except in circumstances where an Assistant Integrity Commissioner is a Judge, the Governor-General *may* terminate the Assistant Integrity Commissioner's appointment by reason of misbehaviour, physical or mental incapacity, if the Assistant Integrity Commissioner becomes bankrupt or fails to comply with the disclosure of interest under Clause 194.

The Governor-General *may* terminate the appointment of an Assistant Integrity Commissioner appointed on a full-time basis where he or she is absent from duty for 14 consecutive days or 28 days in a period of 12 months (except if he or she is on leave) or engages in outside employment in contravention of Clause 190.

The Governor-General *may* terminate the appointment of an Assistant Integrity Commissioner appointed on a part-time basis in circumstances where he or she engages in paid employment in contravention of Clause 190.

Clause 194: Disclosure of Interests

This Clause requires an Assistant Integrity Commissioner to provide written notice to the Minister where he or she has, or acquires, an interest that may conflict with the performance of his or her functions as an Assistant Integrity Commissioner.

Division 3- The Australian Commission For Law Enforcement Integrity

Clause 195: Establishment

This Clause establishes ACLEI, being the Australian Commission for Law Enforcement Integrity and consisting of the Integrity Commissioner, any Assistant Integrity Commissioner and staff. The intention of this Clause is to form the independent body with the powers to prevent, detect and investigate corruption within the Australian Government law enforcement agencies.

Clause 196: Function

This Clause prescribes that the function of ACLEI is to assist the Integrity Commissioner in performing his or her duties in relation to dealing with corruption issues as outlined in Clause 15 of the Bill.

Clause 197: Staff

This Clause provides that staff members of ACLEI will be appointed or employed under the *Public Service Act 1999* and together, the Integrity Commissioner and the APS employees assisting the Integrity Commissioner constitute a Statutory Agency.

To avoid doubt, the Clause also provides that the Integrity Commissioner is the head of the Statutory Agency.

Clause 198: Engagement of Consultants

This Clause provides that the Integrity Commissioner may engage suitable persons as consultants to ACLEI for a period of up to two (2) years, and under any other such terms and conditions as determined by the Integrity Commissioner. The consultant's contract may only be extended beyond two (2) years where it is necessary for the completion of a particular task that was commenced during the initial two (2) year period.

Clause 199: Secondment of Persons to Assist Integrity Commissioner

This Clause provides that the Integrity Commissioner may make arrangements with the Commissioner of the AFP, the head of a police force of a State, Territory or foreign country, the agency head of a Commonwealth government agency, the head of a police integrity agency or the head of an overseas government agency with similar functions to an integrity agency, to make its members available to perform services in connection with the Integrity Commissioner's functions. The person may only be engaged under arrangement for a period of two (2) years, which may only be extended for the completion of a particular task commenced during the initial two (2) year period.

This Clause also provides that in circumstances where the Integrity Commissioner engages the services of existing government agency's staff, the Integrity Commissioner may also make an arrangement for the Commonwealth to reimburse that State or Territory accordingly.

Clause 200: Counsel Assisting Integrity Commissioner

This Clause provides that the Integrity Commissioner may appoint a legal practitioner as Counsel to assist him or her generally, or in relation to a particular investigation or public inquiry.

Counsel assisting the Integrity Commissioner will be entitled to examine and cross-examine witnesses as the Integrity Commissioner sees fit under Clause 88, and have same powers and immunity as provided to Counsel appearing in the High Court.

Division 4- Public Reporting

Clause 201: Annual Report

This Clause provides that the Integrity Commissioner must give a report which is in accordance with section 34C of the *Acts Interpretation Act 1901*, to the Minister to be presented in Parliament on the performance of the Integrity Commissioner's functions during each financial year.

The Clause prescribes all matters to be addressed in the report and includes particulars of corruption issues notified under Clause 19, corruption issues raised by information

or allegations under Clauses 18 and 23, corruption issues dealt with on the Integrity Commissioner's own initiative, corruption issues investigated and referred to other government agencies for investigation. The Clause also provides that the report must also include a description of all investigations considered to raise significant issues or developments in law enforcement and may include statistics, patterns, trends, nature and scope of corruption in law enforcement agencies and other Commonwealth government agencies with a law enforcement function. The Integrity Commissioner must also provide any recommendations for changes to laws or administrative practices in Commonwealth government agencies. The report must also include the number of investigations which resulted in criminal confiscation proceedings, details and the result of applications made to the Federal Court or the Federal Magistrate's Court for orders of review of matters arising under the Bill and particulars of any other Court proceedings involving the Integrity Commissioner.

