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The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Law Enforcement Integrity Commissioner Bill 2006**

**No.     , 2006**

*(Attorney-General)*

**A Bill for an Act to provide for the appointment of  
the Integrity Commissioner, to set out the functions  
and powers of the Integrity Commissioner, and for  
related purposes**

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1     **A Bill for an Act to provide for the appointment of**  
2     **the Integrity Commissioner, to set out the functions**  
3     **and powers of the Integrity Commissioner, and for**  
4     **related purposes**

5     The Parliament of Australia enacts:

6     **Part 1—Preliminary**  
7

8     **1 Short title**

9                     This Act may be cited as the *Law Enforcement Integrity*  
10                    *Commissioner Act 2006*.

1     **2 Commencement**

- 2             (1) Each provision of this Act specified in column 1 of the table  
 3                 commences, or is taken to have commenced, in accordance with  
 4                 column 2 of the table. Any other statement in column 2 has effect  
 5                 according to its terms.  
 6

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Sections 3 to 224	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

- 7             Note:       This table relates only to the provisions of this Act as originally  
 8                 passed by the Parliament and assented to. It will not be expanded to  
 9                 deal with provisions inserted in this Act after assent.

- 10            (2) Column 3 of the table contains additional information that is not  
 11                 part of this Act. Information in this column may be added to or  
 12                 edited in any published version of this Act.

13     **3 Objects of this Act**

- 14            (1) The objects of this Act are:  
 15                 (a) to facilitate:  
 16                     (i) the detection of corrupt conduct in law enforcement  
 17                     agencies; and  
 18                     (ii) the investigation of corruption issues that relate to law  
 19                     enforcement agencies; and

- 1 (b) to enable criminal offences to be prosecuted, and civil  
2 penalty proceedings to be brought, following those  
3 investigations; and  
4 (c) to prevent corrupt conduct in law enforcement agencies; and  
5 (d) to maintain and improve the integrity of staff members of law  
6 enforcement agencies.
- 7 (2) To assist in achieving these objects, this Act establishes:  
8 (a) the office of the Integrity Commissioner; and  
9 (b) the Australian Commission for Law Enforcement Integrity.

10 **4 Application of Act**

11 This Act applies both within and outside Australia and extends to  
12 every external Territory.

1

2

3

**Part 2—Interpretation**

4

**5 Definitions**

5

(1) In this Act:

6

*ACC* means the Australian Crime Commission.

7

*ACLEI*: see *Australian Commission for Law Enforcement Integrity*.

8

9

*ACLEI corruption issue* has the meaning given by section 8.

10

*AFP* means the Australian Federal Police.

11

*Assistant Integrity Commissioner* means an Assistant Integrity Commissioner appointed under section 185.

12

13

*assisting officer*, in relation to a warrant for a person's arrest or a search warrant, means:

14

15

(a) a person who:

16

(i) is an authorised officer or a member or special member of the AFP; and

17

18

(ii) is assisting in executing the warrant; or

19

(b) a person who:

20

(i) is not an authorised officer; and

21

(ii) is not a member or special member of the AFP; and

22

(ii) has been authorised by the authorised officer who is

23

executing the warrant to assist in executing the warrant.

24

*Australian Commission for Law Enforcement Integrity* or *ACLEI* means the Australian Commission for Law Enforcement Integrity established by section 195.

25

26

27

*authorised officer* means:

28

(a) the Integrity Commissioner; or

29

(b) a person authorised under section 140.



- 1            ***civil penalty proceeding*** means a proceeding for a civil penalty in  
2 relation to a contravention of a law of the Commonwealth or of a  
3 State or Territory.
- 4            ***civil penalty provision*** means a provision of a law of the  
5 Commonwealth or of a State or Territory in relation to a  
6 contravention of which a civil penalty may be imposed.
- 7            ***Commonwealth government agency*** means:  
8            (a) a Department of the Commonwealth; or  
9            (b) a body (whether incorporated or not) established for a public  
10 purpose by, or under, a law of the Commonwealth.
- 11           ***confiscation proceeding*** means a proceeding under:  
12           (a) the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act*  
13              *2002*; or  
14           (b) a corresponding law within the meaning of either of those  
15              Acts;  
16 but does not include a criminal prosecution for an offence under  
17 either of those Acts or a corresponding law.
- 18           ***contravene*** a certificate issued under section 149 has the meaning  
19 given by subsection (4).
- 20           ***corrupt conduct***: see ***engages in corrupt conduct***.
- 21           ***corruption investigation*** means:  
22           (a) an investigation of a corruption issue under this Act; or  
23           (b) an investigation of an ACLEI corruption issue under this Act  
24              (including a special investigation).
- 25           ***corruption issue*** has the meaning given by section 7.
- 26           ***criminal proceeding*** means:  
27           (a) a prosecution for an offence against a law of the  
28              Commonwealth or of a State or Territory; or  
29           (b) a confiscation proceeding.
- 30           ***data*** has the same meaning as in Part IAA of the *Crimes Act 1914*.

1            ***data held in a computer*** has the same meaning as in Part IAA of  
2            the *Crimes Act 1914*.

3            ***data storage device*** has the same meaning as in Part IAA of the  
4            *Crimes Act 1914*.

5            ***disciplinary proceeding***:

6            (a) means a proceeding of a disciplinary nature under a law of  
7            the Commonwealth or of a State or Territory; and

8            (b) includes action taken under Subdivision D of Division 5 of  
9            Part V of the *Australian Federal Police Act 1979*.

10          ***eligible seizable item*** means anything that:

11          (a) would present a danger to a person; or

12          (b) could be used to assist a person to escape from lawful  
13          custody.

14          ***employee*** of a government agency has a meaning affected by  
15          subsection (5).

16          ***engage in conduct*** means:

17          (a) do an act; or

18          (b) omit to do an act.

19          ***engages in corrupt conduct*** has the meaning given by section 6.

20          ***evidential material*** means:

21          (a) in relation to an investigation warrant—a thing that may be  
22          relevant to:

23                  (i) a corruption investigation; or

24                  (ii) a public inquiry; or

25          (b) in relation to an offence warrant—a thing relevant to an  
26          offence against a law of the Commonwealth.

27          ***former NCA*** means the National Crime Authority established  
28          under section 7 of the former NCA Act.

29          ***former NCA Act*** means the *National Crime Authority Act 1984* (as  
30          in force at any time before the commencement of Schedule 1 to the  
31          *Australian Crime Commission Establishment Act 2002*).

1 **frisk search** has the same meaning as in Part IAA of the *Crimes*  
2 *Act 1914*.

3 **government agency** means:

- 4 (a) a Department of the Commonwealth or of a State or  
5 Territory; or  
6 (b) a body (whether incorporated or not) established for a public  
7 purpose by or under a law of the Commonwealth or of a State  
8 or Territory.

9 **head** of a government agency means:

- 10 (a) if the agency is the AFP—the Commissioner (within the  
11 meaning of the *Australian Federal Police Act 1979*); or  
12 (b) if the agency is the ACC—the CEO of the ACC (within the  
13 meaning of the *Australian Crime Commission Act 2002*); or  
14 (c) if the agency is a Commonwealth government agency that is  
15 prescribed for the purposes of paragraph (d) of the definition  
16 of **law enforcement agency**—the person holding the office in  
17 the agency that is prescribed by the regulations for the  
18 purposes of this definition; or  
19 (d) if the agency is another Commonwealth government agency:  
20 (i) in the case of a Department of the Commonwealth—the  
21 Secretary of the Department; or  
22 (ii) in the case of a body established for a public purpose—  
23 the person holding, or performing the duties of, the  
24 principal office in respect of the body; or  
25 (e) if the agency is a State or Territory government agency—the  
26 person holding, or performing the duties of, the principal  
27 office in respect of the agency.

28 **integrity agency** for a State or Territory means an agency that:

- 29 (a) is established by the law of the State or Territory for  
30 purposes that include the purpose of investigating corruption  
31 in the police force of the State or Territory; and  
32 (b) is prescribed for the purposes of this definition.

33 **Integrity Commissioner** means the Integrity Commissioner  
34 appointed under section 175.

- 1                    ***Inter-Governmental Committee*** means the Inter-Governmental  
2                    Committee established by section 8 of the *Australian Crime*  
3                    *Commission Act 2002*.
- 4                    ***investigation warrant*** means a warrant to search for a thing that  
5                    may be relevant to:  
6                    (a) a corruption investigation; or  
7                    (b) a public inquiry.
- 8                    ***issuing officer*** means:  
9                    (a) for an investigation warrant:  
10                    (i) a Judge of the Federal Court of Australia sitting in  
11                    Chambers; or  
12                    (ii) a Judge of a court of a State or Territory; or  
13                    (iii) a Federal Magistrate; or  
14                    (b) for an offence warrant—a magistrate.
- 15                    ***law enforcement agency*** means:  
16                    (a) the AFP; or  
17                    (b) the ACC; or  
18                    (c) the former NCA; or  
19                    (d) any other Commonwealth government agency that:  
20                    (i) has a law enforcement function; and  
21                    (ii) is prescribed by the regulations for the purposes of this  
22                    paragraph.
- 23                    ***law enforcement function*** means any of the following functions:  
24                    (a) investigating whether:  
25                    (i) an offence has been committed against a law of the  
26                    Commonwealth; or  
27                    (ii) there has been a contravention of a law of the  
28                    Commonwealth in relation to which civil penalty  
29                    proceedings may be brought;  
30                    (b) preparing the material necessary to prosecute a person for an  
31                    offence against a law of the Commonwealth;  
32                    (c) preparing the material necessary to bring civil penalty  
33                    proceedings against a person for a contravention of a law of  
34                    the Commonwealth;

- 1 (d) collecting, maintaining, correlating, analysing, accessing or  
2 distributing information for the purpose of assisting the  
3 enforcement of laws of the Commonwealth;
- 4 (e) assisting in carrying out a function referred to in  
5 paragraphs (a) to (d).
- 6 **law enforcement secrecy provision** means:
- 7 (a) Part IV of the *Financial Transaction Reports Act 1988*; or  
8 (b) section 45 of the *Surveillance Devices Act 2004*; or  
9 (c) sections 63 and 133 of the *Telecommunications*  
10 *(Interception) Act 1979*; or  
11 (d) anything done under a provision referred to in paragraphs (a)  
12 to (c).
- 13 **legal aid officer** means:
- 14 (a) a member, or member of staff, of an authority established by  
15 or under a law of a State or Territory for purposes that  
16 include providing legal assistance; or  
17 (b) a person to whom the Attorney-General has delegated his or  
18 her powers and functions under section 103.
- 19 **legal practitioner** means a barrister, a solicitor, a barrister and  
20 solicitor or a legal practitioner, of the High Court or of the  
21 Supreme Court of a State or Territory.
- 22 **magistrate** means a magistrate who is remunerated by salary or  
23 otherwise.
- 24 **manage** an investigation of a corruption issue by a law  
25 enforcement agency has the meaning given by section 61.
- 26 **nominated contact** of a law enforcement agency for an  
27 investigation of a corruption issue means:
- 28 (a) a staff member of the agency nominated under section 60 as  
29 the nominated contact for the investigation; or  
30 (b) if a staff member is not nominated—the head of the agency.
- 31 **occupier** of premises means the person apparently in charge of the  
32 premises.

- 1           **offence warrant** means a warrant to search for a thing relevant to  
2           an offence against a law of the Commonwealth.
- 3           **official matter** means any of the following (whether past, present  
4           or contingent):
- 5           (a) a corruption investigation;
- 6           (b) a hearing held by the Integrity Commissioner or a special  
7           investigator in relation to a corruption investigation;
- 8           (c) court proceedings.
- 9           **ordinary search** means a search of a person or of articles in the  
10          possession of a person that may include:
- 11          (a) requiring the person to remove his or her overcoat, coat or  
12          jacket or any gloves, shoes or hat; and
- 13          (b) an examination of those items.
- 14          **oversee** an investigation of a corruption issue by a law enforcement  
15          agency has the meaning given by section 62.
- 16          **premises** includes a place, vehicle, vessel and aircraft.
- 17          **public inquiry** means a public inquiry conducted by the Integrity  
18          Commissioner under Part 8.
- 19          **refer**, in relation to an allegation or information, has the meaning  
20          given by subsections (2) and (3).
- 21          **responsible Minister** for a Commonwealth government agency  
22          means:
- 23          (a) if the agency is established or continued in existence by an  
24          Act—the Minister administering that Act; or
- 25          (b) in any other case—the Minister having general responsibility  
26          for the activities of the agency.
- 27          **search warrant** means an investigation warrant, or an offence  
28          warrant, that is issued under section 109:
- 29          (a) to search premises; or
- 30          (b) to carry out an ordinary search, or frisk search, of a person.
- 31          **secondee**:

- 1 (a) in relation to a law enforcement agency—has the meaning  
2 given by subsection 10(5); and
- 3 (b) in relation to ACLEI—has the meaning given by subsection  
4 11(2).
- 5 ***secrecy provision*** means:
- 6 (a) a provision of a law of the Commonwealth that purports to  
7 prohibit; or
- 8 (b) anything done, under a provision of a law of the  
9 Commonwealth, to prohibit;
- 10 the communication, divulging or publication of information, the  
11 production of, or the publication of the contents of, a document, or  
12 the production of a thing.
- 13 ***section 149 certified information*** means:
- 14 (a) information about a matter specified in a certificate in force  
15 under section 149; or
- 16 (b) information contained in a document specified in a certificate  
17 in force under section 149.
- 18 ***sensitive information*** means information the disclosure of which:
- 19 (a) could prejudice:
- 20 (i) the security, defence or international relations of  
21 Australia; or
- 22 (ii) relations between the Commonwealth Government and  
23 the Government of a State or between the Government  
24 of a State and the Government of another State; or
- 25 (b) would involve disclosing:
- 26 (i) deliberations or decisions of the Cabinet, or of a  
27 Committee of the Cabinet, of the Commonwealth or of a  
28 State; or
- 29 (ii) deliberations or advice of the Federal Executive Council  
30 or the Executive Council of a State or the Northern  
31 Territory; or
- 32 (iii) deliberations or decisions of the Australian Capital  
33 Territory Executive or of a committee of that Executive;  
34 or

- 1 (c) could reveal, or enable a person to ascertain, the existence or  
 2 identity of a confidential source of information in relation to:  
 3 (i) the enforcement of the criminal law of the  
 4 Commonwealth, a State or Territory or a foreign  
 5 country; or  
 6 (ii) a corruption investigation; or  
 7 (iii) a public inquiry under this Act; or  
 8 (d) could endanger a person's life or physical safety; or  
 9 (e) could prejudice the protection of public safety; or  
 10 (f) could prejudice the fair trial of a person or the impartial  
 11 adjudication of a matter; or  
 12 (g) could prejudice the proper enforcement of the law (including  
 13 through corruption investigations); or  
 14 (h) would involve disclosing information whose disclosure is  
 15 prohibited (absolutely or subject to qualifications) by or  
 16 under another law of the Commonwealth; or  
 17 (i) would involve unreasonably disclosing a person's personal  
 18 affairs; or  
 19 (j) would involve unreasonably disclosing confidential  
 20 commercial information.

21 ***serious corruption*** means corrupt conduct engaged in by a staff  
 22 member of a law enforcement agency that could result in the staff  
 23 member being charged with an offence punishable, on conviction,  
 24 by a term of imprisonment for 12 months or more.

25 ***significant corruption issue*** means:

- 26 (a) a corruption issue that relates to corrupt conduct that  
 27 constitutes serious corruption or systemic corruption; or  
 28 (b) a corruption issue that:  
 29 (i) relates to a law enforcement agency; and  
 30 (ii) is of a kind that the Integrity Commissioner and the  
 31 head of the agency have agreed under paragraph  
 32 17(1)(a) to be a significant corruption issue in relation  
 33 to staff members of the agency; or  
 34 (c) a corruption issue of a kind that is prescribed by the  
 35 regulations for the purposes of this paragraph.



- 1            **special investigation** means a special investigation of an ACLEI  
2            corruption issue conducted under Division 4 of Part 12.
- 3            **special investigator** means a person conducting a special  
4            investigation.
- 5            **staff member:**
- 6            (a) in relation to a law enforcement agency—has the meaning  
7            given by subsections 10(1) to (5); and
- 8            (b) in relation to ACLEI—has the meaning given by subsection  
9            11(1).
- 10          **State or Territory government agency** means:
- 11          (a) a Department of a State or Territory; or
- 12          (b) a body (whether incorporated or not) established for a public  
13          purpose by or under a law of a State or Territory.
- 14          **strip search** has the same meaning as in Part IAA of the *Crimes*  
15          *Act 1914*.
- 16          **systemic corruption** means instances of corrupt conduct (which  
17          may or may not constitute serious corruption) that reveal a pattern  
18          of corrupt conduct in a law enforcement agency or in law  
19          enforcement agencies.
- 20          **taxation secrecy provision** means a secrecy provision that is a  
21          provision of a taxation law within the meaning of the *Taxation*  
22          *Administration Act 1953*.
- 23          **thing relevant to an indictable offence** has the same meaning as in  
24          the *Crimes Act 1914*.
- 25          (2) A reference in this Act to a person **referring** an allegation includes  
26          a reference to the person making the allegation.
- 27          (3) A reference in this Act to a person **referring** information includes a  
28          reference to the person giving information.
- 29          (4) For the purposes of this Act, a disclosure **contravenes** a certificate  
30          issued under section 149 if the disclosure would be contrary to the  
31          public interest according to the terms of the certificate.

- 1 (5) A reference in this Act to a person being an *employee* of a  
 2 government agency includes a reference to a person being a  
 3 member of a police force of a State or Territory.

#### 4 **6 Meaning of *engages in corrupt conduct***

##### 5 *Staff members of law enforcement agencies*

- 6 (1) For the purpose of this Act, a staff member of a law enforcement  
 7 agency *engages in corrupt conduct* if the staff member, while a  
 8 staff member of the agency, engages in:  
 9 (a) conduct that involves, or that is engaged in for the purpose  
 10 of, the staff member abusing his or her office as a staff  
 11 member of the agency; or  
 12 (b) conduct that perverts, or that is engaged in for the purpose of  
 13 perverting, the course of justice; or  
 14 (c) conduct that, having regard to the duties and powers of the  
 15 staff member as a staff member of the agency, involves, or is  
 16 engaged in for the purpose of, corruption of any other kind.
- 17 (2) If the law enforcement agency is one referred to in paragraph (d) of  
 18 the definition of *law enforcement agency*, the staff member  
 19 *engages in corrupt conduct* only if the conduct relates to the  
 20 performance of a law enforcement function of the agency.

##### 21 *Staff members of ACLEI*

- 22 (3) For the purpose of this Act, a staff member of ACLEI *engages in*  
 23 *corrupt conduct* if the staff member, while a staff member of  
 24 ACLEI, engages in:  
 25 (a) conduct that involves, or that is engaged in for the purpose  
 26 of, the staff member abusing his or her office as a staff  
 27 member of ACLEI; or  
 28 (b) conduct that perverts, or that is engaged in for the purpose of  
 29 perverting, the course of justice; or  
 30 (c) conduct that, having regard to the duties and powers of the  
 31 staff member as a staff member of ACLEI, involves, or is  
 32 engaged in for the purpose of, corruption of any other kind.

1                    *General provisions*

2                    (4) To avoid doubt:

3                    (a) the conduct referred to in subsection (1) may be conduct that  
4                    was engaged in before the commencement of this Act; and5                    (b) a staff member of a law enforcement agency or ACLEI  
6                    ***engages in corrupt conduct*** even if the conduct engaged in  
7                    by the staff member also involves or implicates someone  
8                    who is not a staff member of a law enforcement agency or  
9                    ACLEI.10                    (5) For the purposes of this section, conduct is taken to be engaged in  
11                    for a purpose if it is engaged in for purposes that include that  
12                    purpose.13                    **7 Meaning of *corruption issue***14                    (1) For the purposes of this Act, a ***corruption issue*** is an issue whether  
15                    a person who is, or has been, a staff member of a law enforcement  
16                    agency:

17                    (a) has, or may have, engaged in corrupt conduct; or

18                    (b) is, or may be, engaging in corrupt conduct; or

19                    (c) will, or may at any time in the future, engage in corrupt  
20                    conduct.21                    (2) To avoid doubt, an allegation, or information, may raise a  
22                    ***corruption issue*** even if the identity of the person is unknown, is  
23                    uncertain or is not disclosed in the allegation or information.24                    **8 Meaning of *ACLEI corruption issue***25                    (1) For the purposes of this Act, an ***ACLEI corruption issue*** is an  
26                    issue whether a person who is, or has been, a staff member of  
27                    ACLEI:

28                    (a) has, or may have, engaged in corrupt conduct; or

29                    (b) is, or may be, engaging in corrupt conduct; or

30                    (c) will, or may at any time in the future, engage in corrupt  
31                    conduct.

- 1           (2) To avoid doubt, an allegation, or information, may raise an **ACLEI**  
2           **corruption issue** even if the identity of the person is unknown, is  
3           uncertain or is not disclosed in the allegation or information.

#### 4           **9 Corruption issue that relates to a law enforcement agency**

5                         For the purposes of this Act, a corruption issue relates to a law  
6                         enforcement agency if the corruption issue relates to corrupt  
7                         conduct of a person as a staff member of the agency.

#### 8           **10 Staff members of law enforcement agencies**

##### 9                         *AFP staff members*

- 10           (1) The following are **staff members** of the AFP for the purposes of  
11           this Act:  
12                         (a) the Commissioner;  
13                         (b) a Deputy Commissioner of Police;  
14                         (c) an AFP employee;  
15                         (d) a protective service officer;  
16                         (e) a special member;  
17                         (f) a special protective service officer;  
18                         (g) a person engaged under section 35 of the *Australian Federal*  
19                         *Police Act 1979*;  
20                         (h) a person who is:  
21                                 (i) a member of the police force of a State or Territory; or  
22                                 (ii) an employee of a government agency;  
23                                 and who is assisting the AFP in the performance of its  
24                                 functions by performing functions specified in an agreement  
25                                 under section 69D of the *Australian Federal Police Act 1979*.  
26           The terms used in paragraphs (a) to (f) have the same meaning as  
27           in the *Australian Federal Police Act 1979*.

##### 28                         *ACC staff members*

- 29           (2) The following are **staff members** of the ACC for the purposes of  
30           this Act:

- 1 (a) the CEO of the ACC (within the meaning of the *Australian*  
2 *Crime Commission Act 2002*);  
3 (b) a person appointed under subsection 46B(1) of that Act;  
4 (c) a member of the staff referred to in subsection 47(1) of that  
5 Act;  
6 (d) a person engaged under subsection 48(1) of that Act;  
7 (e) a person referred to in section 49 of that Act whose services  
8 are made available to the ACC;  
9 (f) a legal practitioner appointed under section 50 of that Act to  
10 assist the ACC as counsel.

11 *Former NCA staff members*

- 12 (3) The following are *staff members* of the former NCA for the  
13 purposes of this Act:  
14 (a) a member of the former NCA;  
15 (b) a member of the staff of the former NCA referred to in  
16 subsection 47(1) of the former NCA Act;  
17 (c) a person engaged under subsection 48(1) of the former NCA  
18 Act;  
19 (d) a person referred to in section 49 of the former NCA Act  
20 whose services were made available to the former NCA;  
21 (e) a legal practitioner appointed under section 50 of the former  
22 NCA Act to assist the former NCA as counsel.

23 *Staff members of prescribed law enforcement agencies*

- 24 (4) For the purposes of this Act, the *staff members* of a  
25 Commonwealth government agency that is prescribed for the  
26 purposes of paragraph (d) of the definition of *law enforcement*  
27 *agency* are the persons in the class of persons prescribed by the  
28 regulations for the purposes of this subsection.

29 *Secondees*

- 30 (5) For the purposes of this Act:  
31 (a) a person referred to in paragraph (1)(h) is a *secondee* to the  
32 AFP; and

- 1 (b) a person referred to in paragraph (2)(e) is a *secondee* to the  
 2 ACC; and  
 3 (c) a person referred to in paragraph (3)(d) is a *secondee* to the  
 4 former NCA; and  
 5 (d) a person is a *secondee* to a Commonwealth agency that is  
 6 prescribed for the purposes of paragraph (d) of the definition  
 7 of *law enforcement agency* if the regulations provide that the  
 8 person is a secondee of that agency.

9 **11 Staff members of ACLEI**

- 10 (1) The following are *staff members of ACLEI* for the purposes of this  
 11 Act:  
 12 (a) the Integrity Commissioner;  
 13 (b) an Assistant Integrity Commissioner;  
 14 (c) a member of the staff referred to in section 197;  
 15 (d) a person engaged under section 198;  
 16 (e) a person referred to in section 199 whose services are made  
 17 available to the Integrity Commissioner;  
 18 (f) a legal practitioner appointed under section 200 to assist the  
 19 Integrity Commissioner as counsel.  
 20 (2) For the purposes of this Act, a person referred to in  
 21 paragraph (1)(e) is a *secondee* to ACLEI.

22 **12 Applying Act to staff members of former NCA**

- 23 (1) For the purposes of this Act, a person who was a staff member of  
 24 the former NCA is taken to have been a staff member of the ACC.  
 25 (2) Subsection (1) does not apply for the purposes of section 6.

26 **13 State offences that have a federal aspect**

27 *Object*

- 28 (1) The object of this section is to identify State offences that have a  
 29 federal aspect because:

- 1 (a) they potentially fall within Commonwealth legislative power  
2 because of the elements of the State offence; or  
3 (b) they potentially fall within Commonwealth legislative power  
4 because of the circumstances in which the State offence was  
5 committed (whether or not those circumstances are expressed  
6 to be acts or omissions involved in committing the offence);  
7 or  
8 (c) the investigation of them is incidental to a corruption  
9 investigation that involves, or may involve, an offence  
10 against a law of the Commonwealth or a Territory.

11 *State offences that have a federal aspect*

- 12 (2) For the purposes of this Act, a State offence has a federal aspect if,  
13 and only if:  
14 (a) both:  
15 (i) the State offence is not an ancillary offence; and  
16 (ii) assuming that the provision creating the State offence  
17 had been enacted by the Parliament of the  
18 Commonwealth instead of by the Parliament of the  
19 State—the provision would have been a valid law of the  
20 Commonwealth; or  
21 (b) both:  
22 (i) the State offence is an ancillary offence that relates to a  
23 particular primary offence; and  
24 (ii) assuming that the provision creating the primary offence  
25 had been enacted by the Parliament of the  
26 Commonwealth instead of by the Parliament of the  
27 State—the provision would have been a valid law of the  
28 Commonwealth; or  
29 (c) assuming that the Parliament of the Commonwealth had  
30 enacted a provision that created an offence penalising the  
31 specific acts or omissions involved in committing the State  
32 offence—that provision would have been a valid law of the  
33 Commonwealth; or  
34 (d) both:

- 1 (i) the Integrity Commissioner is investigating a corruption  
2 issue that involves, or may involve, an offence against a  
3 law of the Commonwealth or a Territory; and  
4 (ii) if the Integrity Commissioner is investigating, or were  
5 to investigate, a corruption issue that involves, or may  
6 involve, the State offence—that investigation is, or  
7 would be, incidental to the investigation referred to in  
8 subparagraph (i).

9 *Specificity of acts or omissions*

- 10 (3) For the purposes of paragraph (2)(c), the specificity of the acts or  
11 omissions involved in committing a State offence is to be  
12 determined having regard to the circumstances in which the  
13 offence was committed (whether or not those circumstances are  
14 expressed to be elements of the offence).

15 *State offences covered by paragraph (2)(c)*

- 16 (4) A State offence is taken to be covered by paragraph (2)(c) if the  
17 conduct constituting the State offence:  
18 (a) affects the interests of:  
19 (i) the Commonwealth; or  
20 (ii) an authority of the Commonwealth; or  
21 (iii) a constitutional corporation; or  
22 (b) was engaged in by a constitutional corporation; or  
23 (c) was engaged in in a Commonwealth place; or  
24 (d) involved the use of a postal service or other like service; or  
25 (e) involved an electronic communication; or  
26 (f) involved trade or commerce:  
27 (i) between Australia and places outside Australia; or  
28 (ii) among the States; or  
29 (iii) within a Territory, between a State and a Territory or  
30 between 2 Territories; or  
31 (g) involved:  
32 (i) banking (other than State banking not extending beyond  
33 the limits of the State concerned); or



- 1 (ii) insurance (other than State insurance not extending  
2 beyond the limits of the State concerned); or  
3 (h) relates to a matter outside Australia; or  
4 (i) relates to a matter in respect of which an international  
5 agreement to which Australia is a party imposes obligations  
6 to which effect could be given by the creation of an offence  
7 against the domestic laws of the parties to the agreement; or  
8 (j) relates to a matter that affects the relations between Australia  
9 and another country or countries or is otherwise a subject of  
10 international concern.

11 (5) Subsection (4) does not limit paragraph (2)(c).

12 *Definitions*

13 (6) In this section:

14 ***ancillary offence***, in relation to an offence (the ***primary offence***),  
15 means:

- 16 (a) an offence of conspiring to commit the primary offence; or  
17 (b) an offence of aiding, abetting, counselling or procuring, or  
18 being in any way knowingly concerned in, the commission of  
19 the primary offence; or  
20 (c) an offence of attempting to commit the primary offence.

21 ***Commonwealth place*** has the same meaning as in the  
22 *Commonwealth Places (Application of Laws) Act 1970*.

23 ***conduct*** has the same meaning as in the *Criminal Code*.

24 ***constitutional corporation*** means a corporation to which  
25 paragraph 51(xx) of the Constitution applies.

26 ***electronic communication*** means a communication of information:

- 27 (a) whether in the form of text; or  
28 (b) whether in the form of data; or  
29 (c) whether in the form of speech, music or other sounds; or  
30 (d) whether in the form of visual images (animated or  
31 otherwise); or  
32 (e) whether in any other form; or

- 1                   (f) whether in any combination of forms;  
2                   by means of guided and/or unguided electromagnetic energy.  
3                   ***engage in conduct*** has the same meaning as in the *Criminal Code*.  
4                   ***State*** includes the Australian Capital Territory and the Northern  
5                   Territory.  
6                   ***State offence*** means an offence against a law of a State.

1

2  
3

## **Part 3—The Integrity Commissioner**

4

### **14 Integrity Commissioner**

5

There is to be an Integrity Commissioner.

6  
7

Note: For provisions in relation to the Integrity Commissioner's appointment, see Division 1 of Part 13.

8

### **15 Functions of the Integrity Commissioner**

9

The Integrity Commissioner has the following functions:

10

(a) to investigate and report on corruption issues;

11

(b) to refer corruption issues, in appropriate circumstances, to a law enforcement agency for investigation;

12

13

(c) to manage, oversee or review, in appropriate circumstances, the investigation of corruption issues by law enforcement agencies;

14

15

16

(d) at the request of the Minister, to conduct public inquiries into:

17

18

(i) corruption issues; or

19

(ii) corruption generally in, or the integrity of staff members of, law enforcement agencies;

20

21

(e) to collect, correlate, analyse and disseminate information and intelligence in relation to corruption generally in, or the integrity of staff members of, both:

22

23

24

(i) law enforcement agencies; and

25

(ii) other Commonwealth government agencies that have law enforcement functions;

26

27

(f) on the Integrity Commissioner's own initiative, or on request by the Minister, to make reports and recommendations to the Minister in relation to any matter that concerns the need for or the desirability of legislative or administrative action on issues in relation to corruption generally in, or the integrity of staff members of, law enforcement agencies;

28

29

30

31

32

33

(g) any other function conferred on the Integrity Commissioner by other provisions of this Act or by another Act.

34

1 Note: Paragraph (a)—the investigation of a corruption issue may be  
2 conducted in response to a referral or notification of the corruption  
3 issue to the Integrity Commissioner or on the Integrity  
4 Commissioner’s own initiative.

5 **16 Integrity Commissioner to give priority to serious corruption and**  
6 **systemic corruption**

7 In carrying out the Integrity Commissioner’s functions, the  
8 Integrity Commissioner must give priority to corruption issues that  
9 relate to corrupt conduct that constitutes serious corruption or  
10 systemic corruption.

11 **17 Integrity Commissioner may enter into agreement with head of**  
12 **law enforcement agency**

- 13 (1) The Integrity Commissioner may enter into an agreement with the  
14 head of a law enforcement agency in relation to all or any of the  
15 following matters:  
16 (a) the kinds of issues that are significant corruption issues in  
17 relation to staff members of the agency;  
18 (b) the level of detail required to notify the Integrity  
19 Commissioner of a corruption issue;  
20 (c) the way in which information or documents in relation to a  
21 corruption issue may be given to the Integrity Commissioner  
22 (whether for the purpose of notifying the Integrity  
23 Commissioner or allowing the Integrity Commissioner to  
24 manage, oversee or review an investigation or otherwise);  
25 (d) the level of detail required in the final report given to the  
26 Integrity Commissioner on the law enforcement agency’s  
27 investigation of a corruption issue.
- 28 (2) The Integrity Commissioner may agree with the head of the law  
29 enforcement agency to vary or revoke the agreement.
- 30 (3) The agreement, or the variation or revocation of the agreement,  
31 must be in writing.

1

2 **Part 4—Dealing with corruption issues**

3 **Division 1—Referring corruption issues to Integrity**  
4 **Commissioner**

5 **18 Referral of corruption issues by Minister**

6 The Minister may refer to the Integrity Commissioner an  
7 allegation, or information, that raises a corruption issue.

8 **19 Notification of corruption issues by law enforcement agency**  
9 **heads**

- 10 (1) As soon as practicable after the head of a law enforcement agency  
11 becomes aware of an allegation, or information, that raises a  
12 corruption issue that relates to the agency, the head of the agency  
13 must:
- 14 (a) notify the Integrity Commissioner in writing of the  
15 corruption issue (including a description of the corruption  
16 issue and the allegation or information giving rise to the  
17 corruption issue); and
  - 18 (b) indicate whether the corruption issue is a significant  
19 corruption issue.
- 20 (2) The head of the agency does not need to take action under  
21 subsection (1), however, if the head of the agency:
- 22 (a) has already notified the Integrity Commissioner of the  
23 corruption issue under subsection (1); or
  - 24 (b) has reasonable grounds to believe that the Integrity  
25 Commissioner is already aware of the allegation or the  
26 information.
- 27 (3) The action taken under subsection (1) must be taken in accordance  
28 with any agreement entered into under section 17 between the head  
29 of the agency and the Integrity Commissioner.
- 30 (4) With the agreement of the Integrity Commissioner, the head of the  
31 agency may:

- 1 (a) notify the Integrity Commissioner under subsection (1) of a  
2 corruption issue; and  
3 (b) indicate whether the corruption issue is a significant  
4 corruption issue;  
5 by entering the required details on a database.
- 6 (5) This section applies to a corruption issue that relates to a staff  
7 member of the former NCA as if the staff member were a staff  
8 member of the ACC.

9 **20 Notification of corruption issue identified as significant**  
10 **corruption issue**

- 11 (1) If the head of a law enforcement agency notifies the Integrity  
12 Commissioner of a corruption issue and indicates that it is a  
13 significant corruption issue, the head of the agency must:  
14 (a) give the Integrity Commissioner all the information and  
15 documents that:  
16 (i) relate to the corruption issue; and  
17 (ii) are in the possession, or under the control, of the head  
18 of the agency; and  
19 (b) stop any investigation of the corruption issue that the agency  
20 is already conducting; and  
21 (c) take all reasonable steps to prevent the loss, destruction or  
22 fabrication of evidence in relation to the corruption issue.

23 This subsection has effect subject to subsection 150(1) but despite  
24 any secrecy provision (other than a law enforcement secrecy  
25 provision or a taxation secrecy provision).

26 Note: Paragraph (a)—section 21 requires the head of the agency to pass on  
27 new information that relates to a significant corruption issue that has  
28 already been referred to the Integrity Commissioner.

- 29 (2) The law enforcement agency may resume an investigation of a  
30 corruption issue stopped under paragraph (1)(b), or commence an  
31 investigation of a corruption issue to which subsection (1) applies,  
32 only if the Integrity Commissioner:  
33 (a) refers the corruption issue to the agency under paragraph  
34 26(1)(b) for investigation; or

- 1 (b) decides to investigate the corruption issue jointly with the  
2 agency under subsection 26(2); or  
3 (c) decides under subsection 31(1) to take no further action in  
4 relation to the corruption issue.

5 **21 Law enforcement agency head to pass on new information in**  
6 **relation to corruption issue already referred**

- 7 (1) If the head of a law enforcement agency:  
8 (a) notifies the Integrity Commissioner of a corruption issue  
9 under section 19 and indicates that it is a significant  
10 corruption issue; and  
11 (b) subsequently becomes aware of an allegation, or information,  
12 that is relevant to the corruption issue;  
13 the head of the agency must give the Integrity Commissioner  
14 details of the allegation, or give the Integrity Commissioner the  
15 information, as soon as practicable after the head of the agency  
16 becomes aware of the allegation or information.
- 17 (2) Subsection (1) has effect subject to subsection 150(1) but despite  
18 any secrecy provision (other than a law enforcement secrecy  
19 provision or a taxation secrecy provision).
- 20 (3) The head of the agency does not need to take action under  
21 subsection (1), however, if the head of the agency:  
22 (a) has reasonable grounds to believe that the Integrity  
23 Commissioner is already aware of the allegation or the  
24 information; or  
25 (b) becomes aware of the allegation or information in the course  
26 of an investigation of the corruption issue and:  
27 (i) the agency is conducting the investigation as a result of  
28 the Integrity Commissioner referring that corruption  
29 issue to the agency for investigation; or  
30 (ii) the Integrity Commissioner is managing or overseeing  
31 the investigation.

1     **22 Notification of corruption issue not identified as significant**  
2             **corruption issue**

3             (1) If the head of a law enforcement agency notifies a corruption issue  
4             to the Integrity Commissioner under section 19 but does not  
5             indicate that it is a significant corruption issue, the head of the  
6             agency must:

- 7                 (a) if the agency is already investigating the corruption issue—  
8                 ensure that the investigation is continued and completed; and  
9                 (b) if the agency is not already investigating the corruption  
10                issue—ensure that the agency investigates the corruption  
11                issue.

12             This subsection applies subject to any action taken by the Integrity  
13             Commissioner under section 32 or 42.

14             (2) The head of the agency does not need to take the action referred to  
15             in subsection (1) if he or she is satisfied that:

- 16                 (a) the matter:  
17                         (i) involves or implicates a secondee to the agency who is  
18                         an employee of a government agency (the *home*  
19                         *agency*); and  
20                         (ii) is already being investigated by the home agency or an  
21                         integrity agency for a State or Territory; or  
22                 (b) the making of the allegation that raises the corruption issue,  
23                 or the giving of the information that raises the corruption  
24                 issue, is frivolous or vexatious; or  
25                 (c) the allegation that raises the corruption issue was not made,  
26                 or the information that raises the corruption issue was not  
27                 given, in good faith; or  
28                 (d) the corrupt conduct to which the corruption issue relates has  
29                 been, is or will be, the subject of proceedings before a court.

30             However, the head of the agency must advise the Integrity  
31             Commissioner that the agency will not be investigating the  
32             corruption issue and the reason why the agency will not be  
33             investigating the corruption issue.

34             (3) With the agreement of the Integrity Commissioner, the head of the  
35             agency may advise the Integrity Commissioner under



1 subsection (2) by entering the required details on a database to  
2 which the Integrity Commissioner has access.

3 **23 Referral of corruption issues by other people**

- 4 (1) A person (other than the Minister) may refer to the Integrity  
5 Commissioner under this section an allegation, or information, that  
6 raises a corruption issue.
- 7 (2) Without limiting subsection (1):  
8 (a) the person may refer the allegation or information on behalf  
9 of:  
10 (i) another person; or  
11 (ii) a government agency (other than a law enforcement  
12 agency); or  
13 (iii) a body or association of persons; and  
14 (b) the person may refer the allegation or information  
15 anonymously; and  
16 (c) the person may refer the allegation or information either  
17 orally or in writing.
- 18 (3) If the person refers the allegation or information orally, the  
19 Integrity Commissioner may require the person to put the  
20 allegation or the information in writing.
- 21 (4) If the person is asked to put the allegation or information in writing  
22 under subsection (3), the Integrity Commissioner may refuse to  
23 investigate the corruption issue that the allegation or information  
24 raises, or to investigate the corruption issue further, until the  
25 allegation or information is put in writing.
- 26 (5) If the Ombudsman:  
27 (a) decides, under subsection 6(16) of the *Ombudsman Act 1976*,  
28 to refer an allegation or information to the Integrity  
29 Commissioner; or  
30 (b) is required, under subsection 6(17) of that Act, to refer an  
31 allegation or information to the Integrity Commissioner;  
32 the person who referred the allegation or information to the  
33 Ombudsman is taken to have referred the allegation or information  
34 to the Integrity Commissioner under this section.

1     **24 Referral under section 23 by person in custody**

2                     *Application of section*

3             (1) This section applies if a person who is detained in custody (the  
4             **prisoner**) wishes to refer an allegation or information to the  
5             Integrity Commissioner under section 23.

6             (2) A reference in this section to a **custodian** is a reference to:  
7                     (a) the person in whose custody the prisoner is detained; or  
8                     (b) any other person performing duties in connection with the  
9                     prisoner's detention.

10                    *Facilities to be provided for communicating with Integrity*  
11                    *Commissioner*

12             (3) The prisoner is entitled to be provided with facilities for:  
13                     (a) preparing a written record of the allegation or information;  
14                     and  
15                     (b) for enclosing that written record in a sealed envelope;  
16             if the prisoner requests a custodian to have those facilities  
17             provided.

18             (4) The prisoner is entitled to have sent to the Integrity Commissioner,  
19             without undue delay, a sealed envelope that is:  
20                     (a) delivered by the prisoner to a custodian; and  
21                     (b) addressed to the Integrity Commissioner;  
22             if the prisoner requests a custodian to have the envelope sent to the  
23             Integrity Commissioner.

24             (5) The prisoner is entitled to have delivered to the prisoner, without  
25             undue delay, any sealed envelope that:  
26                     (a) is addressed to the prisoner; and  
27                     (b) is sent by the Integrity Commissioner; and  
28                     (c) comes into the possession, or under the control, of a  
29                     custodian.

1                    *Dealing with communications between prisoner and Integrity*  
2                    *Commissioner*

- 3                    (6) If:
- 4                        (a) the prisoner delivers to a custodian a sealed envelope  
5                                   addressed to the Integrity Commissioner for sending to the  
6                                   Integrity Commissioner; or
- 7                        (b) a sealed envelope addressed to the prisoner and sent by the  
8                                   Integrity Commissioner comes into the possession, or under  
9                                   the control, of a custodian;
- 10                    neither that custodian, nor any other custodian, is entitled to open  
11                    the envelope or to inspect any document enclosed in the envelope.

12                    *Arrangements with State and Territory prison authorities*

- 13                    (7) For the purposes of this section, the Integrity Commissioner may  
14                    make arrangements with the appropriate authority of a State or a  
15                    Territory for the identification and delivery of sealed envelopes  
16                    sent by the Integrity Commissioner to persons detained in custody  
17                    in that State or Territory.

18                    **25 Person making referral under section 23 may elect to be kept**  
19                    **informed**

- 20                    (1) If a person refers an allegation or information to the Integrity  
21                    Commissioner under section 23, the Integrity Commissioner must  
22                    ask the person to elect whether or not to be kept informed of the  
23                    action taken in relation to the corruption issue raised by the  
24                    allegation or information.
- 25                    (2) Subsection (1) does not apply if the person refers the allegation or  
26                    information anonymously.
- 27                    (3) If the person fails to make an election when asked to do so, the  
28                    person is taken to have elected not to be kept informed of the  
29                    action taken in relation to the corruption issue.
- 30                    (4) If the person elects to be kept informed of the action taken in  
31                    relation to the corruption issue, the person may revoke the election  
32                    at any time by notice to the Integrity Commissioner.

1

2 **Division 2—How Integrity Commissioner deals with**  
3 **corruption issues**

4 **Subdivision A—General**

5 **26 How Integrity Commissioner may deal with corruption issues**

6 (1) The Integrity Commissioner may deal with a corruption issue that  
7 relates to a law enforcement agency in any of the following ways:

- 8 (a) by investigating the corruption issue;  
9 (b) by referring the corruption issue to the law enforcement  
10 agency for investigation and:  
11 (i) managing the investigation; or  
12 (ii) overseeing the investigation; or  
13 (iii) neither managing nor overseeing the investigation;  
14 (c) if the law enforcement agency is not the AFP—by referring  
15 the corruption issue to the AFP for investigation and:  
16 (i) managing the investigation; or  
17 (ii) overseeing the investigation; or  
18 (iii) neither managing nor overseeing the investigation;  
19 (d) by managing an investigation of the corruption issue that is  
20 being conducted by the law enforcement agency;  
21 (e) by overseeing an investigation of the corruption issue that is  
22 being conducted by the law enforcement agency.

23 Note: Subsection 29(6) gives the Integrity Commissioner further options for  
24 dealing with the corruption issue to the extent to which it relates to the  
25 conduct of a secondee to the law enforcement agency.

26 (2) The Integrity Commissioner may investigate the corruption issue  
27 under paragraph (1)(a) either alone or jointly with another  
28 government agency or an integrity agency for a State or Territory.

29 **27 Criteria for deciding how to deal with a corruption issue**

30 (1) The Integrity Commissioner must have regard to the matters set out  
31 in subsection (2) in deciding:

- 1 (a) how to deal with a corruption issue that relates to a law  
2 enforcement agency; or  
3 (b) whether to take no further action in relation to a corruption  
4 issue that relates to a law enforcement agency.
- 5 (2) The matters to which the Integrity Commissioner must have regard  
6 are the following:
- 7 (a) the need to ensure that the corruption issue is fully  
8 investigated;
- 9 (b) the rights and obligations of the law enforcement agency to  
10 investigate the corruption issue;
- 11 (c) if a joint investigation of the corruption issue by the Integrity  
12 Commissioner and the law enforcement agency is being  
13 considered—the extent to which the law enforcement agency  
14 is able to cooperate in the investigation;
- 15 (d) the resources that are available to each of the following to  
16 investigate the corruption issue:
- 17 (i) the Integrity Commissioner;
- 18 (ii) the AFP;
- 19 (iii) the law enforcement agency;
- 20 (e) the need to ensure a balance between:
- 21 (i) the Integrity Commissioner’s role in dealing with  
22 corruption issues in law enforcement agencies  
23 (particularly in dealing with significant corruption  
24 issues); and
- 25 (ii) ensuring that the heads of law enforcement agencies  
26 take responsibility for managing their agencies;
- 27 (f) the likely significance of the corruption issue for the law  
28 enforcement agency.

29 **28 Dealing with multiple corruption issues**

- 30 (1) The Integrity Commissioner may, in his or her discretion, deal with  
31 a number of corruption issues together (whether or not they are  
32 raised by the same allegation or information).
- 33 (2) Without limiting subsection (1), if an allegation, or information,  
34 raises a number of corruption issues, the Integrity Commissioner:

- 1 (a) may deal with some or all of those corruption issues together;  
2 and  
3 (b) may deal with some or all of those corruption issues  
4 separately.
- 5 (3) Without limiting subsection (1), the Integrity Commissioner may  
6 prepare a single report in relation to a number of corruption issues.

7 **29 How Integrity Commissioner may deal with corruption issues**  
8 **that relate to conduct of secondee from government**  
9 **agency**

10 *Section applies if secondee is employee of government agency*

- 11 (1) This section applies if:  
12 (a) a corruption issue relates to the conduct of a secondee to a  
13 law enforcement agency; and  
14 (b) the secondee is an employee of a government agency (the  
15 **home agency**).

16 *Informing head of government agency and integrity agency about*  
17 *corruption issue*

- 18 (2) The Integrity Commissioner must:  
19 (a) inform the head of the home agency of the corruption issue;  
20 and  
21 (b) give the head of the home agency such further information in  
22 relation to the corruption issue as the head of the home  
23 agency requests; and  
24 (c) if the home agency is the police force of a State or Territory:  
25 (i) inform the head of the integrity agency (if any) for the  
26 State or Territory of the corruption issue; and  
27 (ii) give the head of the integrity agency (if any) for the  
28 State or Territory such further information in relation to  
29 the corruption issue as the head of the integrity agency  
30 requests.

31 This subsection has effect subject to section 152 (which deals with  
32 section 149 certified information).

- 1 (3) However, the Integrity Commissioner need not inform the head of  
2 the home agency, and the head of the integrity agency, of the  
3 corruption issue if doing so is likely to prejudice:  
4 (a) the investigation of the corruption issue or another corruption  
5 investigation; or  
6 (b) any action taken as a result of an investigation referred to in  
7 paragraph (a).
- 8 (4) If the Integrity Commissioner does not inform the head of the  
9 home agency, or the head of the integrity agency, of the corruption  
10 issue because of subsection (3), the Integrity Commissioner must:  
11 (a) inform the Minister that the head of the home agency, or the  
12 head of the integrity agency, has not been informed of the  
13 corruption issue; and  
14 (b) give the Minister the Integrity Commissioner's reasons for  
15 not informing the head of the home agency, or the head of  
16 the integrity agency, of the corruption issue.
- 17 (5) The Integrity Commissioner does not need to take action under  
18 paragraph (2)(a) or subparagraph (2)(c)(i) if the Integrity  
19 Commissioner has reasonable grounds to believe that the head of  
20 the home agency, or the head of the integrity agency, is already  
21 aware of the corruption issue.
- 22 *Arranging for government agency to investigate corruption issue*
- 23 (6) The Integrity Commissioner may deal with the corruption issue:  
24 (a) by arranging, in writing, with the head of the home agency  
25 for the home agency to investigate the corruption issue; or  
26 (b) if the secondee is from the police force of a State or  
27 Territory—by arranging, in writing, with the head of the  
28 integrity agency for the State or Territory for the integrity  
29 agency to investigate the corruption issue.
- 30 (7) To avoid doubt, subsection (6) does not limit the operation of  
31 section 26 in relation to the corruption issue.

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*Criteria for deciding how to deal with corruption issue*

- (8) The Integrity Commissioner must have regard to the matters set out in subsection (9) in deciding:
  - (a) how to deal with the corruption issue; or
  - (b) whether to take no further action in relation to a corruption issue.
  
- (9) The matters that the Integrity Commissioner must have regard to are the following:
  - (a) the rights and obligations of:
    - (i) the home agency; and
    - (ii) the integrity agency (if any) for the State or Territory; to investigate the corruption issue;
  - (b) if a joint investigation of the corruption issue is being considered—the extent to which the agencies referred to in paragraph (a) are able to cooperate in the investigation;
  - (c) the resources available to the Integrity Commissioner, the AFP and the agencies referred to in paragraph (a) to investigate the corruption issue;
  - (d) the need to ensure a balance between:
    - (i) the Integrity Commissioner’s role in dealing with corruption issues in law enforcement agencies (particularly in dealing with significant corruption issues); and
    - (ii) ensuring that the head of the home agency takes responsibility for managing the home agency; and
    - (iii) the role of the integrity agency (if any) for the State or Territory in dealing with corruption issues that relate to the State’s or Territory’s police force; and
  - (e) the likely significance of the corruption issue for:
    - (i) the law enforcement agency; and
    - (ii) the home agency; and
    - (iii) the integrity agency (if any) for the State or Territory.



1                                    *Operation of section 27*

2                                    (10) To avoid doubt, subsections (8) and (9) do not limit the operation  
3                                    of section 27 in relation to the corruption issue.

4                                    **30 Arranging for government agencies and integrity agencies to**  
5                                    **investigate corruption issues relating to conduct of**  
6                                    **secondees**

7                                    (1) If a government agency, or an integrity agency for a State or  
8                                    Territory, has power to investigate a corruption issue that relates to  
9                                    the conduct of a secondee to a law enforcement agency, the  
10                                    Integrity Commissioner may arrange with the head of the agency  
11                                    for the agency to investigate the corruption issue.

12                                    (2) If the Integrity Commissioner enters into such an arrangement, the  
13                                    agency may investigate the corruption issue to the full extent of its  
14                                    powers under any laws of the Commonwealth or of a State or  
15                                    Territory.

16                                    (3) The arrangement may relate to:  
17                                    (a) a particular corruption issue or issues; or  
18                                    (b) a series of related corruption issues.

19                                    (4) The Integrity Commissioner may arrange with the agency for the  
20                                    variation or revocation of the arrangement.

21                                    (5) The arrangement, or the variation or revocation of the arrangement,  
22                                    must be in writing.

23                                    (6) The regulations may make provision for and in relation to the  
24                                    participation by the Integrity Commissioner in the carrying out of a  
25                                    joint investigation in accordance with an arrangement under this  
26                                    section.

27                                    (7) Nothing in this section affects the powers and duties of the  
28                                    Integrity Commissioner under any other provision of this Act.

1 **Subdivision B—Integrity Commissioner dealing with**  
2 **corruption issues referred or notified**

3 **31 Significant corruption issues notified under section 19 and**  
4 **corruption issues referred under section 18 or 23**

- 5 (1) This section applies if:  
6 (a) the head of a law enforcement agency:  
7 (i) notifies the Integrity Commissioner of a corruption  
8 issue under section 19; and  
9 (ii) indicates that it is a significant corruption issue; or  
10 (b) an allegation, or information, that raises a corruption issue is  
11 referred to the Integrity Commissioner under section 18 or  
12 23.
- 13 (2) The Integrity Commissioner must decide:  
14 (a) to deal with the corruption issue in one of the ways referred  
15 to in subsection 26(1) or 29(6); or  
16 (b) to take no further action in relation to the corruption issue.
- 17 (3) Subsection (2) does not apply if the Integrity Commissioner has  
18 already made a decision under that subsection in relation to the  
19 corruption issue.
- 20 (4) The Integrity Commissioner may decide under subsection (2) to  
21 take no further action in relation to the corruption issue only if he  
22 or she is satisfied that:  
23 (a) the corruption issue is already being, or will be, investigated  
24 by:  
25 (i) a law enforcement agency; or  
26 (ii) a government agency; or  
27 (iii) an integrity agency for a State or Territory; or  
28 (b) the referral of the allegation or information to the Integrity  
29 Commissioner is frivolous or vexatious; or  
30 (c) the referral of the allegation or information to the Integrity  
31 Commissioner was not made in good faith; or  
32 (d) the corrupt conduct to which the corruption issue relates has  
33 been, is or will be, the subject of proceedings before a court.

1     **32 Corruption issues notified under section 19 (other than**  
2             **significant corruption issues)**

- 3             (1) This section applies if the head of a law enforcement agency:  
4                 (a) notifies the Integrity Commissioner of a corruption issue  
5                 under section 19; and  
6                 (b) does not indicate that it is a significant corruption issue.
- 7             (2) The Integrity Commissioner may decide to deal with the corruption  
8             issue in one of the ways referred to in subsection 26(1) or 29(6).
- 9             (3) For the purposes of making a decision about how to deal with the  
10            corruption issue, the Integrity Commissioner may request the head  
11            of a law enforcement agency to give the Integrity Commissioner  
12            the information specified in the request.
- 13            (4) The head of the law enforcement agency must comply with the  
14            request.
- 15            (5) Subsection (3) does not limit the information to which the Integrity  
16            Commissioner may have regard in making a decision about how to  
17            deal with the corruption issue.
- 18            (6) If the Integrity Commissioner does decide to deal with the  
19            corruption issue in one of the ways referred to in subsection 26(1)  
20            or 29(6), the Integrity Commissioner may direct the head of the  
21            law enforcement agency that the agency is not to investigate the  
22            corruption issue.
- 23            (7) A direction under subsection (6) is not a legislative instrument.

24     **Subdivision C—Advising particular people of decision about**  
25             **how to deal with corruption issue**

26     **33 Minister**

- 27             (1) If the Minister refers an allegation, or information, that raises a  
28             corruption issue to the Integrity Commissioner under section 18,  
29             the Integrity Commissioner must advise the Minister of:  
30                 (a) the Integrity Commissioner's decision under section 31 in  
31                 relation to the corruption issue; and

1 (b) any decision the Integrity Commissioner makes under  
2 section 42 on a reconsideration of how the corruption issue  
3 should be dealt with.

4 (2) The Integrity Commissioner must advise the Minister of the  
5 decision:  
6 (a) in writing; and  
7 (b) as soon as reasonably practicable after the decision is made.

### 8 **34 Person who refers corruption issue**

9 *Integrity Commissioner to advise person who refers corruption*  
10 *issue*

11 (1) If a person:  
12 (a) refers an allegation, or information, that raises a corruption  
13 issue to the Integrity Commissioner under section 23; and  
14 (b) elects under section 25 to be kept informed of the action  
15 taken in relation to the corruption issue;  
16 the Integrity Commissioner must advise the person of:  
17 (c) the Integrity Commissioner's decision under section 31 in  
18 relation to the corruption issue; and  
19 (d) any decision the Integrity Commissioner makes under  
20 section 42 on a reconsideration of how the corruption issue  
21 should be dealt with.