Clause 202: Inter-Governmental Committee Comments on Annual Report

This Clause provides that where an annual report under Clause 201 mentions the ACC, the Minister must give a copy of the annual report to the Inter-Governmental Committee. Any comments made by the Inter-Governmental Committee in relation to the report, are to be laid before each House of the Parliament within fifteen (15) sitting days of the Minister's receipt of the comments.

Clause 203: Reports on Investigations and Public Inquiries

This Clause provides that the Minister must cause reports given to him or her by the Integrity Commissioner or a Special Investigator under Clauses 54, 73 162 or 169 relating to a public hearing, to be laid before each House of Parliament within fifteen (15) sitting days of receipt of the report. The Clause further provides that prior to the report being tabled, the Minister must remove all information from the report that could endanger a person's safety, prejudice an investigation or proceedings brought as a result of an investigation, or compromise operational activities or methodologies of ACLEI or a law enforcement agency.

To avoid doubt, the Clause also particularises that a supplementary report is not required to be tabled in Parliament.

Clause 204: Special Reports

This Clause provides that the Integrity Commissioner may give the Minister a special report on the operation, function and exercise of his or her powers for part of a year to be presented in Parliament. The Minister must cause the report to be laid before each House of the Parliament within fifteen (15) sitting days after receipt.

The Integrity Commissioner must not disclose any opinions or findings in a special report which are critical of a government agency or person in a report, unless the head of the agency or the person has been given an opportunity to appear, or have a representative appear before the Integrity Commissioner to make submissions in relation to the subject matter.

Clause 205: Inter-Governmental Committee Comments on Special Report in Relation to ACC

This Clause provides that where a special report prepared under Clause 204 relates to the ACC, the Minister must provide a copy to the Inter-Governmental Committee. Any comments the Inter-Governmental Committee choose to make are to be laid before each House of the Parliament within fifteen (15) sitting days of the Minister's receipt of those comments.

Clause 206: Contents of Annual or Special Report

This Clause provides that an annual report prepared under Clause 201 or a special report prepared under Clause 204 must not include Clause 149 certified information.

Further, the Clause provides that the Integrity Commissioner may exclude information from a report where the information is sensitive and it is desirable to exclude the information, however, in doing so, the Integrity Commissioner must seek to balance the public interest served and the prejudicial consequences occurring by the disclosure of the information in the report.

Division 5- Confidentiality Requirements

Clause 207: Confidentiality Requirements for ACLEI Staff

This Clause provides that a person who either directly or indirectly, whilst they are, or were a staff member of ACLEI makes record, divulges or communicates any information disclosed or obtained under the Bill, acquired by being a staff member of ACLEI, or in the course of his or her duties as a staff member of ACLEI, is liable to 60 penalty units and/or one (1) year imprisonment, subject to Clauses 208 and 209.

Clause 208: Exceptions to Confidentiality Requirements

This Clause provides that Clause 207 does not prevent a staff member from making records, divulging or communicating information acquired in the performance of his or her duties for the performance of the functions of the Integrity Commissioner under the Bill. Clauses such as 44, 50 and 70 allow for information sharing with other agencies and staff members of ACLEI are permitted to disclose information obtained for this purpose. The Integrity Commissioner is also permitted to disclose information to the Commonwealth Ombudsman, the Ombudsman of a State or Territory, the head of a law enforcement agency, the head of a police force of a State or Territory, the head of an integrity agency or the head of another government agency where the Integrity Commissioner decides that the information may be more appropriately dealt with by that agency. The Integrity Commissioner is permitted to disclose information where a corresponding law is in force with a corresponding provision to Clause 207 with respect to confidentiality of information acquired by persons within that agency.

This Clause provides that the disclosure of information is not prevented by Clause 207 where the disclosure is required under another Commonwealth law.

This Clause also provides that the Integrity Commissioner is authorised to disclose information to a particular person where necessary to protect the person's life or safety.

Further, this Clause prevents the Integrity Commissioner from disclosing Clause 149 certified information contravening the certificate provided under Clause 149.

Clause 209: Disclosure by the Integrity Commissioner in Public Interest etc.

This Clause provides that the Integrity Commissioner may disclose information, except for Clause 149 certified information to a person, to the public or a section of the public about the performance of his or her functions or an investigation where the disclosure is in the public interest.

The Clause provides that prior to disclosing any sensitive information, the Integrity Commissioner must consider a balance between the public interest and the prejudicial consequences that may result in disclosing the information.