22 *Form and timing of advice*

23 (2) The Integrity Commissioner must advise the person of the  
24 decision:  
25 (a) in writing; and  
26 (b) as soon as reasonably practicable after the decision is made.

27 *Exception*

28 (3) However, the Integrity Commissioner need not advise the person if  
29 the Integrity Commissioner is satisfied that doing so is likely to  
30 prejudice:

- 1 (a) the investigation of the corruption issue or another corruption  
2 investigation; or  
3 (b) any action taken as a result of an investigation referred to in  
4 paragraph (a).

5 *Advice to nominated person or office holder*

- 6 (4) If:  
7 (a) a person refers an allegation, or information, that raises the  
8 corruption issue to the Integrity Commissioner on behalf of:  
9 (i) another person; or  
10 (ii) a government agency (other than a law enforcement  
11 agency); or  
12 (iii) a body or association of persons; and  
13 (b) the other person, the agency, the body or the association  
14 nominates:  
15 (i) another person; or  
16 (ii) the holder of a particular office in the agency, body or  
17 association;  
18 by notice in writing to the Integrity Commissioner, to receive  
19 communications from the Integrity Commissioner;  
20 the Integrity Commissioner must give the advice required by  
21 subsection (1) to the person nominated or the person for the time  
22 being holding the office nominated.

23 **35 Head of law enforcement agency**

24 *Commissioner to advise head of law enforcement agency*

- 25 (1) If:  
26 (a) an allegation, or information, that raises a corruption issue is  
27 referred to the Integrity Commissioner under section 18 or  
28 23; and  
29 (b) the corruption issue relates to a law enforcement agency;  
30 the Integrity Commissioner must advise the head of the agency of:  
31 (c) the Integrity Commissioner's decision under section 31 in  
32 relation to the corruption issue; and

- 1 (d) any decision the Integrity Commissioner makes under  
2 section 42 on a reconsideration of how the corruption issue  
3 should be dealt with.

4 *Form and timing of advice*

- 5 (2) The Integrity Commissioner must advise the head of the agency of  
6 the decision:  
7 (a) in writing; and  
8 (b) as soon as reasonably practicable after the decision is made.

9 *Exception*

- 10 (3) However, the Integrity Commissioner need not advise the head of  
11 the agency if doing so would be likely to prejudice:  
12 (a) the investigation of the corruption issue or another corruption  
13 investigation; or  
14 (b) any action taken as a result of an investigation referred to in  
15 paragraph (a).
- 16 (4) If the Integrity Commissioner does not advise the head of the  
17 agency of the decision because of subsection (3), the Integrity  
18 Commissioner must:  
19 (a) inform the Minister that the head of the agency has not been  
20 advised of the decision; and  
21 (b) give the Minister the Integrity Commissioner's reasons for  
22 not advising the head of the agency of the decision; and  
23 (c) inform the Minister that the consultations that would  
24 otherwise take place under section 49 will not take place.

25 **36 Heads of home agency and integrity agency**

26 *Section applies to secondment situations*

- 27 (1) This section applies if:  
28 (a) an allegation, or information, that raises a corruption issue is  
29 referred to the Integrity Commissioner under section 18 or  
30 23; and  
31 (b) the corruption issue relates to the conduct of a person who:

- 1 (i) is, or has been, a secondee to a law enforcement agency;  
2 and  
3 (ii) is an employee of a government agency (the *home*  
4 *agency*).

5 *Advising head of home agency*

- 6 (2) The Integrity Commissioner must advise the head of the home  
7 agency of:  
8 (a) the Integrity Commissioner's decision under section 31 in  
9 relation to the corruption issue; and  
10 (b) any decision the Integrity Commissioner makes under  
11 section 42 on a reconsideration of how the corruption issue  
12 should be dealt with.

13 *Advising head of integrity agency*

- 14 (3) If the home agency is the police force of a State or Territory, the  
15 Integrity Commissioner must also advise the head of the integrity  
16 agency (if any) for the State or Territory of:  
17 (a) the Integrity Commissioner's decision under section 31 in  
18 relation to the corruption issue; and  
19 (b) any decision the Integrity Commissioner makes under  
20 section 42 on a reconsideration of how the corruption issue  
21 should be dealt with.

22 *Form and timing of advice*

- 23 (4) The Integrity Commissioner must advise the head of the home  
24 agency or integrity agency:  
25 (a) in writing; and  
26 (b) as soon as reasonably practicable after the decision is made.

27 *Exception*

- 28 (5) However, the Integrity Commissioner need not advise the head of  
29 the home agency, or integrity agency, if doing so would be likely  
30 to prejudice:  
31 (a) the investigation of the corruption issue or another corruption  
32 investigation; or

- 1 (b) any action taken as a result of an investigation referred to in  
2 paragraph (a).
- 3 (6) If the Integrity Commissioner does not advise the head of the home  
4 agency, or integrity agency, of the decision because of  
5 subsection (5), the Integrity Commissioner must:
- 6 (a) inform the Minister that the head of the home agency, or  
7 integrity agency, has not been advised of the decision; and  
8 (b) give the Minister the Integrity Commissioner's reasons for  
9 not advising the head of the home agency, or integrity  
10 agency, of the decision; and  
11 (c) inform the Minister that the consultations that would  
12 otherwise take place under section 49 will not take place.

13 **37 Staff member to whom corruption issue relates**

14 If the Integrity Commissioner makes a decision under section 31,  
15 32 or 42 in relation to a corruption issue that relates to a person  
16 who is, or has been, a staff member of a law enforcement agency,  
17 the Integrity Commissioner may advise the person of the Integrity  
18 Commissioner's decision.

19 **Subdivision D—Integrity Commissioner dealing with**  
20 **corruption issues on own initiative**

21 **38 Integrity Commissioner may deal with corruption issues on own**  
22 **initiative**

- 23 (1) If the Integrity Commissioner becomes aware of an allegation, or  
24 information, that raises a corruption issue, the Integrity  
25 Commissioner may, on his or her own initiative, deal with the  
26 corruption issue in one of the ways referred to in subsection 26(1)  
27 or 29(6).
- 28 (2) Subsection (1) does not apply if the Integrity Commissioner  
29 becomes aware of the allegation or information because of action  
30 taken under Division 1 of this Part.
- 31 (3) If the Integrity Commissioner decides to deal with the corruption  
32 issue in one of the ways referred to in subsection 26(1) or 29(6),



- 1 the Integrity Commissioner may direct the head of the law  
2 enforcement agency to which the corruption issue relates that the  
3 agency is not to investigate the corruption issue.
- 4 (4) A direction under subsection (3) is not a legislative instrument.
- 5 (5) Without limiting subsection (1), if the Integrity Commissioner:  
6 (a) is investigating, or inquiring into, a particular corruption  
7 issue; and  
8 (b) in the course of doing so, becomes aware of an allegation, or  
9 information, that raises another corruption issue;  
10 the Integrity Commissioner may deal with that other corruption  
11 issue in one of the ways referred to in subsection 26(1) or 29(6).

12 **39 Advising head of law enforcement agency of decision to deal with**  
13 **corruption issue on own initiative**

14 *Advice to head of law enforcement agency*

- 15 (1) If:  
16 (a) the Integrity Commissioner decides, on his or her own  
17 initiative, to deal with a corruption issue in one of the ways  
18 referred to in subsection 26(1) or 29(6); and  
19 (b) the corruption issue relates to a law enforcement agency;  
20 the Integrity Commissioner must advise the head of the agency of:  
21 (c) the Integrity Commissioner's decision to deal with the  
22 corruption issue in that way; and  
23 (d) any decision the Integrity Commissioner makes under  
24 section 42 on a reconsideration of how the corruption issue  
25 should be dealt with.

26 *Form and timing of advice*

- 27 (2) The Integrity Commissioner must advise the head of the agency of  
28 the decision:  
29 (a) in writing; and  
30 (b) as soon as reasonably practicable after the decision is made.

1                    *Exception*

- 2                    (3) However, the Integrity Commissioner need not advise the head of  
3                    the agency if doing so is likely to prejudice:  
4                    (a) the investigation of the corruption issue or another corruption  
5                    investigation; or  
6                    (b) any action taken as a result of an investigation referred to in  
7                    paragraph (a).
- 8                    (4) If the Integrity Commissioner does not advise the head of the  
9                    agency of the decision because of subsection (3), the Integrity  
10                    Commissioner must:  
11                    (a) inform the Minister that the head of the agency has not been  
12                    advised of the decision; and  
13                    (b) give the Minister the Integrity Commissioner's reasons for  
14                    not advising the head of the agency of the decision; and  
15                    (c) inform the Minister that the consultations that would  
16                    otherwise take place under section 49 will not take place.

17                    **40 Advising heads of government agency and integrity agency of**  
18                    **decision to deal with corruption issue on own initiative**

19                    *Section applies to secondment situations*

- 20                    (1) This section applies if:  
21                    (a) the Integrity Commissioner decides, on his or her own  
22                    initiative, to deal with a corruption issue in one of the ways  
23                    referred to in subsection 26(1) or 29(6); and  
24                    (b) the corruption issue relates to the conduct of a person who:  
25                    (i) is, or has been, a secondee to a law enforcement agency;  
26                    and  
27                    (ii) is an employee of a government agency (the *home*  
28                    *agency*).

29                    *Advising head of home agency*

- 30                    (2) The Integrity Commissioner must advise the head of the home  
31                    agency of:

- 1 (a) the Integrity Commissioner's decision to deal with the  
2 corruption issue in that way; and  
3 (b) any decision the Integrity Commissioner makes under  
4 section 42 on a reconsideration of how the corruption issue  
5 should be dealt with.

6 *Advising head of integrity agency*

- 7 (3) If the home agency is the police force of a State or Territory, the  
8 Integrity Commissioner must also advise the head of the integrity  
9 agency (if any) for the State or Territory of:  
10 (a) the Integrity Commissioner's decision to deal with the  
11 corruption issue in that way; and  
12 (b) any decision the Integrity Commissioner makes under  
13 section 42 on a reconsideration of how the corruption issue  
14 should be dealt with.

15 *Form and timing of advice*

- 16 (4) The Integrity Commissioner must advise the head of the home  
17 agency or integrity agency of the decision:  
18 (a) in writing; and  
19 (b) as soon as reasonably practicable after the decision is made.

20 *Exception*

- 21 (5) However, the Integrity Commissioner need not advise the head of  
22 the home agency, or integrity agency, if doing so would be likely  
23 to prejudice:  
24 (a) the investigation of the corruption issue or another corruption  
25 investigation; or  
26 (b) any action taken as a result of an investigation referred to in  
27 paragraph (a).
- 28 (6) If the Integrity Commissioner does not advise the head of the home  
29 agency, or integrity agency, of the decision because of  
30 subsection (5), the Integrity Commissioner must:  
31 (a) inform the Minister that the head of the home agency, or  
32 integrity agency, has not been advised of the decision; and

- 1 (b) give the Minister the Integrity Commissioner's reasons for  
2 not advising the head of the home agency, or integrity  
3 agency, of the decision; and  
4 (c) inform the Minister that the consultations that would  
5 otherwise take place under section 49 will not take place.

6 **41 Advising staff member of decision to deal with corruption issue**  
7 **on own initiative**

8 If:

- 9 (a) the Integrity Commissioner decides, on his or her own  
10 initiative, to deal with a corruption issue in one of the ways  
11 referred to in subsection 26(1) or 29(6); and  
12 (b) the corruption issue relates to a person who is, or has been, a  
13 staff member of a law enforcement agency;  
14 the Integrity Commissioner may advise the person of:  
15 (c) the Integrity Commissioner's decision to deal with the  
16 corruption issue in that way; and  
17 (d) any decision the Integrity Commissioner makes under  
18 section 42 on a reconsideration of how the corruption issue  
19 should be dealt with.

20 **Subdivision E—Reconsidering how to deal with a corruption**  
21 **issue**

22 **42 Reconsidering how to deal with a corruption issue**

- 23 (1) The Integrity Commissioner may, at any time, reconsider how a  
24 particular corruption issue should be dealt with.  
25 (2) On that reconsideration, the Integrity Commissioner may:  
26 (a) if the corruption issue is not being dealt with in one of the  
27 ways referred to in subsection 26(1) or 29(6)—decide to deal  
28 with the corruption issue in one of the ways referred to in  
29 those subsections; or  
30 (b) if the corruption issue is being dealt with in one of the ways  
31 referred to in subsection 26(1) or 29(6)—decide to deal with  
32 the corruption issue in another of the ways referred to in

- 1                                    those subsections, or to take no further action in relation to  
2                                    the corruption issue.
- 3                    (3) The Integrity Commissioner may decide under subsection (2) to  
4                    take no further action in relation to the corruption issue only if he  
5                    or she is satisfied that:
- 6                    (a) the corruption issue is already being, or will be, investigated  
7                    by:
- 8                    (i) a law enforcement agency; or  
9                    (ii) a government agency; or  
10                    (iii) an integrity agency for a State or Territory; or
- 11                    (b) the referral of the allegation, or information, that raises the  
12                    corruption issue is frivolous or vexatious; or
- 13                    (c) the referral of the allegation, or information, that raises the  
14                    corruption issue was not made in good faith; or
- 15                    (d) the corrupt conduct to which the corruption issue relates has  
16                    been, is or will be, the subject of proceedings before a court.
- 17                    (4) If, on that reconsideration, the Integrity Commissioner decides to  
18                    deal with the corruption issue in one of the ways referred to in  
19                    subsection 26(1) or 29(6), the Integrity Commissioner may direct  
20                    the head of the law enforcement agency to which the corruption  
21                    issue relates that the agency is not to investigate the corruption  
22                    issue.
- 23                    (5) A direction under subsection (4) is not a legislative instrument.

1

2 **Part 5—Information sharing when decision made**  
3 **on how to deal with corruption issue**

4 **Division 1—Giving information to head of agency**  
5 **conducting investigation**

6 **43 Division applies if agency to conduct, or continue conducting,**  
7 **investigation of corruption issue**

8

(1) This Division applies if:

9

(a) the Integrity Commissioner decides to deal with a corruption  
10 issue that relates to a law enforcement agency by referring  
11 the corruption issue to:

12

(i) the law enforcement agency; or

13

(ii) the AFP;

14

for investigation; or

15

(b) the Integrity Commissioner is notified of a corruption issue  
16 under section 19 by the head of a law enforcement agency  
17 and the law enforcement agency is investigating the  
18 corruption issue.

19

(2) This Division also applies if:

20

(a) a corruption issue relates in whole or in part to the conduct of  
21 a secondee of a law enforcement agency; and

22

(b) the secondee is an employee of a Commonwealth  
23 government agency; and

24

(c) the Integrity Commissioner decides to deal with the  
25 corruption issue, to the extent to which it relates to the  
26 conduct of the secondee, by arranging for the  
27 Commonwealth government agency to investigate the  
28 corruption issue.

29

(3) This Division also applies if:

30

(a) a corruption issue relates in whole or in part to the conduct of  
31 a secondee of a law enforcement agency; and

31

- 1 (b) the seconded is an employee of a State or Territory  
2 government agency; and  
3 (c) the Integrity Commissioner decides to deal with the  
4 corruption issue, to the extent to which it relates to the  
5 conduct of the seconded by arranging for:  
6 (i) the State or Territory government agency; or  
7 (ii) the integrity agency for the State or Territory;  
8 to investigate the corruption issue.

9 **44 Integrity Commissioner to give information or documents to**  
10 **agency head**

- 11 (1) The Integrity Commissioner must give the head of the agency  
12 investigating the corruption issue information or a document if:  
13 (a) the information or document:  
14 (i) relates to the corruption issue to the extent to which the  
15 agency is investigating the issue; and  
16 (ii) is in the possession, or under the control, of the Integrity  
17 Commissioner; and  
18 (b) the head of the agency does not already have the information  
19 or document.
- 20 Note: Under section 70, the Integrity Commissioner has a continuing  
21 obligation to pass on information that the Integrity Commissioner  
22 becomes aware of and that is relevant to the corruption issue.
- 23 (2) Subsection (1) has effect subject to section 152 (which deals with  
24 section 149 certified information).
- 25 (3) The Integrity Commissioner may give the original or a copy of a  
26 document.

1

2 **Division 2—Information to be given by law enforcement**  
3 **agency that has already commenced investigation**

4 **45 Division applies if law enforcement agency has already**  
5 **commenced investigating corruption issue**

6 This Division applies if:

- 7 (a) the Integrity Commissioner decides to deal with a corruption  
8 issue that relates to a law enforcement agency in one of the  
9 ways referred to in subsection 26(1) or 29(6); and  
10 (b) the law enforcement agency has started or continued  
11 investigating the corruption issue before the Integrity  
12 Commissioner makes that decision.

13 **46 Integrity Commissioner may direct agency head to give**  
14 **information or documents that relate to corruption issue**

- 15 (1) The Integrity Commissioner may direct the head of the agency  
16 investigating the corruption issue to give the Integrity  
17 Commissioner, or the head of another government agency, all  
18 information or documents that:  
19 (a) relate to the corruption issue; and  
20 (b) are in the possession, or under the control, of the head of the  
21 agency.
- 22 (2) The direction must be in writing.
- 23 (3) Subject to subsection 150(1) and section 151, the head of a law  
24 enforcement agency must comply with the direction.
- 25 (4) A direction given under this section is not a legislative instrument.



1

2 **Part 6—Investigations by Integrity Commissioner**

3 **Division 1—Investigation**

4 **47 Application of Division**

5 This Division applies if the Integrity Commissioner investigates a  
6 corruption issue (whether alone or jointly with another person or  
7 persons).

8 **48 Integrity Commissioner to determine manner of conducting**  
9 **investigation**

10 The Integrity Commissioner may conduct the investigation in such  
11 manner as the Integrity Commissioner thinks fit.

12 Note: Part 9 provides for particular powers that are available to the Integrity  
13 Commissioner for the purposes of the investigation.

14 **49 Coordinating Integrity Commissioner’s investigation and law**  
15 **enforcement operations**

16 (1) If the Integrity Commissioner informs the head of a law  
17 enforcement agency under section 35 that the Integrity  
18 Commissioner has decided to investigate a corruption issue that  
19 relates to the agency, the Integrity Commissioner must consult,  
20 from time to time, with the head of the agency and take reasonable  
21 steps to ensure that the investigation does not prejudice the  
22 agency’s law enforcement operations.

23 (2) If the Integrity Commissioner informs the head of a government  
24 agency under section 36 that the Integrity Commissioner has  
25 decided to investigate a corruption issue, the Integrity  
26 Commissioner may consult, from time to time, with the head of the  
27 government agency with a view to taking reasonable steps to  
28 ensure that the investigation does not prejudice the government  
29 agency’s law enforcement operations.

30 Note: The government agency may be the integrity agency for a State or  
31 Territory (see subsection 36(3)).

1       **50 Information sharing for joint investigation**

- 2           (1) If:
- 3               (a) the Integrity Commissioner is investigating a corruption issue
- 4                     jointly with:
- 5                       (i) a law enforcement agency; or
- 6                       (ii) a government agency; or
- 7                       (iii) an integrity agency for a State or Territory; and
- 8               (b) information or documents in relation to the investigation are
- 9                     in the possession, or under the control, of the Integrity
- 10                    Commissioner; and
- 11               (c) the head of the agency does not already have the information
- 12                     or documents;
- 13               the Integrity Commissioner may give the head of the agency the
- 14               information or documents.
- 15           (2) Subsection (1) has effect subject to section 152 (which deals with
- 16               section 149 certified information).
- 17           (3) The Integrity Commissioner may give the head of the agency the
- 18               original or a copy of a document under subsection (1).

19       **51 Opportunity to be heard**

20               *Opinion or finding critical*

- 21           (1) Subject to subsection (2), the Integrity Commissioner must not
- 22               include in a report under section 54 in relation to an investigation
- 23               of a corruption issue an opinion or finding that is critical of a
- 24               government agency or person (either expressly or impliedly) unless
- 25               the Integrity Commissioner has taken the action required by
- 26               subsection (3) or (4) before completing the investigation.
- 27           (2) Subsection (1) does not apply if the Integrity Commissioner is
- 28               satisfied that:
- 29               (a) a person may have:
- 30                     (i) committed a criminal offence; or
- 31                     (ii) contravened a civil penalty provision; or

- 1 (iii) engaged in conduct that could be the subject of  
2 disciplinary proceedings; or  
3 (iv) engaged in conduct that could be grounds for  
4 terminating the person's appointment or employment;  
5 and  
6 (b) taking action under subsection (3) or (4) would compromise  
7 the effectiveness of:  
8 (i) the investigation of the corruption issue or another  
9 corruption investigation; or  
10 (ii) any action taken as a result of an investigation referred  
11 to in subparagraph (i).

12 *Opportunity to appear and make submissions*

- 13 (3) If the opinion or finding is critical of an agency, the Integrity  
14 Commissioner must give the head of the agency:  
15 (a) a statement setting out the opinion or finding; and  
16 (b) a reasonable opportunity to appear before him or her and to  
17 make submissions in relation to the opinion or finding.
- 18 (4) If the opinion or finding is critical of a person, the Integrity  
19 Commissioner must give the person:  
20 (a) a statement setting out the opinion or finding; and  
21 (b) a reasonable opportunity to appear before him or her and to  
22 make submissions in relation to the opinion or finding.
- 23 (5) Submissions under subsection (3) or (4) may be made orally or in  
24 writing.

25 *Representation*

- 26 (6) The head of an agency may:  
27 (a) appear before the Integrity Commissioner personally; or  
28 (b) authorise another person to appear before the Integrity  
29 Commissioner on his or her behalf.
- 30 (7) A person referred to in subsection (4):  
31 (a) may appear before the Integrity Commissioner personally; or

1  
2

(b) may, with the Integrity Commissioner's approval, be represented by another person.

1

2 **Division 2—Reporting**

3 **Subdivision A—Reporting during investigation**

4 **52 Integrity Commissioner to keep person who referred corruption**  
5 **issue informed of progress of investigation**

6 *Minister*

7 (1) If:

8 (a) the Minister refers an allegation, or information, that raises a  
9 corruption issue to the Integrity Commissioner under  
10 section 18; and

11 (b) the Integrity Commissioner investigates the corruption issue;  
12 the Integrity Commissioner must take such steps as the Integrity  
13 Commissioner considers reasonable to keep the Minister informed  
14 of the progress of the investigation of that corruption issue.

15 *Head of law enforcement agency*

16 (2) If:

17 (a) the head of a law enforcement agency notifies the Integrity  
18 Commissioner of a corruption issue under section 19; and

19 (b) the Integrity Commissioner investigates the corruption issue;  
20 the Integrity Commissioner must take such steps as the Integrity  
21 Commissioner considers reasonable to keep the head of the agency  
22 informed of the progress of the investigation of that corruption  
23 issue.

24 *Person who refers issue under section 23*

25 (3) If:

26 (a) a person refers an allegation, or information, that raises a  
27 corruption issue to the Integrity Commissioner under  
28 section 23; and

29 (b) the Integrity Commissioner investigates the corruption issue;  
30 and

1 (c) the person elects under section 25 to be kept informed of the  
2 action taken in relation to the corruption issue and has not  
3 revoked the election;  
4 the Integrity Commissioner must take such steps as the Integrity  
5 Commissioner considers reasonable to keep the person informed of  
6 the progress of the investigation of that corruption issue.

7 **53 Integrity Commissioner to keep home agency and integrity**  
8 **agency informed of progress of investigation**

- 9 (1) This section applies if:
- 10 (a) a corruption issue relates to the conduct of a secondee to a  
11 law enforcement agency; and  
12 (b) the secondee is an employee of a government agency (the  
13 *home agency*).
- 14 (2) If the Integrity Commissioner informs the head of the home agency  
15 of the corruption issue under subsection 29(2), the Integrity  
16 Commissioner must take such steps as the Integrity Commissioner  
17 considers reasonable to keep the head of the home agency  
18 informed of the progress of the investigation of that corruption  
19 issue.
- 20 (3) If:
- 21 (a) if the secondee is from the police force of a State or  
22 Territory; and  
23 (b) the Integrity Commissioner informs the head of the integrity  
24 agency (if any) for the State or Territory of the corruption  
25 issue under subsection 29(2);  
26 the Integrity Commissioner must take such steps as the Integrity  
27 Commissioner considers reasonable to keep the head of the  
28 integrity agency informed of the progress of the investigation of  
29 that corruption issue.

1 **Subdivision B—Reporting at the end of investigation**

2 **54 Report on investigation**

3 *Report and its contents*

4 (1) After completing an investigation of a corruption issue that relates  
5 to a law enforcement agency, the Integrity Commissioner must  
6 prepare a report on the investigation.

7 (2) The report must set out:

8 (a) the Integrity Commissioner’s findings on the corruption  
9 issue; and

10 (b) the evidence and other material on which those findings are  
11 based; and

12 (c) any action that the Integrity Commissioner has taken, or  
13 proposes to take, under Part 10 in relation to the  
14 investigation; and

15 (d) any recommendations that the Integrity Commissioner thinks  
16 fit to make and, if recommendations are made, the reasons  
17 for those recommendations.

18 This subsection has effect subject to subsections (4), (5) and (6).

19 Note: See section 51 for the need for the Integrity Commissioner to give  
20 certain people an opportunity to be heard before including critical  
21 statements in a report.

22 (3) Without limiting paragraph (2)(d), the Integrity Commissioner may  
23 recommend that the head of the law enforcement agency consider:

24 (a) taking action in relation to any staff member of the agency, in  
25 accordance with the procedures of the agency, with a view to  
26 the staff member improving his or her performances; or

27 (b) terminating a staff member’s employment in accordance with  
28 the procedures of the agency; or

29 (c) taking action to rectify or mitigate the effects of the conduct  
30 of a staff member of the agency; or

31 (d) adopting measures to remedy deficiencies in policy or  
32 practice that facilitated:

33 (i) an unsuitable person becoming a staff member of the  
34 agency; or

- 1 (ii) a staff member of the agency engaging in corrupt  
2 conduct; or  
3 (iii) the failure to detect corrupt conduct engaged in by a  
4 staff member of the agency.

5 *Section 149 certified information and sensitive information*

- 6 (4) The Integrity Commissioner must exclude section 149 certified  
7 information from the report if one or more public hearings were  
8 held in the course of the investigation to which the report relates.

9 Note: Under section 203, the report must be laid before each House of the  
10 Parliament.

- 11 (5) The Integrity Commissioner may exclude information from the  
12 report if the Integrity Commissioner is satisfied that:  
13 (a) the information is sensitive information or section 149  
14 certified information; and  
15 (b) it is desirable in the circumstances to exclude the information  
16 from the report.

- 17 (6) In deciding whether to exclude information from the report  
18 prepared under subsection (5), the Integrity Commissioner must  
19 seek to achieve an appropriate balance between:  
20 (a) the public interest that would be served by including the  
21 information in the report; and  
22 (b) the prejudicial consequences that might result from including  
23 the information in the report.

24 *Supplementary report*

- 25 (7) If the Integrity Commissioner excludes information from a report  
26 prepared under subsection (4) or (5), the Integrity Commissioner  
27 must prepare a supplementary report that sets out:  
28 (a) the information; and  
29 (b) the reasons for excluding the information from the report  
30 prepared under subsection (4) or (5).

31 **55 Integrity Commissioner to give report to certain persons**

- 32 (1) The Integrity Commissioner must give the Minister:



- 1 (a) the report prepared under subsection 54(1); and  
2 (b) if a supplementary report is prepared under subsection 54(7)  
3 in relation to the investigation—the supplementary report.
- 4 Note: Section 203 provides that the Minister must lay a copy of the report  
5 prepared under subsection 54(1) before each House of the Parliament  
6 if a public hearing has been held in the course of the investigation to  
7 which the report relates. The Minister is not required, however, to lay  
8 a copy of a supplementary report under subsection 54(7) before each  
9 House of the Parliament.
- 10 (2) Subject to subsection (5), the Integrity Commissioner:  
11 (a) must give the head of a law enforcement agency a copy of a  
12 report prepared under subsection 54(1) in relation to a  
13 corruption issue; and  
14 (b) may give the head of a law enforcement agency a copy of the  
15 whole or a part of a supplementary report prepared under  
16 subsection 54(7) in relation to the investigation of a  
17 corruption issue;  
18 to the extent to which the report relates to the law enforcement  
19 agency.
- 20 (3) Subject to subsection (5), if:  
21 (a) a corruption issue relates to the conduct of a secondee to a  
22 law enforcement agency; and  
23 (b) the secondee is an employee of a government agency (the  
24 **home agency**); and  
25 (c) the Integrity Commissioner informs the head of the home  
26 agency of the corruption issue under subsection 29(2);  
27 the Integrity Commissioner:  
28 (d) must give the head of the home agency a copy of a report  
29 prepared under subsection 54(1) in relation to the corruption  
30 issue; and  
31 (e) may give the head of the home agency a copy of the whole or  
32 a part of a supplementary report prepared under subsection  
33 54(7) in relation to the investigation of the corruption issue;  
34 to the extent to which the report relates to the law enforcement  
35 agency.
- 36 (4) Subject to subsection (5), if:

- 1 (a) a corruption issue relates to the conduct of a secondee to a  
2 law enforcement agency; and  
3 (b) the secondee is an employee of the police force of a State or  
4 Territory; and  
5 (c) the Integrity Commissioner informs the head of the integrity  
6 agency (if any) for the State or Territory of the corruption  
7 issue under subsection 29(2);  
8 the Integrity Commissioner:  
9 (d) must give the head of the integrity agency a copy of a report  
10 prepared under subsection 54(1) in relation to the corruption  
11 issue; and  
12 (e) may give the head of the integrity agency a copy of the whole  
13 or a part of a supplementary report prepared under subsection  
14 54(7) in relation to the investigation of the corruption issue;  
15 to the extent to which the report relates to the law enforcement  
16 agency.
- 17 (5) The Integrity Commissioner must not include information in a  
18 copy of a report given to a person under subsection (2), (3) or (4)  
19 if:  
20 (a) the information is section 149 certified information; and  
21 (b) the disclosure of the information to the person would  
22 contravene the certificate issued under section 149.

## 23 **56 Comments by head of agency**

24 If the Integrity Commissioner gives the head of a law enforcement  
25 agency a copy of a report, or a supplementary report, under  
26 section 55, the head of the agency may give the Integrity  
27 Commissioner such comments concerning the report, or  
28 supplementary report, as he or she wishes to make.

## 29 **57 Follow-up action on report**

- 30 (1) The Integrity Commissioner may request the head of a law  
31 enforcement agency to whom a report is given under subsection  
32 55(2) to give the Integrity Commissioner, within a specified time,  
33 details of any action that the head of the agency proposes to take  
34 with respect to a recommendation included in the report.

- 1 (2) The head of the agency must comply with the request.
- 2 (3) If the Integrity Commissioner is not satisfied with the response of  
3 the head of the agency to the request, the Integrity Commissioner  
4 may refer to the responsible Minister for the agency:
- 5 (a) the Integrity Commissioner's recommendation and the  
6 reasons for that recommendation; and  
7 (b) the response of the head of the agency to the  
8 recommendation; and  
9 (c) the Integrity Commissioner's reasons for not being satisfied  
10 with that response.
- 11 (4) If the Integrity Commissioner refers material to a Minister under  
12 subsection (3), the Integrity Commissioner may also send a copy of  
13 that material to:
- 14 (a) the President of the Senate for presentation to the Senate; and  
15 (b) the Speaker of the House of Representatives for presentation  
16 to the House of Representatives.
- 17 (5) The Integrity Commissioner must exclude section 149 certified  
18 information from the copy of the material sent under  
19 subsection (4).
- 20 (6) The Integrity Commissioner may exclude information from the  
21 copy of the material sent under subsection (4) if the Integrity  
22 Commissioner is satisfied that:
- 23 (a) the information is sensitive information; and  
24 (b) it is desirable in the circumstances to exclude the information  
25 from the material sent.
- 26 (7) In deciding whether to exclude information from the copy of the  
27 material sent under subsection (4), the Integrity Commissioner  
28 must seek to achieve an appropriate balance between:
- 29 (a) the public interest that would be served by including the  
30 information in the material sent; and  
31 (b) the prejudicial consequences that might result from including  
32 the information in the material sent.

- 1 (8) After the material is presented to the Parliament, the Integrity  
2 Commissioner may discuss any matter to which the material relates  
3 with the head of the agency for the purpose of resolving the matter.

4 **58 Advising person who referred corruption issue of outcome of the**  
5 **investigation**

6 *Advice to person who referred issue under section 23*

- 7 (1) If a person:  
8 (a) refers an allegation, or information, that raises a corruption  
9 issue to the Integrity Commissioner under section 23; and  
10 (b) elects under section 25 to be kept informed of the action  
11 taken in relation to the corruption issue and has not revoked  
12 the election;  
13 the Integrity Commissioner must advise the person of the outcome  
14 of the investigation of the corruption issue.

15 *Exception*

- 16 (2) However, the Integrity Commissioner need not advise the person if  
17 the Integrity Commissioner is satisfied that doing so is likely to  
18 prejudice:  
19 (a) the investigation of the corruption issue or another corruption  
20 investigation; or  
21 (b) any action taken as a result of an investigation referred to in  
22 paragraph (a).

23 *Manner of giving advice*

- 24 (3) If the Integrity Commissioner advises the person of the outcome of  
25 the investigation, the Integrity Commissioner may do so by giving  
26 the person a copy of the whole or a part of the report prepared in  
27 relation to the investigation under subsection 54(1).  
28 (4) In advising the person of the outcome of the investigation, the  
29 Integrity Commissioner:  
30 (a) must not disclose section 149 certified information to the  
31 person if the disclosure of the information to the person

1                                would be contravene the certificate issued under section 149;  
2                                and  
3                                (b) may exclude information from the advice if the Integrity  
4                                Commissioner is satisfied that:  
5                                    (i) the information is sensitive information; and  
6                                    (ii) it is desirable in the circumstances to exclude the  
7                                    information from the advice.

8                                (5) In deciding whether to exclude information from the advice under  
9                                paragraph (4)(b), the Integrity Commissioner must seek to achieve  
10                                an appropriate balance between:  
11                                    (a) the person's interest in having the information included in the  
12                                    advice; and  
13                                    (b) the prejudicial consequences that might result from including  
14                                    the information in the advice.

15                                *Advice to nominated person*

16                                (6) If:  
17                                    (a) a person refers an allegation, or information, that raises the  
18                                    corruption issue to the Integrity Commissioner on behalf of:  
19    (i) another person; or  
20    (ii) a government agency (other than a law enforcement  
21    agency); or  
22    (iii) a body or association of persons; and  
23                                    (b) the other person, the agency, the body or the association  
24                                    nominates:  
25    (i) another person; or  
26    (ii) the holder of a particular office in the agency, body or  
27    association;  
28                                    by notice in writing to the Integrity Commissioner, to receive  
29                                    communications from the Integrity Commissioner;  
30                                the Integrity Commissioner must give the advice required by  
31                                subsection (1) to the person nominated or the person for the time  
32                                being holding the office nominated.

1     **59 Advising person whose conduct is investigated of outcome of the**  
2             **investigation**

3             (1) If the Integrity Commissioner investigates a corruption issue that  
4                 relates to a person who is, or has been, a staff member of a law  
5                 enforcement agency, the Integrity Commissioner may advise the  
6                 person of the outcome of the investigation.

7             (2) Without limiting subsection (1), the Integrity Commissioner may  
8                 advise the person of the outcome of the investigation by giving the  
9                 person a copy of the whole or a part of the report prepared in  
10                relation to the investigation under subsection 54(1).

11            (3) In advising the person under subsection (1), the Integrity  
12                Commissioner:

13               (a) must not disclose section 149 certified information to the  
14                 person if the disclosure of the information to the person  
15                 would contravene the certificate issued under section 149;  
16                 and

17               (b) may exclude information from the advice if the Integrity  
18                 Commissioner is satisfied that:

19                   (i) the information is sensitive information; and

20                   (ii) it is desirable in the circumstances to exclude the  
21                     information from the advice.

22             (4) In deciding whether to exclude information from the advice under  
23                 paragraph (3)(b), the Integrity Commissioner must seek to achieve  
24                 an appropriate balance between:

25               (a) the person's interest in having the information included in the  
26                 advice; and

27               (b) the prejudicial consequences that might result from including  
28                 the information in the advice.

1

2 **Part 7—Investigations by other Commonwealth**  
3 **agencies**

4 **Division 1—Nominated contact for investigations by law**  
5 **enforcement agencies**

6 **60 Nominating contact for investigation**

7 (1) If the Integrity Commissioner decides to deal with a corruption  
8 issue by:

9 (a) referring the corruption issue to a law enforcement agency  
10 for investigation; or

11 (b) managing or overseeing an investigation of the corruption  
12 issue by a law enforcement agency;

13 the head of the agency may nominate a staff member of the agency  
14 as the contact for the investigation.

15 Note: If the head of the agency does not nominate someone under this  
16 subsection, the head of the agency is the nominated contact for the  
17 investigation (see the definition of *nominated contact* in subsection  
18 5(1)).

19 (2) The nomination must be made by notice in writing to the Integrity  
20 Commissioner.

1

2 **Division 2—Managing or overseeing investigations by law**  
3 **enforcement agencies**

4 **61 Managing an investigation**

5 (1) The Integrity Commissioner *manages* an investigation of a  
6 corruption issue by a law enforcement agency by giving the  
7 agency's nominated contact for the investigation detailed guidance  
8 about the planning, and carrying out, of the investigation.

9 Note: The Integrity Commissioner can request the agency to provide  
10 information about the investigation under sections 63 and 64.

11 (2) In managing the investigation, the Integrity Commissioner must  
12 not give directions directly to any other staff members of the  
13 agency.

14 (3) The head of the agency must ensure that:  
15 (a) the agency adheres to the Integrity Commissioner's detailed  
16 guidance in planning and carrying out the investigation; and  
17 (b) the staff members of the agency cooperate with the Integrity  
18 Commissioner in relation to the planning and carrying out the  
19 investigation.

20 **62 Overseeing an investigation**

21 (1) The Integrity Commissioner *oversees* an investigation of a  
22 corruption issue by a law enforcement agency by giving the  
23 agency's nominated contact for the investigation general guidance  
24 about the planning, and carrying out, of the investigation.

25 (2) In overseeing the investigation, the Integrity Commissioner must  
26 not give directions directly to any other staff members of the  
27 agency.

28 (3) The head of the agency must ensure that the agency follows the  
29 Integrity Commissioner's general guidance in relation to the  
30 planning and carrying out the investigation.



1

2 **Division 3—Reporting**

3 **Subdivision A—Reporting by law enforcement agencies during**  
4 **investigations**

5 **63 Integrity Commissioner may request individual progress report**

6 (1) If a law enforcement agency is investigating a corruption issue, the  
7 Integrity Commissioner may request:

- 8 (a) if the Integrity Commissioner referred the corruption issue to  
9 the agency for investigation or is managing or overseeing the  
10 investigation—the nominated contact for the investigation; or  
11 (b) in any other case—the head of the agency;  
12 to give him or her a progress report on the investigation.

13 (2) The request:

- 14 (a) must be in writing; and  
15 (b) must specify the date by which the progress report must be  
16 given to the Integrity Commissioner; and  
17 (c) may specify particular matters in relation to the investigation  
18 that the report is to address.

19 The date specified under paragraph (b) must be at least 7 days after  
20 the request is made.

21 (3) The nominated contact, or the head of the agency, must comply  
22 with the request.

23 **64 Integrity Commissioner may request periodic progress reports**

24 (1) If a law enforcement agency is investigating a corruption issue, the  
25 Integrity Commissioner may request:

- 26 (a) if the Integrity Commissioner referred the corruption issue to  
27 the agency for investigation or is managing or overseeing the  
28 investigation—the nominated contact for the investigation; or  
29 (b) in any other case—the head of the agency;  
30 to give him or her periodic progress reports on the investigation.

- 1                   (2) The request:  
2                    (a) must be in writing; and  
3                    (b) must specify the frequency with which the reports are to be  
4                    given and the periods to which they are to relate; and  
5                    (c) may specify particular matters in relation to the investigation  
6                    that the reports are to address.
- 7                   (3) The nominated contact, or the head of the agency, must comply  
8                    with the request.

9                   **65 Head of law enforcement agency to keep person who referred**  
10                   **corruption issue informed of progress of investigation**

11                   *Minister*

- 12                   (1) If:  
13                    (a) the Minister refers an allegation, or information, that raises a  
14                    corruption issue to the Integrity Commissioner under  
15                    section 18; and  
16                    (b) the Integrity Commissioner refers the corruption issue to a  
17                    law enforcement agency under paragraph 26(1)(b) or (c) for  
18                    investigation;  
19                    the head of the agency must take such steps as the head of the  
20                    agency considers reasonable to keep the Minister informed of the  
21                    progress of the investigation of that corruption issue.

22                   *Person who referred issue under section 23*

- 23                   (2) If:  
24                    (a) a person refers an allegation, or information, that raises a  
25                    corruption issue to the Integrity Commissioner under  
26                    section 23; and  
27                    (b) the Integrity Commissioner refers the corruption issue to a  
28                    law enforcement agency under paragraph 26(1)(b) or (c) for  
29                    investigation; and  
30                    (c) the person elects under section 25 to be kept informed of the  
31                    action taken in relation to the corruption issue and has not  
32                    revoked the election;

1 the head of the agency must take such steps as the head of the  
2 agency considers reasonable to keep the person informed of the  
3 progress of the investigation of that corruption issue.

4 **Subdivision B—Reporting by Commonwealth government**  
5 **agencies at end of investigations**

6 **66 Final report on investigation**

- 7 (1) After a Commonwealth government agency completes:  
8 (a) an investigation of a corruption issue; or  
9 (b) a further investigation of a corruption issue recommended by  
10 the Integrity Commissioner under section 67;  
11 the head of the agency must cause a report on the investigation to  
12 be prepared.
- 13 (2) The report:  
14 (a) must set out:  
15 (i) the agency's findings on the corruption issue; and  
16 (ii) the evidence and other material on which those findings  
17 are based; and  
18 (iii) what action (if any) the head of the agency has taken, or  
19 proposes to take, to address those findings; and  
20 (iv) if action is to be taken—the reasons for the proposed  
21 action; and  
22 (b) if the agency is the AFP and the corruption issue relates to  
23 another law enforcement agency—may also set out  
24 recommendations to the head of the other law enforcement  
25 agency.
- 26 (3) The head of the agency must give a copy of the report to the  
27 Integrity Commissioner as soon as reasonably practicable after the  
28 investigation or further investigation is completed.
- 29 (4) If the Commissioner of the AFP causes a report to be prepared on  
30 an investigation that relates to another law enforcement agency, the  
31 Commissioner of the AFP must also give a copy of the report to  
32 the head of that other law enforcement agency at the same time as  
33 a copy of the report is given to the Integrity Commissioner.

1       **67 Integrity Commissioner may comment on final report**

2                   *Integrity Commissioner may make comments or recommendations*

3       (1) The Integrity Commissioner may, if he or she thinks fit, make  
4            comments or recommendations on any matter relating to or arising  
5            out of:

6               (a) a report given to the Integrity Commissioner by the head of a  
7                Commonwealth government agency under section 66; or

8               (b) the investigation to which the report relates.

9       Note:       Under section 42, the Integrity Commissioner could, after receiving  
10                   the report, reconsider how the corruption issue should be dealt with.

11       (2) The Integrity Commissioner must put any such comments or  
12            recommendations in writing and give them to the head of the  
13            Commonwealth government agency.

14       (3) If:

15               (a) the Commonwealth government agency that gives the report  
16                to the Integrity Commissioner is the AFP; and

17               (b) the corruption issue relates to another law enforcement  
18                agency;

19            the Integrity Commissioner must also give the comments or  
20            recommendations to the head of that other law enforcement  
21            agency.

22       (4) Without limiting subsection (1), the Integrity Commissioner may  
23            recommend that:

24               (a) the head of a Commonwealth government agency take  
25                appropriate action with a view to having a person charged  
26                with a criminal offence; or

27               (b) the head of a Commonwealth government agency take  
28                appropriate action:

29                   (i) to initiate disciplinary proceedings against a person; or

30                   (ii) to determine whether a person's employment or  
31                    appointment should be terminated; or

32               (c) the Commonwealth government agency that gave the report  
33                to the Integrity Commissioner investigate the corruption  
34                issue further.

1 Note: Under section 42, the Integrity Commissioner could, instead of  
2 recommending that the agency investigate the corruption issue further,  
3 decide that the corruption issue should be dealt with in another way.

4 *Request for details of action to be taken*

5 (5) The Integrity Commissioner may request the head of the  
6 Commonwealth government agency to which the Integrity  
7 Commissioner's recommendations are directed to give the Integrity  
8 Commissioner, within a specified time, details of any action that  
9 the head of the agency proposes to take with respect to the  
10 recommendations.

11 (6) The head of the agency must comply with the request.

12 (7) If the Integrity Commissioner is not satisfied with the response of  
13 the head of the agency to the request, the Integrity Commissioner  
14 may refer to the responsible Minister for the agency:

- 15 (a) the Integrity Commissioner's recommendation and the  
16 reasons for that recommendation; and  
17 (b) the response of the head of the agency to the  
18 recommendation; and  
19 (c) the Integrity Commissioner's reasons for not being satisfied  
20 with that response.

21 (8) If the Integrity Commissioner refers material to a Minister under  
22 subsection (7), the Integrity Commissioner may also send a copy of  
23 that material to:

- 24 (a) the President of the Senate for presentation to the Senate; and  
25 (b) the Speaker of the House of Representatives for presentation  
26 to the House of Representatives.

27 *Section 149 certified information and sensitive information*

28 (9) The Integrity Commissioner must exclude section 149 certified  
29 information from the copy of the material sent under  
30 subsection (8).

31 (10) The Integrity Commissioner may exclude information from the  
32 copy of the material sent under subsection (8) if the Integrity  
33 Commissioner is satisfied that:

- 1 (a) the information is sensitive information; and  
2 (b) it is desirable in the circumstances to exclude the information  
3 from the material sent.
- 4 (11) In deciding whether to exclude information from the copy of the  
5 material sent under subsection (8), the Integrity Commissioner  
6 must seek to achieve an appropriate balance between:  
7 (a) the public interest that would be served by including the  
8 information in the material sent; and  
9 (b) the prejudicial consequences that might result from including  
10 the information in the material sent.
- 11 (12) After the material is presented to the Parliament, the Integrity  
12 Commissioner may discuss any matter to which the material relates  
13 with the head of the agency for the purpose of resolving the matter.

14 **68 Advising person who referred corruption issue of outcome of the**  
15 **investigation**

- 16 (1) If a person:  
17 (a) refers an allegation, or information, that raises a corruption  
18 issue to the Integrity Commissioner under section 23; and  
19 (b) elects under section 25 to be kept informed of the action  
20 taken in relation to the corruption issue and has not revoked  
21 the election; and  
22 (c) the Integrity Commissioner:  
23 (i) refers the corruption issue to a law enforcement agency  
24 under paragraph 26(1)(b) or (c) for investigation; or  
25 (ii) refers the corruption issue to a Commonwealth  
26 government agency under paragraph 29(6)(a) for  
27 investigation;  
28 the head of the agency must advise the person of the outcome of  
29 the investigation of the corruption issue.
- 30 (2) Without limiting subsection (1), the head of the agency may advise  
31 the person by giving the person a copy of the whole or a part of the  
32 report prepared in relation to the investigation under section 66.
- 33 (3) However, the head of the agency need not advise the person if the  
34 head of the agency is satisfied that doing so is likely to prejudice:

- 1 (a) the investigation of the corruption issue or another corruption  
2 investigation; or  
3 (b) any action taken as a result of an investigation referred to in  
4 paragraph (a).
- 5 (4) If:
- 6 (a) a person refers an allegation, or information, that raises the  
7 corruption issue to the Integrity Commissioner on behalf of:  
8 (i) another person; or  
9 (ii) a government agency (other than a law enforcement  
10 agency); or  
11 (iii) a body or association of persons; and  
12 (b) the other person, the agency, the body or the association  
13 nominates:  
14 (i) another person; or  
15 (ii) the holder of a particular office in the agency, body or  
16 association;  
17 by notice in writing to the Integrity Commissioner, to receive  
18 communications from the Integrity Commissioner;  
19 the head of the agency must give the advice required by  
20 subsection (1) to the person nominated or the person for the time  
21 being holding the office nominated.

22 **69 Advising person whose conduct is investigated of outcome of the**  
23 **investigation**

- 24 (1) If a Commonwealth government agency investigates a corruption  
25 issue that relates to a person who is, or has been, a staff member of  
26 a law enforcement agency, the head of the Commonwealth  
27 government agency may advise the person of the outcome of the  
28 investigation.
- 29 (2) Without limiting subsection (1), the head of the Commonwealth  
30 government agency may advise the person by giving the person a  
31 copy of the whole or a part of the report prepared in relation to the  
32 investigation under section 66.

1

2 **Division 4—Integrity Commissioner to pass on information**  
3 **relevant to agency**

4 **70 Integrity Commissioner to pass on information relevant to**  
5 **agency investigation**

6 (1) If:

7 (a) a government agency is investigating a corruption issue; and

8 (b) either:

9 (i) the Integrity Commissioner referred the corruption issue  
10 to the agency for investigation; or

11 (ii) the head of the agency notified the Integrity  
12 Commissioner of the corruption issue under section 19;  
13 and

14 (c) the Integrity Commissioner becomes aware of information  
15 that is relevant to the corruption issue; and

16 (d) the head of the agency does not already have the information;  
17 the Integrity Commissioner must give the information to the head  
18 of the agency.

19 (2) Subsection (1) has effect subject to section 152 (which deals with  
20 section 149 certified information).



1

2 **Part 8—Public inquiries into corruption issues**

3 **Division 1—Conducting a public inquiry**

4 **71 Minister may request Integrity Commissioner to conduct public**  
5 **inquiry**

6 The Minister may request the Integrity Commissioner to conduct a  
7 public inquiry into all or any of the following:

- 8 (a) a corruption issue or issues;  
9 (b) an issue or issues about corruption generally in law  
10 enforcement agencies;  
11 (c) an issue or issues about the integrity of staff members of law  
12 enforcement agencies.

13 Note: Part 9 provides for particular powers that are available to the Integrity  
14 Commissioner for the purposes of the public inquiry.

15 **72 Publicising inquiry**

16 (1) The Integrity Commissioner must invite submissions on the issues  
17 that are to be the subject of the public inquiry.

18 Note: Subsection 104(3) provides certain protections for people who make  
19 submissions.

20 (2) The invitation must specify the closing date for submissions.

1

2 **Division 2—Reporting**

3 **73 Report on public inquiry**

4 *Report and its contents*

- 5 (1) After conducting a public inquiry, the Integrity Commissioner  
6 must prepare a report on the inquiry.
- 7 (2) The report must set out:
- 8 (a) the Integrity Commissioner’s findings as a result of the  
9 public inquiry; and
- 10 (b) the evidence and other material on which those findings are  
11 based; and
- 12 (c) any action that the Integrity Commissioner has taken, or  
13 proposes to take, under Part 10 in relation to the inquiry; and
- 14 (d) any recommendations that the Integrity Commissioner thinks  
15 fit to make and, if recommendations are made, the reasons  
16 for those recommendations.
- 17 (3) The Integrity Commissioner must exclude section 149 certified  
18 information from the report.

19 Note: Under section 203, the report must be laid before each House of the  
20 Parliament.

21 *Section 149 certified information and sensitive information*

- 22 (4) The Integrity Commissioner may exclude information from the  
23 report if the Integrity Commissioner is satisfied that:
- 24 (a) the information is sensitive information; and  
25 (b) it is desirable in the circumstances to exclude the information  
26 from the report.
- 27 (5) In deciding whether to exclude information from the report  
28 prepared under subsection (4), the Integrity Commissioner must  
29 seek to achieve an appropriate balance between:
- 30 (a) the public interest that would be served by including the  
31 information in the report; and

- 1 (b) the prejudicial consequences that might result from including  
2 the information in the report.

3 *Supplementary report*

- 4 (6) If, under subsection (4) or (5), the Integrity Commissioner  
5 excludes information from a report prepared under subsection (1),  
6 the Integrity Commissioner must prepare a supplementary report  
7 that sets out:  
8 (a) the information; and  
9 (b) the reasons for excluding the information from the report  
10 prepared under subsection (1).

11 **74 Giving report to Minister**

12 The Integrity Commissioner must give the Minister:

- 13 (a) the report prepared under subsection 73(1); and  
14 (b) if a supplementary report is prepared under subsection  
15 73(6)—the supplementary report.

16 Note: Section 203 provides that the Minister must lay a copy of the report  
17 prepared under subsection 73(1) before each House of the Parliament  
18 if a public hearing has been held in the course of the investigation to  
19 which the report relates. The Minister is not required, however, to lay  
20 a copy of a supplementary report under subsection 73(6) before each  
21 House of the Parliament.

1

2 **Part 9—Integrity Commissioner's powers in**  
3 **conducting investigations and public**  
4 **inquiries**

5 **Division 1—Requiring people to give information and**  
6 **produce documents or things**

7 **Subdivision A—Requests by Integrity Commissioner**

8 **75 Request to staff member of law enforcement agency**

9 (1) For the purposes of investigating a corruption issue, the Integrity  
10 Commissioner may request a staff member of a law enforcement  
11 agency:

12 (a) to give the Integrity Commissioner the information specified  
13 in the request; or

14 (b) to produce to the Integrity Commissioner the documents or  
15 things specified in the request.

16 The Integrity Commissioner may require that information to be  
17 provided under paragraph (a) is to be provided in writing.

18 (2) The Integrity Commissioner's request must be:

19 (a) served on the staff member of the law enforcement agency;  
20 and

21 (b) in writing and signed by the Integrity Commissioner.

22 (3) The Integrity Commissioner may make the request without holding  
23 a hearing.

24 (4) The staff member must comply with the request as soon as is  
25 reasonably practicable.

26 Note 1: Failure to comply with a request is an offence: see section 78.

27 Note 2: See also subsection 150(2) in relation to section 149 certified  
28 information.

1 **76 Request to person other than staff member of law enforcement**  
2 **agency**

3 (1) For the purposes of investigating a corruption issue, the Integrity  
4 Commissioner may request a person (other than a staff member of  
5 a law enforcement agency):

6 (a) to give the Integrity Commissioner the information specified  
7 in the request; or

8 (b) to produce to the Integrity Commissioner the documents or  
9 things specified in the request.

10 (2) The Integrity Commissioner's request must:

11 (a) be served on the person; and

12 (b) be in writing and signed by the Integrity Commissioner; and

13 (c) specify the period within which the person must comply with  
14 the request.

15 The period specified under paragraph (c) must be at least 14 days  
16 starting on the day on which the request is served on the person.

17 (3) The Integrity Commissioner may make the request without holding  
18 a hearing.

19 (4) The person must:

20 (a) give the information in writing; or

21 (b) produce the documents or things;

22 within the time specified in the request, or within such further time  
23 as the Integrity Commissioner allows.

24 Note 1: Failure to comply with a request is an offence: see section 78.

25 Note 2: See also subsection 150(2) in relation to section 149 certified  
26 information.

27 **77 Integrity Commissioner may retain documents and things**

28 (1) If a document or thing is produced to the Integrity Commissioner  
29 in accordance with a request under section 75 or 76, the Integrity  
30 Commissioner:

31 (a) may take possession of, and may make copies of, the  
32 document or thing, or take extracts from the document; and

1 (b) may retain possession of the document or thing for such  
2 period as is necessary for the purposes of the investigation to  
3 which the document or thing relates.

4 (2) While the Integrity Commissioner retains the document or thing,  
5 he or she must allow a person who would otherwise be entitled to  
6 inspect the document or view the thing to do so at the times that the  
7 person would ordinarily be able to do so.

8 **Subdivision B—Offence and related provisions**

9 **78 Failure to comply with Integrity Commissioner's request**

10 A person commits an offence if:

- 11 (a) the person is given a request under section 75 or 76; and  
12 (b) the person fails to comply with the request.

13 **Penalty:** Imprisonment for 2 years.

14 **Note 1:** A legal practitioner may refuse to produce a document or thing in  
15 certain circumstances: see section 79.

16 **Note 2:** This section is not subject to the privilege against self-incrimination  
17 but there are limits on the uses to which the evidence the person gives  
18 may be put: see section 80.

19 **79 Legal practitioner not required to disclose privileged**  
20 **communications**

21 (1) A legal practitioner may refuse:

- 22 (a) to give information to the Integrity Commissioner; or  
23 (b) to produce a document or thing to the Integrity  
24 Commissioner;

25 when requested to do so under section 76 if the information would  
26 disclose, or the document contains, a privileged communication  
27 made by the legal practitioner (or to the legal practitioner) in his or  
28 her capacity as a legal practitioner.

29 (2) Subsection (1) has effect subject to paragraph 80(5)(c).

- 1 (3) Subsection (1) does not apply if the person to whom the  
2 communication was made (or by whom the communication was  
3 made) agrees to the legal practitioner:  
4 (a) giving the information; or  
5 (b) producing the document or thing.
- 6 (4) If the legal practitioner refuses:  
7 (a) to give the information; or  
8 (b) to produce the document or thing;  
9 he or she must, if required by the Integrity Commissioner, give the  
10 Integrity Commissioner the name and address of the person to  
11 whom the communication was made (or by whom the  
12 communication was made).
- 13 (5) This section does not affect the law relating to legal professional  
14 privilege.