Clause 210: Opportunity to be Heard

This Clause provides that the Integrity Commissioner must not disclose any opinions or findings which are critical of a government agency or person, unless the head of the agency or the person has been given an opportunity to appear, or have a representative appear before the Integrity Commissioner to make submissions in relation to the subject matter.

Clause 211: ACLEI Staff Generally not Compellable in Court Proceedings

This Clause provides that a person who is, or has been a staff member of ACLEI can not be compelled to disclose information that was obtained under the provisions of the Bill, which were acquired because of being, or having been a staff member of ACLEI, before any Court proceedings or a person authorised to hear, receive and examine evidence.

However, the Clause provides that a staff member or former staff member of ACLEI will be compelled to provide evidence in proceedings where either the Integrity Commissioner, a delegate of the Integrity Commissioner or a person authorised by the Integrity Commissioner are party to proceedings in official capacity. Staff members of ACLEI may also be compelled to provide evidence in proceedings brought in carrying out a provision of the Bill or proceedings resulting from an investigation.

To avoid doubt, this Clause confirms that 'produce' includes permit access to and 'production' has a corresponding meaning.

PART 14 - PARLIAMENTARY JOINT COMMITTEE ON THE AUSTRALIAN COMMISSION FOR LAW ENFORCEMENT INTEGRITY

Clause 212: Definitions

This Clause defines key terms used in this Part.

The Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity will be referred to as the 'Committee' and members of the Committee will be referred to as a 'member'.

Clause 213: Joint Committee on the Australian Commission for Law Enforcement Integrity

This Clause provides that as soon as is practicable after the first session of each Parliament, a Joint Committee of members is to be appointed by the existing practices of appointing members to serve on joint select committees for both Houses of the Parliament.

The Committee will be made up of five (5) members of each House. Members of the Committee cannot hold the office of Minister, President, Speaker, Deputy-President or Chair of Committees and will cease to be a member of the Committee if he or she obtains one of these offices after their appointment. Either House may appoint one of its members to fill a vacancy amongst the members of the Committee appointed by that House.

Clause 214: Powers and Proceedings of the Committee

This Clause requires all matters relating to the powers and proceedings of the Committee to be determined by resolution of both Houses of Parliament.

Clause 215: Duties of the Committee

This Clause provides that the Committee must monitor, review and report to the government on any relevant matter that should be directed to the government's attention. The Committee must report to the government on matters deemed desirable, and must question and inquire into any matter posed by either House in relation to the Integrity Commissioner's performance, ACLEI, annual and special reports of ACLEI, trends in corruption generally and in Commonwealth law enforcement agencies, the integrity of the staff within Commonwealth law enforcement agencies, the changes to the Integrity Commissioner's functions, powers, procedures or ACLEI structure.

To avoid doubt, this Clause provides that the Committee is not authorised to investigate a corruption issue or ACLEI corruption issue, or reconsider decisions or recommendations made by the Integrity Commissioner or a special investigator.

Clause 216: Disclosure to Committee by Integrity Commissioner

This Clause provides that the Integrity Commissioner must inform the Committee when requested, of the general conduct of ACLEI operations and provide information

related to investigations and inquiries unless, the information is Clause 149 certified information. If the Integrity Commissioner is satisfied that the information is, or includes sensitive information and the prejudicial consequences outweigh the public interest served by providing the information to the Committee, the Integrity Commissioner may also decide not to comply with the Committee's request.

In circumstances where the Integrity Commissioner does not provide requested information to the Committee, the Committee may refer their request to the Minister, who will then determine whether or not the information is sensitive information, and, if so, whether the prejudicial consequences outweigh the public interest served by providing the information to the Committee. The Minister must not provide reasons for this determination.

Clause 217: Disclosure to Committee by Minister

This Clause provides that the Minister must comply with a request from the Committee for information in relation to a special investigation or the disclosure to the Committee would contravene a certificate issued under Clause 149.

The Clause further provides that the Minister may decide not to comply with the Committee's request where he or she is satisfied that the information is, or includes sensitive information and the prejudicial consequences outweigh the public interest served by providing the information to the Committee.

Clause 218: Ombudsman to Brief Committee About Controlled Operations

This Clause provides that the Committee must meet in private once each year to receive a brief from the Commonwealth Ombudsman about the Integrity Commissioner's involvement in controlled operations. Due to the nature of the briefing, it is necessary for the Committee to meet in private in order to maintain the confidentiality of persons involved and to ensure the non-disclosure of operational information.

The arrangement will be similar to that currently in place in respect of the Parliamentary Joint Committee that oversees the operations of the ACC.