15 **80 Self-incrimination etc.**

16 *Self-incrimination*

- 17 (1) A person is not excused from:  
18 (a) giving information; or  
19 (b) producing a document or thing;  
20 when requested to do so under section 75 or 76 on the ground that  
21 doing so would tend to incriminate the person or expose the person  
22 to a penalty.

23 *Use indemnity*

- 24 (2) Subsection (4) applies if:  
25 (a) the person:  
26 (i) gives the information (whether orally or in writing); or  
27 (ii) produces the document or thing;  
28 and, before doing so, claims that giving the information or  
29 producing the document or thing, might tend to incriminate  
30 the person or expose the person to a penalty; or  
31 (b) the person gives the information in writing and claims, in a  
32 written statement accompanying the information, that giving

- 1 the information might tend to incriminate the person or  
2 expose the person to a penalty; or  
3 (c) the person produces the document or thing and claims, in a  
4 written statement accompanying the document or thing, that  
5 producing the document or thing might tend to incriminate  
6 the person or expose the person to a penalty.
- 7 (3) Subsection (4) does not apply to the production of a document that  
8 is, or forms part of, a record of an existing or past business.
- 9 (4) None of the following:  
10 (a) the information given;  
11 (b) the document or thing produced;  
12 is admissible in evidence against the person in criminal  
13 proceedings, or any other proceedings for the imposition or  
14 recovery of a penalty, other than:  
15 (c) proceedings for an offence against section 78; or  
16 (d) confiscation proceedings; or  
17 (e) proceedings for an offence against section 137.1 or 137.2 of  
18 the *Criminal Code* (which deals with false or misleading  
19 information or documents) that relates to this Act; or  
20 (f) proceedings for an offence against section 149.1 of the  
21 *Criminal Code* (which deals with obstruction of  
22 Commonwealth public officials) that relates to this Act; or  
23 (g) disciplinary proceedings against the person if the person is a  
24 staff member of a law enforcement agency.
- 25 *Public interest grounds*
- 26 (5) A person is not excused from:  
27 (a) giving information; or  
28 (b) producing a document or thing;  
29 when requested to do so under section 75 or 76 on the ground that  
30 doing so:  
31 (c) would disclose one of the following:  
32 (i) legal advice given to a Minister or a Commonwealth  
33 government agency;



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- 1 (ii) a communication between an officer of a  
2 Commonwealth government agency and another person  
3 or body, being a communication protected against  
4 disclosure by legal professional privilege; or  
5 (d) would breach a secrecy provision other than:  
6 (i) a taxation secrecy provision; or  
7 (ii) a law enforcement secrecy provision; or  
8 (e) would be otherwise contrary to the public interest.
- 9 Note: See also subsection 150(2) in relation to section 149 certified  
10 information.
- 11 (6) The fact that a person is not excused under subsection (5) from:  
12 (a) giving information; or  
13 (b) producing a document or thing;  
14 does not otherwise affect a claim of legal professional privilege  
15 that anyone may make in relation to that information, document or  
16 thing.
- 17 (7) A person does not commit an offence, and is not liable to any  
18 penalty, under the provisions of any other enactment (other than a  
19 taxation secrecy provision or a law enforcement secrecy provision)  
20 because the person gives information, or produces a document or  
21 thing, when required to do so under section 75 or 76.

22 **81 Protection of person required to give information and produce**  
23 **documents**

24 A person who gives information, or produces a document or thing,  
25 to the Integrity Commissioner in response to a request under  
26 section 75 or 76 has the same protection as a witness in  
27 proceedings in the High Court.

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2 **Division 2—Conducting hearings**

3 **Subdivision A—General provisions**

4 **82 Integrity Commissioner may hold hearings**

5 *Commissioner may hold hearings for investigations or public*  
6 *inquiries*

7 (1) The Integrity Commissioner may hold a hearing for the purpose of:  
8 (a) investigating a corruption issue; or  
9 (b) conducting a public inquiry.

10 (2) Subject to subsections (3), (4) and (5), a hearing may be conducted  
11 in such manner as the Integrity Commissioner thinks fit.

12 *Hearing in relation to an investigation of a corruption issue*

13 (3) The Integrity Commissioner may decide to hold the whole (or a  
14 part) of a hearing in relation to an investigation of corruption issue  
15 either in public or in private.

16 (4) In deciding under subsection (3) whether a hearing (or a part of a  
17 hearing) is to be held in public or in private, the Integrity  
18 Commissioner must have regard to the following:

- 19 (a) whether evidence that may be given, or a matter that may  
20 arise, during the hearing (or that part of the hearing) is of a  
21 confidential nature or relates to the commission, or to the  
22 alleged or suspected commission, of an offence;
- 23 (b) any unfair prejudice to a person's reputation that would be  
24 likely to be caused if the hearing (or that part of the hearing)  
25 took place in public;
- 26 (c) whether it is in the public interest that the hearing (or that  
27 part of the hearing) take place in public;
- 28 (d) any other relevant matter.

29 Note: If the hearing is to be held in public, a witness may request that his or  
30 her evidence be taken in private: see section 89.

1 *Hearing in relation to a public inquiry*

- 2 (5) A hearing in relation to a public inquiry must be held in public.  
3 However, a part of a hearing in relation to a public inquiry may be  
4 held in private if the Integrity Commissioner so directs.

5 Note: Certain evidence must be given in private, and a witness may request  
6 that his or her evidence be taken in private: see section 89.

7 *Record of hearing*

- 8 (6) The Integrity Commissioner must make a record of a hearing.  
9 (7) If the Integrity Commissioner is conducting a public inquiry, the  
10 record of the hearing must include:  
11 (a) any document produced to the Integrity Commissioner at the  
12 hearing; or  
13 (b) a description of any thing (other than a document) produced  
14 to the Integrity Commissioner at the hearing;  
15 unless the Integrity Commissioner directs otherwise.

16 *Direction is not a legislative instrument*

- 17 (8) A direction given under this section is not a legislative instrument.

18 **83 Integrity Commissioner may summon person**

- 19 (1) The Integrity Commissioner may summon a person to attend a  
20 hearing at a time and place specified in the summons:  
21 (a) to give evidence; or  
22 (b) to produce documents or things specified in the summons.

23 Note 1: In certain cases, disclosing the existence of a summons, or any  
24 information about it, is an offence: see section 92.

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

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

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

- 30 (2) A summons must:  
31 (a) be in writing and signed by the Integrity Commissioner; and

- 1 (b) be served on the person required to attend a hearing.
- 2 (3) If the hearing is held for the purpose of investigating a corruption  
3 issue, a summons requiring a person to give evidence must set out,  
4 so far as is reasonably practicable, the general nature of the matters  
5 in relation to which the Integrity Commissioner intends to question  
6 the person.
- 7 (4) Subsection (3) does not prevent the Integrity Commissioner from  
8 questioning the person in relation to:  
9 (a) any aspect of the corruption issue to which the hearing  
10 relates; or  
11 (b) another corruption issue.
- 12 (5) Subsection (3) does not apply if the Integrity Commissioner is  
13 satisfied that complying with that subsection is likely to prejudice:  
14 (a) the investigation to which the hearing relates or another  
15 corruption investigation; or  
16 (b) any action taken as a result of an investigation referred to in  
17 paragraph (a).
- 18 (6) A person summoned to appear as a witness at a hearing is entitled  
19 to be paid by the Commonwealth any allowances for travelling and  
20 other expenses that are prescribed by the regulations.

21 **84 Integrity Commissioner may take evidence outside Australia**

- 22 If arrangements have been made between Australia and another  
23 country in relation to the taking of evidence in that country by the  
24 Integrity Commissioner for a hearing held under this Division, the  
25 Integrity Commissioner may:  
26 (a) take evidence on oath or by affirmation; and  
27 (b) use any evidence taken in that country in accordance with  
28 those arrangements;  
29 for the purpose of performing any function, or exercising any  
30 power, under this Act.

1 **Subdivision B—Procedure at hearing**

2 **85 Who may be represented at a hearing**

- 3 (1) A person giving evidence at a hearing may be represented by a  
4 legal practitioner.
- 5 (2) A person who is not giving evidence may be represented at a  
6 hearing by a legal practitioner if:
- 7 (a) special circumstances exist; and  
8 (b) the Integrity Commissioner consents to the person being so  
9 represented.

10 **86 Who may be present at a hearing**

11 *Who may be present*

- 12 (1) The Integrity Commissioner may determine who may be present  
13 during all or part of a hearing held in private.
- 14 (2) The Integrity Commissioner must allow the following persons to  
15 be present when evidence is being given:
- 16 (a) a legal practitioner representing the person giving evidence;  
17 (b) a legal practitioner representing a person who:  
18 (i) is not giving evidence; but  
19 (ii) has the Integrity Commissioner's consent to being  
20 present at that time.

21 *Opportunity to comment on a person's presence*

- 22 (3) If:
- 23 (a) a person (the *witness*) is giving evidence at a hearing; and  
24 (b) another person is present at the hearing at that time; and  
25 (c) the other person is not:  
26 (i) a staff member of ACLEI; or  
27 (ii) a legal practitioner representing a person at the hearing;  
28 the Integrity Commissioner must:  
29 (d) inform the witness that the person is present; and

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1 (e) give the witness an opportunity to comment on the person's  
2 presence.

3 (4) To avoid doubt, a person is still entitled to be present during all or  
4 part of the hearing even if:

5 (a) the Integrity Commissioner fails to comply with  
6 subsection (3); or

7 (b) a witness comments adversely on the person's presence  
8 under paragraph (3)(e).

9 *Offence*

10 (5) A person commits an offence if:

11 (a) the person is present while evidence is being given in private  
12 at a hearing; and

13 (b) the person is none of the following:

14 (i) the person giving evidence;

15 (ii) a person whom the Integrity Commissioner must, under  
16 subsection (2), allow to be present while the evidence is  
17 being given;

18 (iii) a person who may be present at the hearing in  
19 accordance with a determination under subsection (1).

20 Penalty: Imprisonment for 12 months.

21 *Determination of who may be present not a legislative instrument*

22 (6) If the determination of who may be present at a hearing is made in  
23 writing, the determination is not a legislative instrument.

24 **Subdivision C—Taking evidence at hearing**

25 **87 Evidence on oath or by affirmation**

26 (1) At a hearing, the Integrity Commissioner may:

27 (a) require a witness to either take an oath or make an  
28 affirmation; and

29 (b) administer an oath or affirmation to the witness.

30 Note 1: Failure to take an oath or make an affirmation is an offence: see  
31 section 93.

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- 1 Note 2: This means that a hearing is a *judicial proceeding* for the purposes of  
2 Part III of the *Crimes Act 1914*, which creates various offences in  
3 relation to judicial proceedings.
- 4 (2) The Integrity Commissioner may administer an oath or affirmation  
5 to a person appearing as a witness in another country, but must do  
6 so in accordance with:  
7 (a) any provision of the arrangements made between Australia  
8 and that other country, as referred to in section 84; and  
9 (b) the laws of that other country.
- 10 (3) The oath or affirmation is an oath or affirmation that the evidence  
11 the person will give will be true.
- 12 (4) The Integrity Commissioner may allow a person attending a  
13 hearing who has been sworn, or who has made an affirmation, to  
14 give evidence by tendering a written statement and verifying it by  
15 oath or affirmation.

16 **88 Examination and cross-examination of witnesses**

- 17 At a hearing, the following persons may, so far as the Integrity  
18 Commissioner thinks appropriate, examine or cross-examine any  
19 witness on any matter that the Integrity Commissioner considers  
20 relevant:  
21 (a) counsel assisting the Integrity Commissioner generally or in  
22 relation to the investigation or public inquiry to which the  
23 hearing relates;  
24 (b) a person summoned, or otherwise authorised, to appear  
25 before the Integrity Commissioner;  
26 (c) any legal practitioner representing a person at the hearing.

27 **89 Giving evidence in private**

28 *Certain evidence must be given in private*

- 29 (1) A person giving evidence at a hearing held in public must give  
30 particular evidence in private if the evidence:  
31 (a) would disclose one of the following:

- 1 (i) legal advice given to a Minister or a Commonwealth  
2 government agency;  
3 (ii) a communication between an officer of a  
4 Commonwealth government agency and another person  
5 or body, being a communication protected against  
6 disclosure by legal professional privilege; or  
7 (b) would breach a secrecy provision other than:  
8 (i) a taxation secrecy provision; or  
9 (ii) a law enforcement secrecy provision.

10 Note: If the evidence involves section 149 certified information, the  
11 evidence may need to be given in private in order to comply with the  
12 terms of the certificate. In some circumstances the terms of the  
13 section 149 certificate may mean that the evidence may not be able to  
14 be given at all.

15 *Person may request that certain evidence be given in private*

- 16 (2) A person giving evidence at a hearing held in public may request  
17 that he or she give particular evidence in private on the grounds  
18 that:  
19 (a) the evidence relates to the profits or financial position of any  
20 person; and  
21 (b) the taking of evidence in public would be unfairly prejudicial  
22 to the interests of the person referred to in paragraph (a).  
23 (3) The Integrity Commissioner may, if he or she considers it  
24 appropriate, allow the evidence to be given in private.

## 25 **90 Directions in relation to confidentiality**

26 *Prohibition or limitation on publication*

- 27 (1) The Integrity Commissioner may direct that:  
28 (a) particular evidence given at a hearing; or  
29 (b) the contents of a particular document, or a description of any  
30 thing, produced to the Integrity Commissioner at the hearing;  
31 or  
32 (c) particular information that might enable a person who has  
33 given evidence at the hearing to be identified; or



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1 (d) the fact that a particular person has given or may be about to  
2 give evidence at the hearing;  
3 must not be published, or must not be published except in such  
4 manner, and to such persons, as the Integrity Commissioner  
5 specifies.

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

7 (2) If the hearing is held in private, the Integrity Commissioner must  
8 give a direction under subsection (1) if the Commissioner is  
9 satisfied that the failure to give a such a direction:

10 (a) might prejudice:

11 (i) a person's safety or reputation; or

12 (ii) the fair trial of a person who has been, or may be,  
13 charged with an offence; or

14 (b) might lead to the publication of section 149 certified  
15 information.

16 (3) The Integrity Commissioner may vary or revoke a direction in  
17 writing. However, the Integrity Commissioner must not vary or  
18 revoke a direction if the Integrity Commissioner is satisfied that  
19 doing so:

20 (a) might prejudice:

21 (i) a person's safety or reputation; or

22 (ii) the fair trial of a person who has been, or may be,  
23 charged with an offence; or

24 (b) might lead to the publication of section 149 certified  
25 information.

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

28 (4) If:

29 (a) a person has been charged with an offence before a federal  
30 court or a court of a State or Territory; and

31 (b) the court considers that it may be desirable in the interests of  
32 justice that particular evidence given at a hearing, in respect  
33 of which the Integrity Commissioner has given a direction  
34 under subsection (1), be made available to the person or to a  
35 legal practitioner representing the person;

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1 the court may give to the Integrity Commissioner a certificate to  
2 that effect. If the court does so, the Integrity Commissioner must  
3 make the evidence available to the court.

4 (5) If:  
5 (a) the Integrity Commissioner makes evidence available to a  
6 court under subsection (4); and  
7 (b) the court, after examining the evidence, is satisfied that the  
8 interests of justice so require;  
9 the court may make the evidence available to the person charged  
10 with the offence concerned or to a legal practitioner representing  
11 the person.

12 *Offence*

13 (6) A person commits an offence if:  
14 (a) the person is given a direction by the Integrity Commissioner  
15 under subsection (1); and  
16 (b) the person contravenes the direction.

17 Penalty: Imprisonment for 12 months.

18 *Direction is not a legislative instrument*

19 (7) A direction given to a person under subsection (1) is not a  
20 legislative instrument.

21 **Subdivision D—Prohibitions against disclosing information**  
22 **about a summons**

23 **91 Disclosure of summons may be prohibited**

24 *Application*

25 (1) This section applies if:  
26 (a) a summons is served on a person (the *person served*) under  
27 section 83 to attend a hearing; and  
28 (b) the hearing is to be held in private.

1

*Notation prohibiting disclosure of information about summons*

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(2) The Integrity Commissioner may include a notation in the summons to the effect that disclosure of information about:

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(a) the summons; or

5

(b) any official matter connected with the summons;

6

is prohibited except in the circumstances (if any) specified in the notation.

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(3) The Integrity Commissioner must include a notation in the summons if the Integrity Commissioner is satisfied that failure to do so would reasonably be expected to prejudice:

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

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(b) the fair trial of a person who has been, or may be, charged with an offence; or

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(c) the investigation to which the hearing relates or another corruption investigation; or

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(d) any action taken as a result of an investigation referred to in paragraph (c).

17

18

(4) The Integrity Commissioner may include a notation in the summons if the Integrity Commissioner is satisfied that:

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(a) failure to do so might prejudice:

21

(i) a person's safety or reputation; or

22

(ii) the fair trial of a person who has been, or may be, charged with an offence; or

23

24

(iii) the investigation to which the hearing relates or another corruption investigation; or

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(iv) any action taken as a result of an investigation referred to in subparagraph (iii); or

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(b) failure to do so might otherwise be contrary to the public interest.

29

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(5) The Integrity Commissioner must not include a notation in the summons in any other case.

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1 *Written statement to accompany notation*

- 2 (6) If a notation is included in the summons, it must be accompanied  
3 by a written statement setting out the rights and obligations  
4 conferred or imposed by section 92 on the person served.

5 *Cancellation of notation*

- 6 (7) A notation included in the summons is cancelled by this subsection  
7 if:  
8 (a) the Integrity Commissioner concludes the investigation to  
9 which the hearing relates; and  
10 (b) any criminal proceedings or civil penalty proceedings  
11 resulting from the investigation are commenced.
- 12 (8) If a notation is cancelled by subsection (7), the Integrity  
13 Commissioner must advise the person served, in writing, of the  
14 cancellation.

15 *Relationship of notation with Privacy Act 1988*

- 16 (9) If:  
17 (a) a notation has been included in the summons in relation to  
18 the disclosure of information about the summons or any  
19 official matter connected with the summons; and  
20 (b) the notation has not been cancelled; and  
21 (c) apart from this subsection, a credit reporting agency (within  
22 the meaning of section 11A of the *Privacy Act 1988*) would  
23 be required, under subsection 18K(5) of the *Privacy Act*  
24 *1988*, to make a note about the disclosure of the information;  
25 such a note must not be made until the notation is cancelled.

26 **92 Offences of disclosure**

- 27 (1) A person commits an offence if:  
28 (a) the person is served with a summons under section 83; and  
29 (b) the summons includes a notation under section 91; and  
30 (c) the person discloses the existence of, or any information  
31 about:  
32 (i) the summons; or

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- 1 (ii) any official matter connected with the summons; and  
2 (d) when the disclosure is made:  
3 (i) the notation has not been cancelled by subsection 91(7);  
4 and  
5 (ii) the period of 5 years after the summons is served under  
6 section 83 has not ended.

7 Penalty: Imprisonment for 12 months.

- 8 (2) In proceedings for an offence against subsection (1), it is a defence  
9 if the person makes the disclosure:  
10 (a) in the circumstances, if any, permitted by the terms of the  
11 notation; or  
12 (b) to a legal practitioner for the purpose of obtaining legal  
13 advice or representation in relation to the summons; or  
14 (c) to a legal aid officer for the purpose of obtaining assistance  
15 under section 103 in relation to the summons; or  
16 (d) if the person is a body corporate—to an officer or agent of  
17 the body corporate for the purpose of ensuring compliance  
18 with the summons; or  
19 (e) if the person is a legal practitioner—for the purpose of  
20 obtaining the agreement of another person under subsection  
21 95(2) to the legal practitioner answering a question or  
22 producing a document or thing at the hearing.

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

- 25 (3) A person commits an offence if:  
26 (a) a disclosure is made to a person about:  
27 (i) a summons under section 83 that includes a notation  
28 under section 91; or  
29 (ii) any official matter connected with a summons under  
30 section 83 that includes a notation under section 91; and  
31 (b) the disclosure is permitted under subsection (2) or (4)  
32 because the person is a person of a particular kind; and  
33 (c) while the person is a person of that kind, the person discloses  
34 the existence of, or any information about:  
35 (i) the summons; or

- 1 (ii) any official matter connected with the summons; and  
2 (d) when the disclosure by the person is made:  
3 (i) the notation has not been cancelled by subsection 91(7);  
4 and  
5 (ii) the period of 5 years after the summons is served under  
6 section 83 has not ended.
- 7 Penalty: Imprisonment for 12 months.
- 8 (4) In proceedings for an offence against subsection (3), it is a defence  
9 if the person discloses the information:  
10 (a) if the person is an officer or agent of a body corporate  
11 referred to in paragraph (2)(d):  
12 (i) to another officer or agent of the body corporate for the  
13 purpose of ensuring compliance with the summons; or  
14 (ii) to a legal practitioner for the purpose of obtaining legal  
15 advice or representation in relation to the summons; or  
16 (iii) to a legal aid officer for the purpose of obtaining  
17 assistance under section 103 in relation to the summons;  
18 or  
19 (b) if the person is a legal practitioner—for the purpose of giving  
20 legal advice, making representations, or obtaining assistance  
21 under section 103, in relation to the summons; or  
22 (c) if the person is a legal aid officer—for the purpose of  
23 obtaining legal advice or representation in relation to the  
24 summons.
- 25 Note: A defendant bears an evidential burden in relation to the matters in  
26 subsection (4): see subsection 13.3(3) of the *Criminal Code*.
- 27 (5) A person commits an offence if:  
28 (a) a disclosure is made to a person about:  
29 (i) a summons under section 83 that includes a notation  
30 under section 91; or  
31 (ii) any official matter connected with a summons under  
32 section 83 that includes a notation under section 91; and  
33 (b) the disclosure is permitted under subsection (2) or (4)  
34 because the person is a person of a particular kind; and

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- 1 (c) when the person is no longer a person of that kind, the  
2 person:  
3 (i) makes a record of the summons; or  
4 (ii) discloses the existence of the summons; or  
5 (iii) discloses any information about the summons or the  
6 existence of it; and  
7 (d) when the record, or disclosure, is made by the person:  
8 (i) the notation has not been cancelled by subsection 91(7);  
9 and  
10 (ii) the period of 5 years after the summons is served under  
11 section 83 has not ended.

12 Penalty: Imprisonment for 12 months.

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

16 **Subdivision E—Offences in relation to hearings**

17 **93 Offences**

18 *Failure to attend hearing*

- 19 (1) A person commits an offence if:  
20 (a) the person is served with a summons to attend a hearing; and  
21 (b) the person:  
22 (i) fails to attend as required by the summons; or  
23 (ii) fails to appear and report from day to day unless  
24 excused or released from further attendance by the  
25 Integrity Commissioner.

26 Penalty: Imprisonment for 12 months.

27 Note: A defendant bears an evidential burden in relation to the excuse or  
28 release from further attendance referred to in subparagraph (b)(ii); see  
29 subsection 13.3(3) of the *Criminal Code*.

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1                    *Failure to swear an oath, make an affirmation or answer a*  
2                    *question*

- 3                    (2) A person commits an offence if:  
4                        (a) the person is served with a summons to attend a hearing; and  
5                        (b) the person fails:  
6                               (i) to be sworn or to make an affirmation at the hearing; or  
7                               (ii) to answer a question at the hearing that the Integrity  
8                               Commissioner requires the person to answer.

9                    Penalty: Imprisonment for 2 years.

10                  Note 1:     A legal practitioner may refuse to answer a question in certain  
11                             circumstances: see section 95.

12                  Note 2:     This subsection is not subject to the privilege against  
13                             self-incrimination but there are limits on the uses to which the  
14                             evidence the person gives may be put: see section 96.

- 15                  (3) Subsection (2) has effect subject to section 150 (which deals with  
16                             section 149 certified information).

17                  *Failure to produce a document or thing*

- 18                  (4) A person commits an offence if:  
19                      (a) the person is served with a summons to produce a document  
20                             or thing specified in the summons; and  
21                      (b) the person fails to produce the document or thing that the  
22                             person was required to produce.

23                  Penalty: Imprisonment for 2 years.

24                  Note 1:     A legal practitioner may refuse to produce a document or thing in  
25                             certain circumstances: see section 95.

26                  Note 2:     This subsection is not subject to the privilege against  
27                             self-incrimination but there are limits on the uses to which the  
28                             evidence the person gives may be put: see section 96.

- 29                  (5) Subsection (4) has effect subject to section 150 (which deals with  
30                             section 149 certified information).

31                  **94 Contempt**

- 32                  (1) A person commits an offence if:
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- 1 (a) the person insults, disturbs or uses insulting language  
2 towards another person; and  
3 (b) the person knows that:  
4 (i) the other person is the Integrity Commissioner; and  
5 (ii) the other person is holding a hearing in the performance  
6 of his or her functions, or the exercise of his or her  
7 powers, as Integrity Commissioner.

8 Penalty: Imprisonment for 6 months.

- 9 (2) A person commits an offence if:  
10 (a) the person creates a disturbance, or takes part in creating or  
11 continuing a disturbance, in or near a place; and  
12 (b) the person knows that the place is a place where a hearing is  
13 being held for the purpose of:  
14 (i) investigating a corruption issue; or  
15 (ii) conducting a public inquiry.

16 Penalty: Imprisonment for 6 months.

- 17 (3) A person commits an offence if:  
18 (a) the person interrupts a hearing that is being held for the  
19 purpose of:  
20 (i) investigating a corruption issue; or  
21 (ii) conducting a public inquiry; or  
22 (b) the person does any other act or thing that would, if the  
23 hearing were held in a court of record, constitute a contempt  
24 of that court.

25 Penalty: Imprisonment for 6 months.

26 **95 Legal practitioner not required to disclose privileged**  
27 **communications**

- 28 (1) A legal practitioner may refuse:  
29 (a) to answer a question asked by the Integrity Commissioner at  
30 a hearing; or  
31 (b) to produce a document or thing to the Integrity  
32 Commissioner at a hearing;

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- 1 if the answer to the question would disclose, or the document or  
2 thing contains, a privileged communication made by or to the legal  
3 practitioner in his or her capacity as a legal practitioner.
- 4 (2) Subsection (1) has effect subject to paragraph 96(5)(d).
- 5 (3) Subsection (1) does not apply if the person to whom or by whom  
6 the communication was made agrees to the legal practitioner:  
7 (a) answering the question; or  
8 (b) producing the document or thing.
- 9 (4) If the legal practitioner refuses:  
10 (a) to answer the question; or  
11 (b) to produce the document or thing;  
12 he or she must, if required by the Integrity Commissioner, give the  
13 Integrity Commissioner the name and address of the person to  
14 whom or by whom the communication was made.
- 15 (5) This section does not affect the law relating to legal professional  
16 privilege.

17 **96 Self-incrimination etc.**

18 *Self-incrimination*

- 19 (1) A person is not excused from:  
20 (a) answering a question; or  
21 (b) producing a document or thing;  
22 when summoned, under section 83, to attend a hearing to do so on  
23 the ground that doing so would tend to incriminate the person or  
24 expose the person to a penalty.

25 *Use indemnity*

- 26 (2) Subsection (4) applies if:  
27 (a) the person:  
28 (i) answers the question (whether orally or in writing); or  
29 (ii) produces the document or thing;

- 1 and, before doing so, claims that answering the question, or  
2 producing the document or thing, might tend to incriminate  
3 the person or expose the person to a penalty; or  
4 (b) the person answers the question in writing and claims, in a  
5 written statement accompanying the answer, that answering  
6 the question might tend to incriminate the person or expose  
7 the person to a penalty; or  
8 (c) the person produces the document or thing and claims, in a  
9 written statement accompanying the document or thing, that  
10 producing the document or thing might tend to incriminate  
11 the person or expose the person to a penalty.
- 12 (3) Subsection (4) does not apply to the production of a document that  
13 is, or forms part of, a record of an existing or past business.
- 14 (4) Neither of the following:  
15 (a) the answer given;  
16 (b) the document or thing produced;  
17 is admissible in evidence against the person in criminal  
18 proceedings, or any other proceedings for the imposition or  
19 recovery of a penalty, other than:  
20 (c) proceedings for an offence against section 93; or  
21 (d) confiscation proceedings; or  
22 (e) proceedings for an offence against section 137.1 or 137.2 of  
23 the *Criminal Code* (which deals with false or misleading  
24 information or documents) that relates to this Act; or  
25 (f) proceedings for an offence against section 149.1 of the  
26 *Criminal Code* (which deals with obstruction of  
27 Commonwealth public officials) that relates to this Act; or  
28 (g) disciplinary proceedings against the person if the person is a  
29 staff member of a law enforcement agency.

30 *Public interest grounds*

- 31 (5) A person is not excused from:  
32 (a) answering a question; or  
33 (b) producing a document or thing;  
34 when summoned, under section 83, to attend a hearing to do so on  
35 the ground that doing so:

- 1 (c) would disclose one of the following:  
2 (i) legal advice given to a Minister or a Commonwealth  
3 government agency;  
4 (ii) a communication between an officer of a  
5 Commonwealth government agency and another person  
6 or body, being a communication protected against  
7 disclosure by legal professional privilege; or  
8 (d) would breach a secrecy provision other than:  
9 (i) a taxation secrecy provision; or  
10 (ii) a law enforcement secrecy provision; or  
11 (e) would be otherwise contrary to the public interest.
- 12 Note: See also subsection 150(3) in relation to section 149 certified  
13 information.
- 14 (6) The fact that a person is not excused under subsection (5) from:  
15 (a) answering a question; or  
16 (b) producing a document or thing;  
17 does not otherwise affect a claim of legal professional privilege  
18 that anyone may make in relation to that answer, document or  
19 thing.
- 20 (7) A person who is served with a summons under section 83 does not  
21 commit an offence, and is not liable to any penalty, under the  
22 provisions of any other enactment (other than a taxation secrecy  
23 provision or a law enforcement secrecy provision) because the  
24 person:  
25 (a) answers a question at a hearing that the Integrity  
26 Commissioner requires the person to answer; or  
27 (b) produces a document or thing that the person is required to  
28 produced in accordance with the summons.

1 **Subdivision F—Court orders for delivery of witness's passport**  
2 **and witness's arrest**

3 **97 Integrity Commissioner may apply for order that witness deliver**  
4 **his or her passport**

5 (1) The Integrity Commissioner may apply to a Judge of the Federal  
6 Court for an order that a person deliver his or her passport to the  
7 Integrity Commissioner if:

8 (a) either of the following apply:

9 (i) a summons under section 83 has been issued requiring  
10 the person to attend a hearing (whether or not the  
11 summons has been served) in relation to a corruption  
12 investigation or public inquiry; or

13 (ii) the person has appeared at a hearing in relation to a  
14 corruption investigation or public inquiry to give  
15 evidence or to produce documents or things; and

16 (b) there are reasonable grounds for believing that the person  
17 may be able:

18 (i) to give evidence, or further evidence, that is relevant to  
19 the investigation or public inquiry; or

20 (ii) to produce documents or things, or further documents or  
21 things, that are relevant to the investigation or public  
22 inquiry; and

23 (c) there are reasonable grounds for suspecting that the person:

24 (i) intends to leave Australia; and

25 (ii) has in his or her possession, custody or control a  
26 passport issued to him or her.

27 (2) The Integrity Commissioner must give the Judge information on  
28 oath, or by affirmation, in support of the grounds for the  
29 application.

1 **98 Court orders**

2 *Court order for witness to appear before the Court*

3 (1) If a Judge of the Federal Court, sitting in Chambers, is satisfied, on  
4 the evidence, that the requirements of paragraphs 97(1)(a), (b) and  
5 (c) are met, the Judge may make an order:

6 (a) requiring the person to appear before the Federal Court on a  
7 date, and at a time and place, specified in the order; and

8 (b) requesting the person to show cause why he or she should not  
9 be ordered to deliver the passport to the Integrity  
10 Commissioner.

11 *Offence*

12 (2) A person commits an offence if:

13 (a) the person leaves Australia; and

14 (b) an order has been made in relation to the person under  
15 subsection (1); and

16 (c) a copy of the order has been served on the person.

17 Penalty: Imprisonment for 2 years.

18 (3) In proceedings for an offence against subsection (2), it is a defence  
19 if:

20 (a) the person has appeared before the Federal Court as required  
21 by the order referred to in paragraph (2)(b); and

22 (b) if the Court makes an order in relation to the person under  
23 paragraph (4)(a)—the person has complied with the terms of  
24 the order and any passport delivered to the Integrity  
25 Commissioner in accordance with the order has been  
26 returned to the person.

27 *Court order that witness deliver passport to Integrity*  
28 *Commissioner*

29 (4) If the person appears before the Federal Court as required by the  
30 order made under subsection (1), the Court may, if it thinks fit,  
31 make an order:

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- 1 (a) requiring the person to deliver to the Integrity Commissioner  
2 any passport:  
3 (i) issued to him or her; and  
4 (ii) in his or her possession, custody or control; and  
5 (b) authorising the Integrity Commissioner to retain the passport  
6 until the end of the period (not exceeding one month) that is  
7 specified in the order.

8 *Extension of period that Integrity Commissioner may retain*  
9 *passport*

- 10 (5) The Federal Court may, upon application by the Integrity  
11 Commissioner, extend for a further period (of not more than one  
12 month), or further periods (of not more than one month in each  
13 case), the period for which the Integrity Commissioner is  
14 authorised to retain a passport. However, the total period for which  
15 the Integrity Commissioner is authorised to retain the passport  
16 must not exceed 3 months.

17 *Revocation of court order*

- 18 (6) If the Federal Court makes an order authorising the Integrity  
19 Commissioner to retain a passport issued to a person, the person  
20 may apply to the Federal Court for the order to be revoked.  
21 (7) If the Federal Court revokes the order, the Integrity Commissioner  
22 must return the passport to the person immediately.

23 *Jurisdiction of the Federal Court*

- 24 (8) The Federal Court has jurisdiction with respect to matters arising  
25 under this section.

26 *Definition*

- 27 (9) In this section:  
28 *Australia* includes the external Territories.

**99 Applying for a warrant to arrest witness**

(1) An authorised officer may 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 if the authorised officer has reasonable grounds to believe that:

(a) the person:

(i) has been ordered to deliver his or her passport to the Integrity Commissioner (whether or not the person has complied with the order); and

(ii) is likely to leave Australia for the purpose of avoiding giving evidence at a hearing before the Integrity Commissioner; or

(b) the person has been served with a summons under section 83 and:

(i) has absconded or is likely to abscond; or

(ii) is otherwise attempting, or likely to attempt, to evade service of the summons; or

(c) the person has committed an offence under subsection 93(1) or is likely to do so.

(2) An authorised officer must give the Judge information on oath, or by affirmation, in support of the grounds for the application.

**100 Warrant for arrest**

*Issue of warrant*

(1) If a Judge, sitting in Chambers, is satisfied, on the evidence, that there are reasonable grounds for believing that paragraph 99(1)(a), (b) or (c) is met, the Judge may issue a warrant authorising the authorised officer to arrest the person.

*Execution of warrant*

(2) For the purpose of executing a warrant, if the authorised officer executing the warrant (or an assisting officer) believes on reasonable grounds that the person is on any premises, the authorised officer (or the assisting officer) may break into and enter those premises.



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- 1 (3) However, the authorised officer executing the warrant (or an  
2 assisting officer) must not enter a dwelling house at any time  
3 during the period commencing at 9 pm on a day and ending at 6 am  
4 on the following day unless the authorised officer (or the assisting  
5 officer) believes on reasonable grounds that it would not be  
6 practicable to arrest the person, either at the dwelling house or  
7 elsewhere, at another time.
- 8 (4) The authorised officer executing the warrant (or an assisting  
9 officer) must not, in the course of arresting the person, use more  
10 force, or subject the other person to greater indignity, than is  
11 necessary and reasonable:  
12 (a) to make the arrest; or  
13 (b) to prevent the escape of the person after the arrest.
- 14 (5) The warrant may be executed even if the authorised officer does  
15 not have a copy of the warrant in his or her possession at the time it  
16 is executed.
- 17 (6) The authorised officer executing the warrant (or an assisting officer  
18 who arrests the person) must inform the person, at the time of the  
19 arrest, of the reason for which he or she is being arrested.
- 20 (7) It is sufficient if the person is informed of the substance of the  
21 reason and it is not necessary that this be done in language of a  
22 precise or technical nature.
- 23 (8) Subsection (6) does not apply to the arrest of the person if:  
24 (a) the person should, in the circumstances, know the substance  
25 of the reason for which he or she is being arrested; or  
26 (b) the person's actions make it impracticable for the authorised  
27 officer executing the warrant (or an assisting officer making  
28 the arrest) to inform the person of the reason for which he or  
29 she is being arrested.
- 30 (9) Nothing in this section prevents the arrest of a person in  
31 accordance with any other law.

32 *Definitions*

- 33 (10) In this section:

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1                    *dwelling house* includes a conveyance, and a room in a hotel,  
2                    motel, boarding house or club, in which people ordinarily retire for  
3                    the night.

4                    *Judge* means:

- 5                    (a) a Judge of the Federal Court of Australia; or  
6                    (b) a Judge of the Supreme Court of a State or Territory.

7                    **101 Powers of Judge in relation to person arrested**

8                    (1) A person arrested under a warrant issued under section 100 must  
9                    be brought, as soon as practicable, before a Judge.

10                  (2) The Judge may:

- 11                  (a) grant the person bail:  
12                      (i) on such security as the Judge thinks fit; and  
13                      (ii) on such conditions as the Judge thinks are necessary to  
14                          ensure that the person appears as a witness at a hearing  
15                          before the Integrity Commissioner; or  
16                  (b) order that the person continue to be detained for the purpose  
17                          of ensuring that the person appears as a witness at a hearing  
18                          before the Integrity Commissioner; or  
19                  (c) order that the person be released.

20                  (3) A person who is detained under paragraph (2)(b) must be brought  
21                  before a Judge:

- 22                      (a) within 14 days after he or she was brought, or last brought,  
23                          before a Judge; or  
24                      (b) within such shorter or longer time as a Judge fixed on the  
25                          person's last previous appearance before a Judge;  
26                  and the Judge may exercise any of the powers under subsection (2).

27                  (4) In this section:

28                  *Judge* means:

- 29                      (a) a Judge of the Federal Court of Australia; or  
30                      (b) a Judge of the Supreme Court of a State or Territory.

1 **Subdivision G—Miscellaneous**

2 **102 Integrity Commissioner may retain documents or things**

- 3 (1) If a document or thing is produced to the Integrity Commissioner  
4 in accordance with a summons under section 83, the Integrity  
5 Commissioner:  
6 (a) may take possession of, and may make copies of, the  
7 document or thing, or take extracts from the document; and  
8 (b) may retain possession of the document or thing for such  
9 period as is necessary for the purposes of the investigation or  
10 public inquiry to which the document or thing relates.
- 11 (2) While the Integrity Commissioner retains the document or thing,  
12 he or she must allow a person who would otherwise be entitled to  
13 inspect the document or view the thing to do so at the times that the  
14 person would ordinarily be able to do so.

15 **103 Person may apply for legal and financial assistance**

- 16 (1) A person who is summoned under section 83 to attend a hearing  
17 before the Integrity Commissioner may apply to the  
18 Attorney-General for assistance in respect of:  
19 (a) his or her attendance at the hearing; or  
20 (b) his or her representation at the hearing by a legal practitioner.

21 Note 1: A person summoned to appear as a witness at a hearing is entitled to  
22 be paid allowances for travelling and other expenses prescribed by  
23 regulations: see subsection 83(5).

24 Note 2: A person may also apply for assistance in respect of an application to  
25 the Federal Court or the Federal Magistrates Court under the  
26 *Administrative Decisions (Judicial Review) Act 1977* for an order of  
27 review in respect of a matter arising under this Act: see section 221.

- 28 (2) A person who:  
29 (a) is not giving evidence at a hearing before the Integrity  
30 Commissioner; and  
31 (b) is being represented at the hearing by a legal practitioner with  
32 the consent of the Integrity Commissioner;  
33 may apply to the Attorney-General for assistance in respect of that  
34 representation.

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

- 5 (3) If a person applies under subsection (1) or (2), the  
6 Attorney-General may, if he or she is satisfied that:  
7 (a) it would involve substantial hardship to the person to refuse  
8 the application; or  
9 (b) the circumstances of the case are of such a special nature that  
10 the application should be granted;  
11 authorise the Commonwealth to provide the person with legal or  
12 financial assistance, determined by the Attorney-General, in  
13 respect of:  
14 (c) the person's attendance at the hearing; or  
15 (d) the person's representation at the hearing by a legal  
16 practitioner.
- 17 (4) Legal or financial assistance may be given:  
18 (a) unconditionally; or  
19 (b) subject to such conditions as the Attorney-General  
20 determines.
- 21 (5) An instrument that determines the conditions on which legal or  
22 financial assistance may be given is not a legislative instrument.

23 **104 Protection of Integrity Commissioner etc.**

- 24 (1) The Integrity Commissioner has, in exercising his or her power to  
25 hold a hearing, the same protection and immunity as a Justice of  
26 the High Court.
- 27 (2) A legal practitioner assisting the Integrity Commissioner, or  
28 representing a person at a hearing, has the same protection and  
29 immunity as a barrister appearing for a party in proceedings in the  
30 High Court.
- 31 (3) A person who:  
32 (a) gives evidence at a hearing conducted under this Act; or  
33 (b) produces a document or thing at a hearing conducted under  
34 this Act; or

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- 1 (c) makes a submission to the Integrity Commissioner in relation  
2 to a public inquiry;  
3 has the same protection as a witness in proceedings in the High  
4 Court.
- 5 (4) To avoid doubt, this section does not limit the powers of the  
6 Ombudsman under the *Ombudsman Act 1976* to investigate issues  
7 of administrative practice in relation to a hearing that been held  
8 under this Division.
- 9 (5) A reference in this section to the Integrity Commissioner includes a  
10 reference to an Assistant Integrity Commissioner who exercises the  
11 power to hold a hearing under an authorisation under section 219.

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

3

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**105 Power to enter places occupied by law enforcement agencies**

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(1) For the purposes of investigating a corruption issue, the Integrity  
Commissioner (or an authorised officer) may:

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7

(a) enter any place occupied by a law enforcement agency at any  
reasonable time of the day; and

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9

(b) carry on the investigation of the corruption issue at that  
place; and

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11

(c) inspect any documents relevant to the investigation that are  
kept at that place; and

12

13

(d) make copies of, or take extracts from, any documents so  
inspected; and

14

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(e) for the purpose of making a copy of, or taking an extract  
from, a document, remove the document from that place; and

16

17

(f) seize things found at that place if the Integrity Commissioner  
(or the authorised officer) believes on reasonable grounds  
that:

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(i) the thing is relevant to an indictable offence; and

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21

(ii) seizure of the thing is necessary to prevent its  
concealment, loss or destruction or its use in committing  
an indictable offence.

22

23

24

(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.

25

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(3) Subsection (1) does not authorise a person to enter, or carry on an  
investigation at:

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(a) a place referred to in paragraph 80(c) of the *Crimes Act 1914*;  
or

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(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

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- 1 (c) an area of land or water, or an area of land and water, that is  
2 declared under section 14 of the *Defence (Special*  
3 *Undertakings) Act 1952* to be a restricted area for the  
4 purposes of that Act;  
5 unless:  
6 (d) the Minister administering that Act (or another Minister  
7 acting for and on behalf of that Minister) has approved the  
8 person entering the place or area; and  
9 (e) the person complies with any conditions imposed by the  
10 Minister giving the approval in relation to:  
11 (i) his or her entering that place or area; and  
12 (ii) the manner in which his or her investigation is to be  
13 conducted at that place or area.
- 14 (4) If the Attorney-General is satisfied that conducting an investigation  
15 at a place might prejudice the security or defence of the  
16 Commonwealth, the Attorney-General may, by written notice to  
17 the Integrity Commissioner, declare the place to be a place to  
18 which this subsection applies.
- 19 (5) While the declaration is in force, subsection (1) does not authorise  
20 a person to do anything at the place unless:  
21 (a) a Minister specified in the declaration (or another Minister  
22 acting for and on behalf of that Minister) has approved the  
23 person entering the place; and  
24 (b) the person complies with any conditions imposed by the  
25 Minister giving the approval in relation to:  
26 (i) his or her entering that place; and  
27 (ii) the manner in which his or her investigation is to be  
28 conducted at that place.
- 29 (6) A declaration by the Attorney-General under this section is not a  
30 legislative instrument.

31 **106 Receipts of things seized under warrant**

- 32 (1) If a thing is seized, or removed from a place, under section 105, the  
33 Integrity Commissioner (or an authorised officer) must provide a  
34 receipt for the thing.

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2

(2) If 2 or more things are seized or moved, they may be covered by the one receipt.



1

2 **Division 4—Search warrants**

3 **Subdivision A—Preliminary**

4 **107 Application to things under the control of a person**

5 This Division applies to a person (the *possessor*) who has a thing  
6 under his or her control in any place (whether for the use or benefit  
7 of the possessor or another person), even if another person has the  
8 actual possession or custody of the thing, as if the possessor has  
9 possession of the thing.

10 **Subdivision B—Applying for a search warrant**

11 **108 Authorised officer may apply for a search warrant**

12 *Application for warrant to search premises (investigation warrant)*

- 13 (1) An authorised officer may apply to an issuing officer for an  
14 investigation warrant to search premises if the authorised officer:  
15 (a) has reasonable grounds for suspecting that there is, or there  
16 will be within the next 72 hours, any evidential material on  
17 the premises; and  
18 (b) has reasonable grounds for believing that, if a person was  
19 served with a summons to produce the evidential material,  
20 the material might be concealed, lost, mutilated or destroyed.

21 Note: In special circumstances and urgent cases, an application may be  
22 made by telephone, fax, email or other electronic means: see  
23 section 111.

24 *Application for warrant to search premises (offence warrant)*

- 25 (2) An authorised officer may apply to an issuing officer for an  
26 offence warrant to search premises if the authorised officer has  
27 reasonable grounds for suspecting that there is, or there will be  
28 within the next 72 hours, any evidential material on the premises.

29 Note: In special circumstances and urgent cases, an application may be  
30 made by telephone, fax, email or other electronic means: see  
31 section 111.

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1                                    *Application for a warrant to search person (investigation warrant)*

- 2                                    (3) An authorised officer may apply to an issuing officer for an  
3                                    investigation warrant to carry out an ordinary search or a frisk  
4                                    search of a person if the authorised officer:  
5                                    (a) has reasonable grounds for suspecting that the person has in  
6                                    his or her possession, or will within the next 72 hours have in  
7                                    his or her possession, any evidential material; and  
8                                    (b) has reasonable grounds for believing that, if the person was  
9                                    served with a summons to produce the evidential material,  
10                                    the material might be concealed, lost, mutilated or destroyed.

11                                    Note:            In special circumstances and urgent cases, an application may be  
12                                    made by telephone, fax, email or other electronic means: see  
13                                    section 111.

14                                    *Application for a warrant to search person (offence warrant)*

- 15                                    (4) An authorised officer may apply to an issuing officer for an  
16                                    offence warrant to carry out an ordinary search or a frisk search of  
17                                    a person if the authorised officer has reasonable grounds for  
18                                    suspecting that the person has in his or her possession, or will  
19                                    within the next 72 hours have in his or her possession, any  
20                                    evidential material.

21                                    Note:            In special circumstances and urgent cases, an application may be  
22                                    made by telephone, fax, email or other electronic means: see  
23                                    section 111.

24                                    *Information in support of application*

- 25                                    (5) An authorised officer must give the issuing officer information on  
26                                    oath or by affirmation to support the grounds for an application  
27                                    under subsection (1), (2), (3) or (4).  
28                                    (6) If an authorised officer applying for a search warrant suspects that,  
29                                    in executing the warrant, it will be necessary to use firearms, the  
30                                    authorised officer must state that suspicion, and the grounds for it,  
31                                    in the information given under subsection (5).  
32                                    (7) If the authorised officer applying for a search warrant (or another  
33                                    authorised officer who will be an assisting officer in relation to the  
34                                    search warrant) has, at any time previously, applied for a search

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1 warrant under this Act or another Act in relation to the same person  
2 or premises, the authorised officer must state particulars of those  
3 applications, and their outcome, in the information given under  
4 subsection (5).

5 **Subdivision C—Issue of a search warrant**

6 **109 When search warrants may be issued**

7 *Issue of a warrant to search premises (investigation warrant)*

8 (1) If:

9 (a) an authorised officer makes an application to an issuing  
10 officer under subsection 108(1); and

11 (b) the issuing officer is satisfied, on the information given under  
12 subsection 108(5), that:

13 (i) there are reasonable grounds for suspecting that there is,  
14 or there will be within the next 72 hours, evidential  
15 material on the premises in relation to which the  
16 application is made; and

17 (ii) there are reasonable grounds for believing that, if a  
18 person was served with a summons to produce the  
19 evidential material, the material might be concealed,  
20 lost, mutilated or destroyed;

21 the issuing officer may issue an investigation warrant authorising  
22 the authorised officer to search the premises.

23 *Issue of a warrant to search premises (offence warrant)*

24 (2) If:

25 (a) an authorised officer makes an application to an issuing  
26 officer under subsection 108(2); and

27 (b) the issuing officer is satisfied, on the information given under  
28 subsection 108(5), that there are reasonable grounds for  
29 suspecting that there is, or there will be within the next 72  
30 hours, evidential material on the premises in relation to  
31 which the application is made;

32 the issuing officer may issue an offence warrant authorising the  
33 authorised officer to search the premises.



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- 1 (b) issue a search warrant in relation to premises or a person in  
2 an external Territory; or  
3 (c) issue a search warrant in relation to premises or a person in  
4 another State or internal Territory (including the Jervis Bay  
5 Territory) if he or she is satisfied that there are special  
6 circumstances that make the issue of the warrant appropriate;  
7 or  
8 (d) issue a search warrant in relation to a person wherever the  
9 person is in Australia or in an external Territory if he or she  
10 is satisfied that it is not possible to predict where the person  
11 may be.

12 (6) An issuing officer in New South Wales or the Australian Capital  
13 Territory may issue a search warrant in relation to premises or a  
14 person in the Jervis Bay Territory.

- 15 (7) Subsections (5) and (6) do not apply if the issuing officer is:  
16 (a) a Judge of the Federal Court of Australia; or  
17 (b) a Federal Magistrate.

18 *Issue of a warrant by issuing officers*

19 (8) The function of issuing a search warrant is conferred on an issuing  
20 officer in a personal capacity and not as a court or a member of a  
21 court. The issuing officer need not accept the function conferred.

22 (9) An issuing officer performing a function of, or connected with,  
23 issuing a search warrant has the same protection and immunity as  
24 if he or she were performing that function as, or as a member of,  
25 the court of which the issuing officer is a member.

26 **110 Content of warrants**

27 *General contents of warrant*

- 28 (1) If an issuing officer issues a search warrant under section 109, the  
29 issuing officer is to state in the warrant:  
30 (a) either:

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- 1 (i) if the warrant is an investigation warrant—the  
2 corruption issue or public inquiry to which the warrant  
3 relates; or  
4 (ii) if the warrant is an offence warrant—the offence to  
5 which the warrant relates; and  
6 (b) a description of the premises to which the warrant relates or  
7 the name or a description of a person to whom it relates; and  
8 (c) the kinds of evidential material that are to be searched for  
9 under the warrant; and  
10 (d) the name of the authorised officer who, unless he or she  
11 inserts the name of another authorised officer in the warrant,  
12 is to be responsible for executing the warrant; and  
13 (e) the time at which the warrant expires; and  
14 (f) whether the warrant may be executed at any time or only  
15 during particular hours.

- 16 (2) The time stated in the warrant as the time at which the warrant  
17 expires must be a time that is not later than the end of the seventh  
18 day after the day on which the warrant is issued.

19 Example: If a warrant is issued at 3 pm on a Monday, the expiry time specified  
20 in the warrant must not be later than midnight on Monday in the  
21 following week.

22 *Additional matters for warrant in relation to premises*

- 23 (3) If the search warrant relates to premises, the issuing officer is also  
24 to state:  
25 (a) that the warrant authorises the seizure of a thing (other than  
26 evidential material of the kind referred to in paragraph (1)(c))  
27 found at the premises in the course of the search that the  
28 authorised officer or an assisting officer believes on  
29 reasonable grounds to be:  
30 (i) if the warrant is an investigation warrant—evidential  
31 material in relation to the corruption issue or public  
32 inquiry to which the warrant relates; or  
33 (ii) if the warrant is an offence warrant—a thing relevant to  
34 the offence to which the warrant relates; or

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- 1 (iii) in any case—evidential material (within the meaning of  
2 the *Proceeds of Crime Act 2002*) or tainted property  
3 (within the meaning of that Act); or  
4 (iv) in any case—a thing relevant to an indictable offence;  
5 if the authorised officer or the assisting officer believes on  
6 reasonable grounds that seizure of the thing is necessary to  
7 prevent its concealment, loss or destruction or its use in  
8 committing an offence; and  
9 (b) whether the warrant authorises an ordinary search or a frisk  
10 search of a person who is at or near the premises when the  
11 warrant is executed if the authorised officer or an assisting  
12 officer suspects on reasonable grounds that the person has in  
13 his or her possession:  
14 (i) in the case of an investigation warrant—any evidential  
15 material in relation to the corruption issue or public  
16 inquiry to which the warrant relates; or  
17 (ii) in the case of an offence warrant—a thing relevant to  
18 the offence to which the warrant relates; or  
19 (iii) in any case—evidential material (within the meaning of  
20 the *Proceeds of Crime Act 2002*) or tainted property  
21 (within the meaning of that Act); or  
22 (iv) in any case—a thing relevant to an indictable offence;  
23 or  
24 (v) in any case—any eligible seizable items.

25 *Additional matters for warrant in relation to person*

- 26 (4) If the search warrant relates to a person, the issuing officer is also  
27 to state:  
28 (a) the kind of search (ordinary or frisk) of the person that the  
29 warrant authorises; and  
30 (b) that the warrant authorises the seizure of a thing (other than  
31 evidential material of the kind referred to in paragraph (1)(c))  
32 found, in the course of the search, in the possession of the  
33 person or in, or on, an aircraft, vehicle or vessel that the  
34 person had operated or occupied at any time within 24 hours  
35 before the search began, being a thing that the authorised  
36 officer or an assisting officer believes on reasonable grounds  
37 to be:

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- 1 (i) in the case of an investigation warrant—evidential  
2 material in relation to the corruption issue or public  
3 inquiry to which the warrant relates; or  
4 (ii) in the case of an offence warrant—a thing relevant to  
5 the offence to which the warrant relates; or  
6 (iii) in any case—evidential material (within the meaning of  
7 the *Proceeds of Crime Act 2002*) or tainted property  
8 (within the meaning of that Act); or  
9 (iv) in any case—a thing relevant to an indictable offence;  
10 if the authorised officer or the assisting officer believes on  
11 reasonable grounds that seizure of the thing is necessary to  
12 prevent its concealment, loss or destruction or its use in  
13 committing an offence.

14 *Successive warrants*

- 15 (5) Paragraph (1)(e) does not prevent the issue of successive warrants  
16 in relation to the same premises or person.

17 **111 Application by telephone etc. and issue of warrant**

- 18 (1) An authorised officer may apply to an issuing officer for a search  
19 warrant by telephone, fax, email or other electronic means:  
20 (a) in an urgent case; or  
21 (b) if the delay that would occur if an application were made in  
22 person would frustrate the effective execution of the warrant.
- 23 (2) The issuing officer:  
24 (a) may require communication by voice to the extent that is  
25 practicable in the circumstances; and  
26 (b) may make a recording of the whole or any part of any such  
27 communication by voice.
- 28 (3) An application under this section must include all information that  
29 is required in an ordinary application for a search warrant, but the  
30 application may, if necessary, be made before the information is  
31 sworn or affirmed.
- 32 (4) If an application is made under this section:



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- 1 (a) sections 108 and 109 apply as if subsections 108(1), (2), (3)  
2 and (4) and 109(1), (2), (3) and (4) referred to 48 hours rather  
3 than 72 hours; and  
4 (b) section 110 applies as if subsection 110(2) referred to the end  
5 of the 48th hour rather than the end of the seventh day.
- 6 (5) If an application is made to an issuing officer under this section  
7 and the issuing officer, after considering the information and  
8 having received and considered such further information (if any) as  
9 the issuing officer required, is satisfied that:  
10 (a) a search warrant in the terms of the application should be  
11 issued urgently; or  
12 (b) the delay that would occur if an application were made in  
13 person would frustrate the effective execution of the warrant;  
14 the issuing officer may complete and sign the same form of search  
15 warrant that would be issued under section 109.
- 16 (6) If the issuing officer decides to issue the search warrant, the issuing  
17 officer is to inform the applicant, by telephone, fax, email or other  
18 electronic means, of the terms of the warrant and the day on which  
19 and the time at which it was signed.
- 20 (7) The applicant must then complete a form of search warrant in  
21 terms substantially corresponding to those given by the issuing  
22 officer, stating on the form the name of the issuing officer and the  
23 day on which and the time at which the warrant was signed.
- 24 (8) The applicant must give or transmit to the issuing officer:  
25 (a) the form of search warrant completed by the applicant; and  
26 (b) if the information referred to in subsection (3) was not sworn  
27 or affirmed—that information duly sworn or affirmed.
- 28 (9) The applicant must do so not later than the day after the warrant  
29 expires or the day after the day on which the search warrant was  
30 executed, whichever is the earlier.
- 31 (10) The issuing officer is to attach to the documents provided under  
32 subsection (8) the form of search warrant he or she has completed.
- 33 (11) If:

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- 1 (a) it is material, in any proceedings, for a court to be satisfied  
2 that the exercise of a power under a search warrant issued  
3 under this section was duly authorised; and  
4 (b) the form of search warrant signed by the issuing officer is not  
5 produced in evidence;  
6 the court is to assume, unless the contrary is proved, that the  
7 exercise of the power was not duly authorised.