PART 15 - MISCELLANEOUS

Clause 219: Delegation

This Clause authorises the Integrity Commissioner to delegate all or any of their powers, except the power to hold a hearing for a public inquiry, to an Assistant Integrity Commissioner.

Further, this Clause authorises the Integrity Commissioner to delegate all or any of their powers, except for the powers to hold a hearing to conduct a public inquiry, summon a person or enter premises without a warrant, to a staff member of ACLEI who is a SES, or acting SES employee.

The delegation authorising the Assistant Integrity Commissioner or ACLEI staff member with the Integrity Commissioner's powers must be in writing and signed by the Integrity Commissioner.

Clause 220: Offence of Victimisation

The Clause provides that any person who causes, or threatens to cause detriment to another person (the 'victim') on the basis that the victim refers, notifies or produces documents to the Integrity Commissioner, the Minister or a special investigator in relation to a corruption issue or an ACLEI corruption issue, is liable to two (2) years imprisonment. Where a victim is threatened, whether the threat is express, implied, conditional or unconditional, the prosecution of the offence does not require proof that the victim actually feared the threat would be carried out. The burden is lowered with the intention of pursuing all threats made, regardless of the intensity and to demonstrate that threatening witnesses or those providing assistance to the Integrity Commissioner is not tolerated.

The Clause intends to ensure that persons involved in an investigation by the Integrity Commissioner can assist in the investigation and be protected from harassment or violence by reason of their involvement.

Clause 221: Legal and Financial Assistance in Relation to Applications for Administrative Review

This Clause provides that in relation to an application or proposed application to the Federal Court or the Federal Magistrates Court for an order of review of a matter arising under the Bill (pursuant to the *Administrative Decisions (Judicial Review) Act 1977*) a person may apply to the Attorney-General for legal and financial assistance.

Where an application for legal and/or financial assistance is made, the Attorney-General may authorise the Commonwealth to provide such assistance, either unconditionally or subject to specified terms, if satisfied that a substantial hardship would be suffered if assistance was refused, or where the circumstances of the case are of a special nature.

The intention of this provision is to attempt to provide an equal access to justice. The assistance can provide resources for representation and minimise a potential

disadvantage. Further, the assistance will allow access to legal advice to assess claims and prevent applications being pursued where there is no merit, saving the Court's time.

Clause 222: Immunity from Civil Proceedings

A staff member of ACLEI is not liable to civil proceedings in relation to an act or omission done in good faith during the performance, or purported performance of their functions under the Bill.

A person requested by the Integrity Commissioner to assist ACLEI is not liable to civil proceedings in relation to an act or omission done in good faith during the performance, or purported performance, of assisting ACLEI.

A special investigator is not liable to civil proceedings in relation to an act or omission done in good faith during the performance, or purported performance of their functions under Part 12, Division 4 of the Bill.

A person requested by a special investigator to assist him or her, is not liable to civil proceedings in relation to an act or omission done in good faith during the performance, or purported performance of assisting the special investigator.

In circumstances where information, documents or evidence is produced to the Integrity Commissioner or a special investigator, a person is not liable to any action, suit, claim or proceeding in relation to the loss, damage or injury suffered by another person as a result of the evidence being provided to the Integrity Commissioner or special investigator.

The intention of the Clause is to allow staff members of ACLEI to perform their duties, functions and exercise the powers authorised under the Bill, without the fear of personal liability for any actions they perform. For example, the Bill authorises staff members of ACLEI to use a reasonable amount of force where necessary in executing an arrest or search warrant under Clause 117. Accordingly, immunity from civil proceedings is necessary as staff members of ACLEI will potentially be exposed to actions for damages etc. in the performance of their duties.

Clause 223: Immunities from Certain State and Territory Laws

The Integrity Commissioner, an Assistant Integrity Commissioner and staff members of ACLEI are not required to obtain a licence or permission under any State or Territory law, for the purpose of doing an act or thing in the course of their respective duties under the Bill. Further, ACLEI are not required to register any vehicle, vessel, animal or article belonging to the Commonwealth.

The Clause intends to prevent ACLEI being restricted in the performance of their duties by imposing different State and Territory regulations. Due to ACLEI's function of investigating corruption issues nationally, staff members will be qualified under the Commonwealth.

Clause 224: Regulations

This Clause provides that the Governor-General may make Regulations prescribing matters required or permitted by the Bill, or which are necessary or convenient to be prescribed.

For example, in the future, it may be necessary for the Regulations to prescribe other agencies to be included as a 'law enforcement agency' for the purposes of the Bill and Clause 5 currently reflects that any additional Commonwealth government agencies with a law enforcement function may be prescribed by the Regulations.