8 (12) In this section:

9 *applicant* means the authorised officer who applied for the search  
10 warrant.

11 **112 The things authorised by a search warrant in relation to**  
12 **premises**

13 A search warrant in force in relation to premises authorises the  
14 authorised officer executing the warrant or an assisting officer to  
15 do any of the following:

- 16 (a) to enter the premises;  
17 (b) to search for and record fingerprints found at the premises  
18 and to take samples of things found at the premises for  
19 forensic purposes;  
20 (c) to search the premises for the kinds of evidential material  
21 specified in the warrant, and to seize things of that kind  
22 found on the premises;  
23 (d) to seize other things found on the premises in the course of  
24 the search that the authorised officer or the assisting officer  
25 believes on reasonable grounds to be:  
26 (i) in the case of an investigation warrant—evidential  
27 material in relation to the corruption issue or public  
28 inquiry to which the warrant relates; or  
29 (ii) in the case of an offence warrant—a thing relevant to  
30 the offence to which the warrant relates; or  
31 (iii) in any case—evidential material (within the meaning of  
32 the *Proceeds of Crime Act 2002*) or tainted property  
33 (within the meaning of that Act); or  
34 (iv) in any case—a thing relevant to an indictable offence;

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- 1 if the authorised officer or the assisting officer believes on  
2 reasonable grounds that seizure of the thing is necessary to  
3 prevent its concealment, loss or destruction or its use in  
4 committing an offence;
- 5 (e) to seize other things found at the premises in the course of  
6 the search that the authorised officer or the assisting officer  
7 believes on reasonable grounds to be eligible seizable items;
- 8 (f) if the warrant so allows—to conduct an ordinary search or a  
9 frisk search of a person at or near the premises if the  
10 authorised officer or the assisting officer suspects on  
11 reasonable grounds that the person has in his or her  
12 possession:
- 13 (i) in the case of an investigation warrant—any evidential  
14 material in relation to the corruption issue or public  
15 inquiry to which the warrant relates; or
- 16 (ii) in the case of an offence warrant—a thing relevant to  
17 the offence to which the warrant relates; or
- 18 (iii) in any case—evidential material (within the meaning of  
19 the *Proceeds of Crime Act 2002*) or tainted property  
20 (within the meaning of that Act); or
- 21 (iv) in any case—a thing relevant to an indictable offence;  
22 or
- 23 (v) in any case—any eligible seizable items.

24 **113 The things authorised by a search warrant in relation to a**  
25 **person**

- 26 (1) A search warrant in force in relation to a person authorises the  
27 authorised officer executing the warrant or an assisting officer to  
28 do any of the following:
- 29 (a) to search:
- 30 (i) the person as specified in the warrant and things found  
31 in the possession of the person; and
- 32 (ii) any aircraft, vehicle or vessel that the person had  
33 operated or occupied at any time within 24 hours before  
34 the search began, for things specified in the warrant;
- 35 (b) to:
- 36 (i) seize things of that kind; or

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- 1 (ii) record fingerprints from things; or  
2 (iii) take forensic samples from things;  
3 found in the course of the search;  
4 (c) to seize other things found on, or in, the possession of the  
5 person or in the aircraft, vehicle or vessel referred to in  
6 subparagraph (a)(ii) in the course of the search that the  
7 authorised officer or the assisting officer believes on  
8 reasonable grounds to be:  
9 (i) in the case of an investigation warrant—evidential  
10 material in relation to the corruption issue or public  
11 inquiry to which the warrant relates; or  
12 (ii) in the case of an offence warrant—a thing relevant to  
13 the offence to which the warrant relates; or  
14 (iii) in any case—evidential material (within the meaning of  
15 the *Proceeds of Crime Act 2002*) or tainted property  
16 (within the meaning of that Act); or  
17 (iv) in any case—a thing relevant to an indictable offence;  
18 if the authorised officer or the assisting officer believes on  
19 reasonable grounds that seizure of the thing is necessary to  
20 prevent its concealment, loss or destruction or its use in  
21 committing an offence;  
22 (d) to seize other things found in the course of the search that the  
23 authorised officer or the assisting officer believes on  
24 reasonable grounds to be eligible seizable items.  
25 (2) If the search warrant authorises an ordinary search or a frisk search  
26 of a person, a search of the person different from that authorised by  
27 the warrant must not be done under the warrant.

28 **114 Restrictions on personal searches**

29 A search warrant may not authorise a strip search or a search of a  
30 person's body cavities.

31 **115 When warrant may be executed etc.**

- 32 (1) If a search warrant states that it may be executed only during  
33 particular hours, the warrant must not be executed outside those  
34 hours.

- 1 (2) If things are seized under a search warrant, the warrant authorises  
2 the authorised officer executing the warrant to make the things  
3 available to officers of other government agencies if it is necessary  
4 to do so for the purpose of investigating or prosecuting an offence  
5 to which the things relate.

6 **Subdivision D—General provisions about executing a search**  
7 **warrant**

8 **116 Announcement before entry**

- 9 (1) An authorised officer executing the search warrant must, before  
10 any person enters premises under the warrant:  
11 (a) announce that he or she is authorised to enter the premises;  
12 and  
13 (b) give any person at the premises an opportunity to allow entry  
14 to the premises.
- 15 (2) An authorised officer is not required to comply with subsection (1)  
16 if he or she believes on reasonable grounds that immediate entry to  
17 the premises is required:  
18 (a) to ensure the safety of a person (including an authorised  
19 officer or assisting officer); or  
20 (b) to ensure that the effective execution of the warrant is not  
21 frustrated.

22 **117 Availability of assistance and use of force in executing a warrant**

- 23 (1) In executing a search warrant, the authorised officer executing the  
24 warrant may:  
25 (a) obtain the assistance that is necessary and reasonable in the  
26 circumstances; and  
27 (b) use the force against persons and things that is necessary and  
28 reasonable in the circumstances.
- 29 (2) In executing a search warrant:  
30 (a) if an assisting officer is also an authorised officer—the  
31 assisting officer may use the force against persons and things  
32 that is necessary and reasonable in the circumstances; and

1 (b) if an assisting officer is not an authorised officer—the  
2 assisting officer may use the force against things that is  
3 necessary and reasonable in the circumstances.

4 (3) A person who is not an authorised officer must not take part in  
5 searching a person.

6 **Subdivision E—Specific provisions about executing a warrant**  
7 **in relation to premises**

8 **118 Application**

9 This Subdivision applies if a search warrant in relation to premises  
10 is being executed.

11 **119 Copy of warrant to be shown to occupier etc.**

12 (1) If the occupier of the premises, or another person who apparently  
13 represents the occupier, is present at the premises, the authorised  
14 officer executing the search warrant or an assisting officer must  
15 make a copy of the warrant available to the person.

16 (2) If a person is searched under a search warrant in relation to  
17 premises, the authorised officer executing the warrant or an  
18 assisting officer must show the person a copy of the warrant.

19 (3) The authorised officer must identify himself or herself to the  
20 person at the premises.

21 (4) The copy of the search warrant need not include the signature of  
22 the issuing officer who issued it.

23 **120 Occupier entitled to watch search**

24 (1) The occupier of the premises, or another person who apparently  
25 represents the occupier, who is present at the premises, is entitled  
26 to watch the search.

27 (2) Subsection (1) is subject to Part IC of the *Crimes Act 1914*.

28 (3) The right to watch the search being conducted ceases if the person  
29 impedes the search.

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- 1 (4) This section does not prevent 2 or more areas of the premises being  
2 searched at the same time.

3 **121 Specific powers available to person executing a warrant**

- 4 (1) The authorised officer executing the search warrant or an assisting  
5 officer may take photographs or video recordings of the premises  
6 or things on the premises:  
7 (a) for a purpose incidental to the execution of the warrant; or  
8 (b) with the written consent of the occupier of the premises.
- 9 (2) The authorised officer executing the search warrant and all  
10 assisting officers may, if the warrant is still in force, finish  
11 executing the warrant after all of them temporarily stop executing  
12 it and leave the premises:  
13 (a) for not more than one hour; or  
14 (b) for a longer period with the written consent of the occupier of  
15 the premises.
- 16 (3) The execution of a search warrant that is stopped by an order of a  
17 court may be completed if:  
18 (a) the order is later revoked or reversed on appeal; and  
19 (b) the warrant is still in force.

20 **122 Use of equipment to examine or process things**

- 21 (1) The authorised officer executing the search warrant or an assisting  
22 officer may bring to the premises any equipment (including  
23 electronic equipment) reasonably necessary to examine or process  
24 things found at the premises in order to determine whether they are  
25 things that may be seized under the warrant.
- 26 (2) A thing found at the premises may be moved to another place for  
27 examination or processing in order to determine whether it may be  
28 seized under a warrant if:  
29 (a) both of the following apply:  
30 (i) it is significantly more practicable to do so having  
31 regard to the timeliness and cost of examining or  
32 processing the thing at another place and the availability  
33 of expert assistance;

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- 1 (ii) there are reasonable grounds to believe that the thing  
2 contains or constitutes evidential material; or  
3 (b) the occupier of the premises consents in writing.
- 4 (3) If things are moved to another place for the purpose of examination  
5 or processing, the authorised officer must, if it is practicable to do  
6 so:  
7 (a) inform the occupier of the address of the place and the time  
8 at which the examination or processing will be carried out;  
9 and  
10 (b) allow the occupier or his or her representative to be present  
11 during the examination or processing.
- 12 (4) The thing may be moved to another place for examination or  
13 processing for no longer than 72 hours.
- 14 (5) An authorised officer may apply to an issuing officer for one or  
15 more extensions of that time if the authorised officer believes on  
16 reasonable grounds that the thing cannot be examined or processed  
17 within 72 hours or that time as previously extended.
- 18 (6) The authorised officer must give notice of the application to the  
19 occupier of the premises, and the occupier is entitled to be heard in  
20 relation to the application.
- 21 (7) The authorised officer executing the search warrant or an assisting  
22 officer may operate equipment (including electronic equipment)  
23 already on the premises to examine or process a thing found on the  
24 premises in order to determine whether it may be seized under the  
25 warrant, if the authorised officer or the assisting officer believes on  
26 reasonable grounds that:  
27 (a) the equipment is suitable for the examination or processing;  
28 and  
29 (b) the examination or processing can be carried out without  
30 damaging the equipment or thing.
- 31 (8) A notice of the application given to the occupier of the premises is  
32 not a legislative instrument.



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1 **123 Use of electronic equipment at premises without expert**  
2 **assistance**

3 (1) The authorised officer executing the search warrant or an assisting  
4 officer may operate electronic equipment on the premises to access  
5 data (including data not held at the premises) if he or she believes  
6 on reasonable grounds that:

- 7 (a) the data might constitute evidential material; and  
8 (b) the equipment can be operated without damaging it.

9 Note: An authorised officer can obtain an order requiring a person with  
10 knowledge of a computer or computer system to provide assistance:  
11 see section 125.

12 (2) If the authorised officer or the assisting officer believes on  
13 reasonable grounds that any data accessed by operating the  
14 electronic equipment might constitute evidential material, he or she  
15 may:

- 16 (a) copy the data to a disk, tape or other associated device  
17 brought to the premises; or  
18 (b) if the occupier of the premises agrees in writing—copy the  
19 data to a disk, tape or other associated device at the premises;  
20 and take the device from the premises.

21 (3) If:

- 22 (a) the authorised officer or the assisting officer takes the device  
23 from the premises; and  
24 (b) the Integrity Commissioner is satisfied that the data is not  
25 required (or is no longer required) for:  
26 (i) investigating a corruption issue; or  
27 (ii) conducting a public inquiry; or  
28 (iii) judicial proceedings or administrative review  
29 proceedings; or  
30 (iv) investigating or resolving AFP conduct or practices  
31 issues under Part V of the *Australian Federal Police Act*  
32 *1979*;

33 the Integrity Commissioner must arrange for:

- 34 (c) the removal of the data from any device in the control of  
35 ACLEI; and

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- 1 (d) the destruction of any other reproduction of the data in the  
2 control of ACLEI.
- 3 (4) However, the Integrity Commissioner must not do so if:  
4 (a) the data is evidence that he or she must deal with in  
5 accordance with Division 1 of Part 10; or  
6 (b) the data is information that he or she decides to deal with in  
7 accordance with Division 2 of Part 10.
- 8 (5) If the authorised officer or the assisting officer, after operating the  
9 equipment, finds that evidential material is accessible by doing so,  
10 he or she may:  
11 (a) seize the equipment and any disk, tape or other associated  
12 device; or  
13 (b) if the material can, by using facilities at the premises, be put  
14 in documentary form—operate the facilities to put the  
15 material in that form and seize the documents so produced.
- 16 (6) A person may seize equipment under paragraph (5)(a) only if:  
17 (a) it is not practicable to put the material in documentary form  
18 as referred to in paragraph (5)(b); or  
19 (b) possession of the equipment by the occupier could constitute  
20 an offence.

21 **124 Use of electronic equipment at premises with expert assistance**

- 22 (1) If the authorised officer executing the search warrant or an  
23 assisting officer believes on reasonable grounds that:  
24 (a) evidential material may be accessible by operating electronic  
25 equipment at the premises; and  
26 (b) expert assistance is required to operate the equipment; and  
27 (c) if he or she does not take action under this subsection, the  
28 material may be destroyed, altered or otherwise interfered  
29 with;  
30 he or she may do whatever is necessary to secure the equipment,  
31 whether by locking it up, placing a guard or otherwise.
- 32 (2) The authorised officer or the assisting officer must notify the  
33 occupier of the premises, in writing, of:

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- 1 (a) his or her intention to secure the equipment; and  
2 (b) the fact that the equipment may be secured for up to 24  
3 hours.
- 4 (3) The equipment may be secured for up to 24 hours to allow the  
5 equipment to be operated by an expert.
- 6 (4) If the authorised officer or the assisting officer believes on  
7 reasonable grounds that expert assistance will not be available  
8 within 24 hours, he or she may apply to an issuing officer for an  
9 extension of that period.
- 10 (5) The authorised officer or the assisting officer must notify the  
11 occupier of the premises of his or her intention to apply for an  
12 extension, and the occupier is entitled to be heard in relation to the  
13 application.
- 14 (6) The provisions of this Division in relation to the issuing of search  
15 warrants apply, with such modifications as are necessary, to the  
16 issuing of an extension.
- 17 (7) A notification given to the occupier of the premises under this  
18 section is not a legislative instrument.

19 **125 Person with knowledge of a computer or a computer system to**  
20 **assist access etc.**

- 21 (1) The authorised officer executing the search warrant may apply to  
22 an issuing officer for an order requiring a specified person to  
23 provide any information or assistance that is reasonable and  
24 necessary to allow the officer or an assisting officer or to do one or  
25 more of the following:
- 26 (a) access data held in a computer, or accessible from a  
27 computer, that is on premises in relation to which the warrant  
28 is in force;
- 29 (b) copy the data to a data storage device;
- 30 (c) convert the data into documentary form.
- 31 (2) The issuing officer may grant the order if he or she is satisfied that:
- 32 (a) there are reasonable grounds for suspecting that evidential  
33 material is held in, or is accessible from, the computer; and

- 1 (b) the specified person is:
- 2 (i) in the case of an investigation warrant—reasonably
- 3 suspected of having, or having access to, data that may
- 4 be relevant to the corruption issue or public inquiry to
- 5 which the warrant relates; or
- 6 (ii) in the case of an offence warrant—reasonably suspected
- 7 of having committed the offence stated in the warrant;
- 8 or
- 9 (iii) the owner or lessee of the computer; or
- 10 (iv) an employee of the owner or lessee of the computer; and
- 11 (c) the specified person has relevant knowledge of:
- 12 (i) the computer or a computer network of which the
- 13 computer forms a part; or
- 14 (ii) measures applied to protect data held in, or accessible
- 15 from, the computer.
- 16 (3) A person commits an offence if the person fails to comply with the
- 17 order.
- 18 Penalty: Imprisonment for 6 months.

19 **126 Accessing data held on other premises—notification to occupier**

20 **of those premises**

- 21 (1) If:
- 22 (a) data that is held on premises (other than the premises in
- 23 relation to which the warrant is in force) is accessed under
- 24 subsection 123(1); and
- 25 (b) it is practicable to notify the occupier of the other premises
- 26 that the data has been accessed under a warrant;
- 27 the authorised officer executing the search warrant must:
- 28 (c) do so as soon as practicable; and
- 29 (d) if the authorised officer has arranged, or intends to arrange,
- 30 for continued access to the data under subsection 123(2) or
- 31 (5)—include that information in the notification.
- 32 (2) A notification under subsection (1) must include sufficient
- 33 information to allow the occupier of the other premises to contact
- 34 the authorised officer.

1 **127 Compensation for damage to electronic equipment**

- 2 (1) This section applies if:
- 3 (a) as a result of equipment being operated as mentioned in
- 4 section 122, 123 or 124:
- 5 (i) damage is caused to the equipment; or
- 6 (ii) the data recorded on the equipment is damaged; or
- 7 (iii) programs associated with the use of the equipment, or
- 8 with the use of the data, are damaged or corrupted; and
- 9 (b) the damage or corruption occurs because:
- 10 (i) insufficient care was exercised in selecting the person
- 11 who was to operate the equipment; or
- 12 (ii) insufficient care was exercised by the person operating
- 13 the equipment.
- 14 (2) The Commonwealth must pay the owner of the equipment, or the
- 15 user of the data or programs, such reasonable compensation for the
- 16 damage or corruption as the Commonwealth and the owner or user
- 17 agree on.
- 18 (3) However, if the owner or user and the Commonwealth fail to
- 19 agree, the owner or user may institute proceedings in the Federal
- 20 Court of Australia for such reasonable amount of compensation as
- 21 the Court determines.
- 22 (4) In determining the amount of compensation payable, regard is to
- 23 be had to whether the occupier of the premises, or the occupier's
- 24 employees or agents, if they were available at the time, had
- 25 provided any appropriate warning or guidance on the operation of
- 26 the equipment.
- 27 (5) Compensation is payable out of money appropriated by the
- 28 Parliament.
- 29 (6) For the purpose of subsection (1):
- 30 **damage**, in relation to data, includes damages by erasure of data or
- 31 addition of other data.

1 **128 Copies of seized things to be provided**

- 2 (1) If the authorised officer executing the search warrant or an  
3 assisting officer seizes:  
4 (a) a document, film, computer file or other thing that can be  
5 readily copied; or  
6 (b) a device storing information that can be readily copied;  
7 the authorised officer or the assisting officer must, if requested to  
8 do so by the occupier of the premises or another person who  
9 apparently represents the occupier and who is present when the  
10 warrant is executed, give a copy of the thing or the information to  
11 that person as soon as practicable after the seizure.
- 12 (2) However, subsection (1) does not apply if:  
13 (a) the thing that has been seized was seized under subsection  
14 123(2) or paragraph 123(5)(a); or  
15 (b) possession of the document, film, computer file, thing or  
16 information by the occupier could constitute an offence.

17 **129 Receipts of things seized under warrant**

- 18 (1) If a thing is seized under a search warrant or moved under  
19 subsection 122(2), the authorised officer executing the warrant or  
20 an assisting officer must provide a receipt for the thing.
- 21 (2) If 2 or more things are seized or moved, they may be covered by  
22 the one receipt.

23 **Subdivision F—Specific provisions about executing a warrant**  
24 **in relation to a person**

25 **130 Copy of warrant to be shown to person**

- 26 (1) If a search warrant in relation to a person is being executed, the  
27 authorised officer executing the warrant or an assisting officer  
28 must make a copy of the warrant available to that person.
- 29 (2) The authorised officer must identify himself or herself to the  
30 person being searched.

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- 1 (3) The copy of the warrant need not include the signature of the  
2 issuing officer who issued it.

3 **131 Conduct of an ordinary search or a frisk search**

- 4 An ordinary search or a frisk search of a person must, if  
5 practicable, be conducted by a person of the same sex as the person  
6 being searched.

7 **Subdivision G—Offences**

8 **132 Making false statements in warrants**

- 9 A person commits an offence if:  
10 (a) the person makes a statement in applying for a search  
11 warrant; and  
12 (b) the person knows that the statement is false or misleading in  
13 a material particular.

14 Penalty: Imprisonment for 2 years.

15 **133 Offence for stating incorrect names in telephone warrants**

- 16 A person commits an offence if:  
17 (a) the person states a name of an issuing officer in a document;  
18 and  
19 (b) the document purports to be a form of search warrant under  
20 section 111; and  
21 (c) the name is not the name of the issuing officer who issued the  
22 search warrant.

23 Penalty: Imprisonment for 2 years.

24 **134 Offence for unauthorised form of warrant**

- 25 A person commits an offence if:  
26 (a) the person states a matter in a form of search warrant under  
27 section 111; and  
28 (b) the person knows that the matter departs in a material  
29 particular from the form authorised by the issuing officer.

1                   Penalty: Imprisonment for 2 years.

2       **135 Offence for executing etc. an unauthorised form of warrant**

3                   A person commits an offence if:

- 4                   (a) the person executes or presents a document to another  
5                   person; and  
6                   (b) the document purports to be a form of search warrant under  
7                   section 111; and  
8                   (c) the person knows that the document:  
9                   (i) has not been approved by an issuing officer under that  
10                  section; or  
11                  (ii) departs in a material particular from the terms  
12                  authorised by an issuing officer under that section.

13                  Penalty: Imprisonment for 2 years.

14       **136 Offence for giving unexecuted form of warrant**

15                  A person commits an offence if:

- 16                  (a) the person gives an issuing officer a form of search warrant  
17                  under section 111; and  
18                  (b) the document is not the form of search warrant that the  
19                  person executed.

20                  Penalty: Imprisonment for 2 years.

21       **Subdivision H—Miscellaneous**

22       **137 Other laws about search, arrest etc. not affected**

- 23                  (1) This Division is not intended to limit or exclude the operation of  
24                  another law of the Commonwealth relating to:  
25                  (a) the search of persons or premises; or  
26                  (b) arrest and related matters; or  
27                  (c) the seizure of things.
- 28                  (2) To avoid doubt, even though another law of the Commonwealth  
29                  provides power to do one or more of the things referred to in



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1 subsection (1), a similar power conferred by this Division may be  
2 used despite the existence of the power under the other law.

3 **138 Law relating to legal professional privilege not affected**

4 This Division does not affect the law relating to legal professional  
5 privilege.

1

2 **Division 5—Powers of arrest**

3 **139 Authorised officers may exercise powers of arrest**

4 For the purposes of investigating a corruption issue, an authorised  
5 officer who is not a constable (within the meaning of the *Crimes*  
6 *Act 1914*) has the same powers and duties under Divisions 4 and 5  
7 of Part IAA of the *Crimes Act 1914* as a constable as if the  
8 authorised officer were a constable.

1

2 **Division 6—Authorised officers**

3 **140 Appointment of authorised officers**

4 (1) The Integrity Commissioner may, in writing, authorise a person to  
5 be an authorised officer for the purposes of this Part.

6 (2) The person must be:

7 (a) a staff member of ACLEI:

8 (i) who the Integrity Commissioner considers has suitable  
9 qualifications or experience; or

10 (ii) who is also a member of the Australian Federal Police;  
11 or

12 (iii) who is also a member of the police force of a State or  
13 Territory; or

14 (b) a member of the Australian Federal Police.

15 (3) The Integrity Commissioner may authorise a person referred to in  
16 subparagraph (2)(a)(ii) or paragraph (2)(b) only if the  
17 Commissioner of the AFP agrees to the appointment.

18 (4) The Integrity Commissioner may authorise a person referred to in  
19 subparagraph (2)(a)(iii) only if the head (however described) of the  
20 police force of the State or Territory concerned agrees to the  
21 appointment.

22 (5) In exercising powers as an authorised officer, an authorised officer  
23 must comply with any directions given by the Integrity  
24 Commissioner.

25 (6) If the Integrity Commissioner gives a direction under  
26 subsection (5) in writing, the direction is not a legislative  
27 instrument.

1 **141 Identity cards**

2 *Issue of identity card*

- 3 (1) The Integrity Commissioner must issue an identity card to a person  
4 who is an authorised officer for the purposes of this Part.

5 *Form of identity card*

- 6 (2) An identity card:  
7 (a) must be in the form prescribed by the regulations; and  
8 (b) must contain a recent photograph of the authorised officer.

9 *Identity card to be carried and produced on request*

- 10 (3) An authorised officer must carry the identity card at all times when  
11 exercising powers as an authorised officer in accordance with this  
12 Part.

- 13 (4) An authorised officer is not entitled to exercise any powers under  
14 this Part in relation to premises if:  
15 (a) the occupier of the premises requires the authorised officer to  
16 produce his or her identity card for inspection by the  
17 occupier; and  
18 (b) the authorised officer fails to comply with the requirement.

- 19 (5) An authorised officer is not entitled to exercise any powers under  
20 this Part in relation to a person if:  
21 (a) the person requires the authorised officer to produce his or  
22 her identity card for inspection by the person; and  
23 (b) the authorised officer fails to comply with the requirement.

24 *Offence*

- 25 (6) A person commits an offence if:  
26 (a) the person has been issued with an identity card; and  
27 (b) the person ceases to be an authorised officer; and  
28 (c) the person does not return the identity card to the Integrity  
29 Commissioner immediately after ceasing to be an authorised  
30 officer.

1

Penalty: 1 penalty unit.

1

2 **Part 10—Dealing with evidence and information**  
3 **obtained in investigation or public inquiry**

4 **Division 1—Dealing with evidence obtained in**  
5 **investigation or public inquiry**

6 **142 Evidence of offence or liability to civil penalty**

7 *Commonwealth offence or civil penalty*

- 8 (1) If, in investigating a corruption issue or conducting a public  
9 inquiry, the Integrity Commissioner obtains:
- 10 (a) evidence of an offence against a law of the Commonwealth  
11 that would be admissible in a prosecution for the offence; or
  - 12 (b) evidence of the contravention of a law of the  
13 Commonwealth:
    - 14 (i) in relation to which civil penalty proceedings may be  
15 brought; and
    - 16 (ii) that would be admissible in civil penalty proceedings  
17 for the contravention;
- 18 the Integrity Commissioner must:
- 19 (c) assemble the evidence; and
  - 20 (d) give the evidence to:
    - 21 (i) the Commissioner of the AFP; or
    - 22 (ii) another person or authority who is authorised by or  
23 under a law of the Commonwealth to prosecute the  
24 offence or bring the civil penalty proceedings.

25 *State or Territory offence or civil penalty*

- 26 (2) If, in investigating a corruption issue or conducting a public  
27 inquiry, the Integrity Commissioner obtains:
- 28 (a) evidence of an offence against a law of a State or Territory  
29 that would be admissible in a prosecution for the offence; or
  - 30 (b) evidence of the contravention of a law of a State or Territory:

- 1 (i) in relation to which civil penalty proceedings may be  
2 brought; and  
3 (ii) that would be admissible in civil penalty proceedings  
4 for the contravention;  
5 the Integrity Commissioner must:  
6 (c) assemble the evidence; and  
7 (d) give the evidence to:  
8 (i) the head (however described) of the police force of the  
9 State or Territory; or  
10 (ii) another person or authority who is authorised by or  
11 under a law of the State or Territory to prosecute the  
12 offence or bring the civil penalty proceedings.

13 **143 Evidence that could be used in confiscation proceedings**

14 *Commonwealth proceedings*

- 15 (1) If, in investigating a corruption issue or conducting a public  
16 inquiry, the Integrity Commissioner obtains evidence that would be  
17 admissible in a proceeding under the *Proceeds of Crime Act 1987*  
18 or the *Proceeds of Crime Act 2002* (other than a criminal  
19 prosecution for an offence under that Act), the Integrity  
20 Commissioner must:  
21 (a) assemble the evidence; and  
22 (b) give the evidence to:  
23 (i) the Commissioner of the AFP; or  
24 (ii) another person or authority who is authorised by or  
25 under a law of the Commonwealth to bring the  
26 proceeding.

27 *State or Territory proceedings*

- 28 (2) If, in investigating a corruption issue or conducting a public  
29 inquiry, the Integrity Commissioner obtains evidence that would be  
30 admissible in a proceeding under a corresponding law within the  
31 meaning of the *Proceeds of Crime Act 1987* or the *Proceeds of*  
32 *Crime Act 2002* (other than a criminal prosecution for an offence  
33 under the corresponding law), the Integrity Commissioner must:  
34 (a) assemble the evidence; and

- 1 (b) give the evidence to:
- 2 (i) the head (however described) of the police force of the
- 3 State or Territory; or
- 4 (ii) another person or authority who is authorised by or
- 5 under a law of the State or Territory to bring the
- 6 proceeding.

7 **144 Consultation with law enforcement agency head before taking**

8 **action under section 142 or 143**

- 9 (1) This section applies if the Integrity Commissioner proposes to take
- 10 action under section 142 or 143 in relation to an investigation of a
- 11 corruption issue that relates to a law enforcement agency.
- 12 (2) The Integrity Commissioner must take reasonable steps to consult
- 13 the head of the law enforcement agency before taking the action.
- 14 (3) If:
- 15 (a) the corruption issue relates to the conduct of a secondee to
- 16 the law enforcement agency; and
- 17 (b) the secondee is an employee of a government agency (the
- 18 **home agency**);
- 19 the Integrity Commissioner must also take reasonable steps to
- 20 consult the head of the home agency before taking the action.
- 21 (4) If:
- 22 (a) the corruption issue relates to the conduct of a secondee to
- 23 the law enforcement agency; and
- 24 (b) the secondee is an employee of a State or Territory
- 25 government agency;
- 26 the Integrity Commissioner must also take reasonable steps to
- 27 consult the head of the integrity agency (if any) for that State or
- 28 Territory before taking the action.
- 29 (5) However, the Integrity Commissioner need not consult a person
- 30 under subsection (2), (3) or (4) if doing so is likely to prejudice:
- 31 (a) the investigation of the corruption issue or another corruption
- 32 investigation; or



1 (b) any action taken as a result of an investigation referred to in  
2 paragraph (a).

3 (6) If the Integrity Commissioner does not consult a person because of  
4 subsection (5), the Integrity Commissioner must:

5 (a) inform the Minister that the person has not been consulted;  
6 and

7 (b) give the Minister the Integrity Commissioner's reasons for  
8 not consulting the person.

9 **145 Notification of action taken under section 142 or 143**

10 (1) This section applies if the Integrity Commissioner takes action  
11 under section 142 or 143 in relation to the investigation of a  
12 corruption issue that relates to a law enforcement agency.

13 (2) The Integrity Commissioner must inform the head of the law  
14 enforcement agency that the action has been taken.

15 (3) If:

16 (a) the corruption issue relates to the conduct of a secondee to  
17 the law enforcement agency; and

18 (b) the secondee is an employee of a government agency (the  
19 *home agency*);

20 the Integrity Commissioner must inform the head of the home  
21 agency that the action has been taken.

22 (4) If:

23 (a) the corruption issue relates to the conduct of a secondee to  
24 the law enforcement agency; and

25 (b) the secondee is an employee of a State or Territory  
26 government agency;

27 the Integrity Commissioner must also inform the head of the  
28 integrity agency (if any) for that State or Territory that the action  
29 has been taken.

30 (5) However, the Integrity Commissioner need not inform a person  
31 under subsection (2), (3) or (4) if doing so is likely to prejudice:

32 (a) the investigation of the corruption issue or another corruption  
33 investigation; or

1 (b) any action taken as a result of an investigation referred to in  
2 paragraph (a).

3 (6) If the Integrity Commissioner does not inform a person because of  
4 subsection (5), the Integrity Commissioner must:

5 (a) inform the Minister that the person has not been informed;  
6 and

7 (b) give the Minister the Integrity Commissioner's reasons for  
8 not informing the person.

9 **146 Evidence of breach of duty or misconduct by staff member**

10 *Passing evidence on to head of law enforcement agency*

11 (1) If:

12 (a) the Integrity Commissioner, in investigating a corruption  
13 issue or conducting a public inquiry, obtains evidence of a  
14 breach of duty or misconduct by a staff member of a law  
15 enforcement agency; and

16 (b) the Integrity Commissioner is satisfied that the evidence may  
17 justify:

18 (i) terminating the staff member's employment or, if the  
19 staff member is a secondee to the law enforcement  
20 agency, the staff member's secondment; or

21 (ii) initiating disciplinary proceedings against the staff  
22 member; and

23 (c) the Integrity Commissioner is satisfied that the evidence is, in  
24 all the circumstances, of sufficient force to justify his or her  
25 doing so;

26 the Integrity Commissioner must bring the evidence to the notice  
27 of the head of the law enforcement agency.

28 *Passing evidence on to head of secondee's home agency*

29 (2) If:

30 (a) the Integrity Commissioner, in investigating a corruption  
31 issue or conducting a public inquiry, obtains evidence of a  
32 breach of duty or misconduct by a staff member of a law  
33 enforcement agency; and

- 1 (b) the staff member is a secondee to the law enforcement  
2 agency; and  
3 (c) the secondee is an employee of a government agency (the  
4 *home agency*); and  
5 (d) the Integrity Commissioner is satisfied that the evidence may  
6 justify:  
7 (i) terminating the secondee's employment; or  
8 (ii) initiating disciplinary proceedings against the secondee;  
9 and  
10 (e) the Integrity Commissioner is satisfied that the evidence is, in  
11 all the circumstances, of sufficient force to justify his or her  
12 doing so;  
13 the Integrity Commissioner must bring the evidence to the notice  
14 of:  
15 (f) the head of the home agency; and  
16 (g) if the home agency is a State or Territory government  
17 agency—the integrity agency (if any) for that State or  
18 Territory.

19 **147 Evidence of, or information suggesting, wrongful conviction**

20 *Commonwealth offence*

- 21 (1) If the Integrity Commissioner:  
22 (a) in investigating a corruption issue or conducting a public  
23 inquiry, obtains evidence that a person was wrongly  
24 convicted of an offence against a law of the Commonwealth;  
25 and  
26 (b) is satisfied that the evidence is, in all the circumstances, of  
27 sufficient force to justify his or her doing so;  
28 the Integrity Commissioner must:  
29 (c) bring the evidence to the notice of the Minister; and  
30 (d) advise the person that the Integrity Commissioner has must  
31 brought the evidence to the notice of the Minister.

32 *State or Territory offence*

- 33 (2) If the Integrity Commissioner:

- 1 (a) in investigating a corruption issue or conducting a public  
2 inquiry, obtains evidence that a person was wrongly  
3 convicted of an offence against a law of a State or Territory;  
4 and  
5 (b) is satisfied that the evidence is, in all the circumstances, of  
6 sufficient force to justify his or her doing so;  
7 the Integrity Commissioner must:  
8 (c) bring the evidence to the notice of the Minister; and  
9 (d) advise the person that the Integrity Commissioner has must  
10 brought the evidence to the notice of the Minister.

1

2 **Division 2—Dealing with information etc. obtained in**  
3 **investigation or public inquiry**

4 **148 Integrity Commissioner may communicate information etc.**

5 *Commonwealth offence or civil penalty*

- 6 (1) Subsection (2) applies if the Integrity Commissioner, in  
7 investigating a corruption issue or conducting a public inquiry,  
8 obtains information, a document or thing that relates, or that may  
9 relate, to:  
10 (a) an offence against a law of the Commonwealth; or  
11 (b) a contravention of a law of the Commonwealth in relation to  
12 which civil penalty proceedings may be brought.
- 13 (2) The Integrity Commissioner may, if he or she thinks it is  
14 appropriate to do so, communicate the information, or give the  
15 document or thing, to:  
16 (a) the Commissioner of the AFP; or  
17 (b) another person or authority who is authorised by or under a  
18 law of the Commonwealth to prosecute the offence or bring  
19 the civil penalty proceedings.

20 *State or Territory offence or civil penalty*

- 21 (3) Subsection (4) applies if the Integrity Commissioner, in  
22 investigating a corruption issue or conducting a public inquiry,  
23 obtains information, a document or thing that relates, or that may  
24 relate, to:  
25 (a) an offence against a law of a State or Territory; or  
26 (b) the contravention of a law of a State or Territory in relation  
27 to which civil penalty proceedings may be brought.
- 28 (4) The Integrity Commissioner may, if he or she thinks it is  
29 appropriate to do so, communicate the information, or give the  
30 document or thing, to:  
31 (a) the head (however described) of the police force of the State  
32 or Territory; or

1 (b) another person or authority who is authorised by or under a  
2 law of the State or Territory to prosecute the offence or bring  
3 the civil penalty proceedings.

4 *Reference to giving a document or thing*

5 (5) In this section, a reference to giving a document or thing includes a  
6 reference to giving the contents of the document or a description of  
7 the thing.

1

2 **Part 11—Attorney-General's certificates about**  
 3 **release of information**  
 4

5 **149 Attorney-General's certificate in relation to particular**  
 6 **information**

- 7 (1) The Attorney-General may certify that disclosure of:  
 8 (a) information about a matter specified in the certificate; or  
 9 (b) the contents of a document specified in the certificate;  
 10 would be contrary to the public interest on one or more of the  
 11 grounds set out in subsection (2).
- 12 (2) The grounds for making a certificate under subsection (1) are that  
 13 the disclosure would:  
 14 (a) prejudice the security, defence or international relations of  
 15 the Commonwealth; or  
 16 (b) involve the disclosure of:  
 17 (i) communications between a Minister and a Minister of a  
 18 State or Territory and would prejudice relations between  
 19 the Commonwealth Government and the Government of  
 20 a State or Territory; or  
 21 (ii) deliberations or decisions of the Cabinet or of a  
 22 Committee of the Cabinet; or  
 23 (iii) deliberations or advice of the Executive Council; or  
 24 (c) prejudice the conduct of an investigation of or inquiry into:  
 25 (i) crime or criminal activity; or  
 26 (ii) a contravention of a civil penalty provision;  
 27 that is currently being pursued; or  
 28 (d) prejudice the fair trial of any person or the impartial  
 29 adjudication of a matter; or  
 30 (e) reveal, or enable a person to ascertain, the existence or  
 31 identity of a confidential source of information in relation to  
 32 the enforcement of:  
 33 (i) the criminal law of the Commonwealth, a State or  
 34 Territory or a foreign country; or

- 1 (ii) a civil penalty provision; or  
2 (f) prejudice the effectiveness of the operational methods, or  
3 investigative practices or techniques, of agencies responsible  
4 for the enforcement of:  
5 (i) the criminal law of the Commonwealth, a State or  
6 Territory or a foreign country; or  
7 (ii) a civil penalty provision; or  
8 (g) prejudice the proper performance of the functions of the  
9 ACC; or  
10 (h) endanger a person's life or physical safety.
- 11 (3) The certificate must specify the kind of disclosure that would be  
12 contrary to the public interest.
- 13 (4) Without limiting subsection (3), the kind of disclosure that may be  
14 specified in the certificate includes:  
15 (a) disclosure generally; or  
16 (b) disclosure to a specified person or group of persons; or  
17 (c) disclosure otherwise than to a specified person or group of  
18 persons.
- 19 (5) Without limiting subsection (1), a certificate under that subsection  
20 may provide that the disclosure of information about the existence  
21 or non-existence of:  
22 (a) information about a specified matter; or  
23 (b) a document or thing;  
24 would be contrary to the public interest because it would:  
25 (c) prejudice the security, defence or international relations of  
26 the Commonwealth; or  
27 (d) prejudice the proper performance of the functions of the  
28 ACC.

29 **150 Integrity Commissioner's access to section 149 certified**  
30 **information**

- 31 (1) If:



1 (a) the head of a law enforcement agency would, but for this  
2 subsection, be required under section 20, 21, 32 or 46 to give  
3 the Integrity Commissioner information or a document; and  
4 (b) the information is, or the document contains, section 149  
5 certified information;  
6 the head of the agency must not give the Integrity Commissioner  
7 the information or document if doing so would contravene the  
8 certificate issued under section 149.

9 (2) If:  
10 (a) a person is requested under Division 1 of Part 9:  
11 (i) to give Integrity Commissioner information; or  
12 (ii) to produce a document to the Integrity Commissioner;  
13 and  
14 (b) the information is, or the document contains, section 149  
15 certified information;  
16 the person must not comply with the request if doing so would  
17 contravene the certificate issued under section 149.

18 (3) If:  
19 (a) a person is served with a summons to attend a hearing under  
20 Division 2 of Part 9; and  
21 (b) at the hearing the person is required to:  
22 (i) give information; or  
23 (ii) produce a document; and  
24 (c) the information is, or the document contains, section 149  
25 certified information;  
26 the person must not comply with the requirement if doing so would  
27 contravene the certificate issued under section 149.

28 **151 Giving another agency section 149 certified information**

29 If:  
30 (a) the head of a law enforcement agency (the *first agency*)  
31 would, but for this subsection, be required under section 46  
32 to give the head of another government agency (the *second*  
33 *agency*) information or a document; and

1 (b) the information is, or the document contains, section 149  
2 certified information;  
3 the head of the first agency must not give the information or  
4 document to the head of the second agency if doing so would  
5 contravene the certificate issued under section 149.

6 **152 Integrity Commissioner giving section 149 certified information**  
7 **to agency head or special investigator**

8 If:

9 (a) either:

10 (i) the Integrity Commissioner would, but for this section,  
11 be required or allowed under subsection 29(2) or  
12 section 44, 50 or 70 to give information or a document  
13 to the head of a government agency; or

14 (ii) the Integrity Commissioner would, but for this section,  
15 be required under subsection 156(6) or (9) to give  
16 information or a document to a special investigator; and

17 (b) the information is, or the document contains, section 149  
18 certified information;

19 the Integrity Commissioner must not give the information or  
20 document to the head of the agency, or to the special investigator,  
21 if doing so would contravene the certificate issued under  
22 section 149.

1

2 **Part 12—Dealing with ACLEI corruption issues**

3 **Division 1—Referring ACLEI corruption issues to**  
4 **Minister**

5 **153 Integrity Commissioner and ACLEI staff notifying Minister of**  
6 **ACLEI corruption issues**

7 (1) If the Integrity Commissioner becomes aware of an ACLEI  
8 corruption issue that relates to the conduct of another person who  
9 is, or has been, a staff member of ACLEI, the Integrity  
10 Commissioner must, as soon as practicable after becoming aware  
11 of the issue notify the Minister of the issue in writing.

12 Note 1: Failure to notify the Minister is an offence under subsection 174(1).

13 Note 2: Staff members of ACLEI have an obligation to notify the Integrity  
14 Commissioner of ACLEI corruption issues: see subsection 174(5).

15 (2) If a staff member of ACLEI (other than the Integrity  
16 Commissioner) becomes aware of an ACLEI corruption issue that  
17 relates to the conduct of the person who is the Integrity  
18 Commissioner, the staff member must, as soon as practicable after  
19 becoming aware of the issue, notify the Minister of the issue in  
20 writing.

21 Note: Failure to notify the Minister is an offence under subsection 174(3).

22 (3) A notification given under this section is not a legislative  
23 instrument.

24 **154 Referral of ACLEI corruption issues by other persons**

25 (1) A person (other than a staff member of ACLEI) may refer to the  
26 Minister an allegation, or information, that raises an ACLEI  
27 corruption issue.

28 (2) Without limiting subsection (1):

29 (a) the person may refer the allegation or information  
30 anonymously; and

- 1 (b) the person may refer the allegation or information either  
2 orally or in writing.
- 3 (3) If the person refers the allegation or information orally, the  
4 Minister may require the person to put the allegation or  
5 information in writing.
- 6 (4) If the person is asked to put the allegation or information in  
7 writing, the Minister may refuse to deal with the ACLEI corruption  
8 issue raised by the allegation or information until the allegation or  
9 the information is put in writing.
- 10 (5) Nothing in this section limits a person's right to make a complaint  
11 to the Ombudsman in relation to action taken by the Integrity  
12 Commissioner or a staff member of ACLEI.

13 **155 Person may elect to be kept informed**

- 14 (1) If a person refers an allegation or information to the Minister under  
15 section 154, the Minister must ask the person to elect whether or  
16 not to be kept informed of the action taken in relation to the  
17 ACLEI corruption issue raised by the allegation or information.
- 18 (2) Subsection (1) does not apply if the person refers the allegation or  
19 information anonymously.
- 20 (3) If the person fails to make an election when asked to do so, the  
21 person is taken to have elected not to be kept informed of the  
22 action taken in relation to the ACLEI corruption issue.
- 23 (4) If the person elects to be kept informed of the action taken in  
24 relation to the ACLEI corruption issue, the person may revoke the  
25 election at any time by notice to:  
26 (a) the Minister; or  
27 (b) the person conducting the investigation of the issue.

1

2 **Division 2—How Minister deals with ACLEI corruption**  
3 **issues**

4

**156 How Minister may deal with ACLEI corruption issues**

5

*Application of section*

6

(1) This section applies if:

7

(a) the Integrity Commissioner, or another staff member of  
8 ACLEI, notifies the Minister of an ACLEI corruption issue  
9 under section 153; or

10

(b) a person refers an allegation, or information, that raises an  
11 ACLEI corruption issue to the Minister under section 154; or

12

(c) the Minister otherwise becomes aware of an ACLEI  
13 corruption issue.

13

14

*How Minister may deal with ACLEI corruption issue*

15

(2) The Minister may:

16

(a) refer the ACLEI corruption issue to the Integrity  
17 Commissioner for investigation under Division 3; or

18

(b) authorise a person to conduct a special investigation of the  
19 ACLEI corruption issue under Division 4; or

20

(c) decide to take no further action in relation to the ACLEI  
21 corruption issue.

21

22

(3) The Minister must not refer the ACLEI corruption issue to the  
23 Integrity Commissioner for investigation under Division 3 if the  
24 ACLEI corruption issue relates to the conduct of a person who is a  
25 member of the staff referred to in section 197 (persons appointed  
26 or employed under the *Public Service Act 1999*).

27

(4) The Minister may, at any time, reconsider how the ACLEI  
28 corruption issue should be dealt with.

28

29

(5) If the Minister decides:

- 1 (a) to authorises a person under paragraph (2)(b) to conduct a  
2 special investigation of the ACLEI corruption issue under  
3 Division 4; or  
4 (b) to take no further action in relation to the ACLEI corruption  
5 issue;  
6 the Minister must notify the Integrity Commissioner of the  
7 decision.

8 *Integrity Commissioner to pass on information and documents to*  
9 *special investigator*

- 10 (6) The Integrity Commissioner must, as soon as practicable after  
11 being notified of an authorisation under paragraph (2)(b), give the  
12 person authorised to conduct the special investigation any  
13 information or document that:  
14 (a) relates to the ACLEI corruption issue; and  
15 (b) is in the possession, or under the control, of the Integrity  
16 Commissioner.

17 Note: Under subsection (9), the Integrity Commissioner has a continuing  
18 obligation to pass on information that the Integrity Commissioner  
19 becomes aware of and that relates to the ACLEI corruption issue.

- 20 (7) Subsection (6) has effect subject to section 152 (which deals with  
21 section 149 certified information).

- 22 (8) The Integrity Commissioner may give the original or a copy of a  
23 document.

- 24 (9) If:

- 25 (a) the Minister notifies the Integrity Commissioner that the  
26 Minister has authorised a person under paragraph (2)(b) to  
27 conduct a special investigation of an ACLEI corruption issue;  
28 and  
29 (b) the Integrity Commissioner becomes aware of information  
30 that is relevant to the issue; and  
31 (c) the person conducting the investigation does not already have  
32 the information;

33 the Integrity Commissioner must give the information to the  
34 person.

1 (10) Subsection (9) has effect subject to section 152 (which deals with  
2 section 149 certified information).

3 **157 Qualification to conduct special investigation**

4 The Minister must not authorise a person under paragraph  
5 156(2)(b) to conduct a special investigation under Division 4  
6 unless the person:

- 7 (a) is enrolled as a legal practitioner; and  
8 (b) has been enrolled as a legal practitioner for at least 5 years.

9 **158 Counsel assisting special investigator**

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

1

2 **Division 3—Investigation by Integrity Commissioner**

3 **159 Application of Division**

4 This Division applies if the Minister refers an ACLEI corruption  
5 issue to the Integrity Commissioner for investigation under this  
6 Division.

7 **160 Investigation and investigative powers**

8 (1) Subject to subsections (2), (3) and (4), Division 1 of Part 6 (other  
9 than section 49) and Parts 9 and 10 apply in relation to the  
10 investigation of the ACLEI corruption issue by the Integrity  
11 Commissioner as if the following substitutions were made:  
12

---

**Substitutions to be made**

---

<b>Item</b>	<b>For a reference to...</b>	<b>substitute a reference to...</b>
1	a corruption issue	an ACLEI corruption issue
2	a staff member of a law enforcement agency	a staff member of ACLEI
3	a law enforcement agency	ACLEI
4	a report under section 54	a report under section 162

---

13 (2) The provisions referred to in subsection (1) apply in relation to the  
14 investigation with such further modifications as are specified in the  
15 regulations.

16 (3) For the purposes of applying section 86 in relation to the  
17 investigation of the ACLEI corruption issue by the Integrity  
18 Commissioner, subsection 86(3) applies as if subparagraph  
19 86(3)(c)(i) were omitted.

20 (4) Subsections 144(2), (5) and (6) and 145(2), (5) and (6) do not  
21 apply in relation to the investigation of the ACLEI corruption  
22 issue.

23 (5) If the Integrity Commissioner proposes to take action under  
24 section 142 or 143 in relation to the investigation of the ACLEI



- 1 corruption issue, the Integrity Commissioner need not consult a  
2 person under subsection 144(3) or (4), or inform a person under  
3 subsection 145(3) or (4), if doing so would be likely to prejudice:  
4 (a) the investigation of the issue or another corruption  
5 investigation; or  
6 (b) any action taken as a result of an investigation referred to in  
7 paragraph (a).
- 8 (6) If the Integrity Commissioner does not consult or inform a person  
9 because of subsection (5), the Integrity Commissioner must:  
10 (a) inform the Minister that the person has not been consulted or  
11 informed; and  
12 (b) give the Minister the Integrity Commissioner's reasons for  
13 not consulting or informing the person.

14 **161 Keeping Minister, and person who referred ACLEI corruption**  
15 **issue, informed of progress of the investigation**

- 16 (1) The Integrity Commissioner must take such steps as the Integrity  
17 Commissioner considers reasonable to keep the Minister informed  
18 of the progress of the investigation of the ACLEI corruption issue.
- 19 (2) If:  
20 (a) a person refers the allegation, or information, that raises the  
21 ACLEI corruption issue to the Minister under section 154;  
22 and  
23 (b) the Integrity Commissioner investigates the issue; and  
24 (c) the person elects under section 155 to be kept informed of the  
25 action taken in relation to the issue and has not revoked the  
26 election;  
27 the Integrity Commissioner must take such steps as the Integrity  
28 Commissioner considers reasonable to keep the person informed of  
29 the progress of the investigation of the issue.

1 **162 Report on investigation**

2 *Report and its contents*

3 (1) After completing the investigation of the ACLEI corruption issue,  
4 the Integrity Commissioner must prepare a report on the  
5 investigation.

6 (2) The report must set out:

- 7 (a) the Integrity Commissioner's findings on the ACLEI  
8 corruption issue; and  
9 (b) the evidence and other material on which those findings are  
10 based; and  
11 (c) any action that the Integrity Commissioner has taken, or  
12 proposes to take, in relation to the issue.

13 This subsection has effect subject to subsections (4), (5) and (6).

14 Note: See section 51 (as applied by section 160) for the need for the  
15 Integrity Commissioner to give certain people an opportunity to be  
16 heard before including critical statements in a report.

17 (3) Without limiting paragraph (2)(c), the action that the Integrity  
18 Commissioner may take in relation to the ACLEI corruption issue  
19 includes:

- 20 (a) taking action in relation to a staff member of ACLEI with a  
21 view to the staff member improving his or her performance;  
22 or  
23 (b) terminating:  
24 (i) the secondment to ACLEI; or  
25 (ii) the engagement as consultant to ACLEI;  
26 of a staff member of ACLEI; or  
27 (c) taking action to rectify or mitigate the effects of the conduct  
28 of a staff member of ACLEI; or  
29 (d) adopting measures to remedy deficiencies in policy or  
30 practice that facilitated:  
31 (i) an unsuitable person becoming a staff member of  
32 ACLEI; or  
33 (ii) a staff member of ACLEI engaging in corrupt conduct;  
34 or

- 1 (iii) the failure to detect corrupt conduct engaged in by a  
2 staff member of ACLEI.

3 *Section 149 certified information and sensitive information*

- 4 (4) The Integrity Commissioner must exclude section 149 certified  
5 information from the report if one or more public hearings were  
6 held in the investigation to which the report relates.

7 Note: Under section 203, the report must be laid before each House of the  
8 Parliament.

- 9 (5) The Integrity Commissioner may exclude information from the  
10 report if the Integrity Commissioner is satisfied that:  
11 (a) the information is sensitive information or section 149  
12 certified information; and  
13 (b) it is desirable in the circumstances to exclude the information  
14 from the report.
- 15 (6) In deciding whether to exclude information from the report  
16 prepared under subsection (5), the Integrity Commissioner must  
17 seek to achieve an appropriate balance between:  
18 (a) the public interest that would be served by including the  
19 information in the report; and  
20 (b) the prejudicial consequences that might result from including  
21 the information in the report.

22 *Supplementary report*

- 23 (7) If the Integrity Commissioner excludes information from a report  
24 prepared under subsection (4) or (5), the Integrity Commissioner  
25 must prepare a supplementary report that sets out:  
26 (a) the information; and  
27 (b) the reasons for excluding the information from the report  
28 prepared under subsection (4) or (5).

29 **163 Integrity Commissioner to give report to Minister**

- 30 The Integrity Commissioner must give the Minister:  
31 (a) the report prepared under subsection 162(1); and

1 (b) if a supplementary report is prepared under subsection 162(7)  
2 in relation to the investigation—the supplementary report.

3 Note: Section 203 provides that the Minister must lay a copy of the report  
4 prepared under subsection 162(1) before each House of the Parliament  
5 if a public hearing has been held in the course of the investigation to  
6 which the report relates. The Minister is not required, however, to lay  
7 a copy of a supplementary report under subsection 162(7) before each  
8 House of the Parliament.

9 **164 Advising person who referred allegation or information about**  
10 **the outcome of the investigation**

11 (1) If a person:

12 (a) refers an allegation, or information, that raises an ACLEI  
13 corruption issue under section 154; and

14 (b) elects under section 155 to be kept informed of the action  
15 taken in relation to the ACLEI corruption issue and has not  
16 revoked the election;

17 the Integrity Commissioner must advise the person who referred  
18 the allegation or information of the outcome of the investigation of  
19 the ACLEI corruption issue.

20 (2) However, the Integrity Commissioner need not advise the person if  
21 the Integrity Commissioner is satisfied that doing so is likely to  
22 prejudice:

23 (a) the investigation of the ACLEI corruption issue or another  
24 corruption investigation; or

25 (b) any action taken as a result of an investigation referred to in  
26 paragraph (a).

27 (3) If the Integrity Commissioner advises the person who referred the  
28 allegation or information that raises the ACLEI corruption issue,  
29 the Integrity Commissioner may do so by giving the person a copy  
30 of the whole or a part of the report prepared in relation to the  
31 investigation under subsection 162(1).

32 (4) The Integrity Commissioner:

33 (a) must not disclose section 149 certified information to the  
34 person if the disclosure of the information to the person  
35 would be contravene the certificate issued under section 149;  
36 and

- 1 (b) may exclude information from the advice if the Integrity  
2 Commissioner is satisfied that:  
3 (i) the information is sensitive information; and  
4 (ii) it is desirable in the circumstances to exclude the  
5 information from the advice.
- 6 (5) In deciding whether to exclude information from the advice under  
7 paragraph (4)(b), the Integrity Commissioner must seek to achieve  
8 an appropriate balance between:  
9 (a) the person's interest in having the information included in the  
10 advice; and  
11 (b) the prejudicial consequences that might result from including  
12 the information in the advice.

13 **165 Advising person whose conduct is investigated of outcome of the**  
14 **investigation**

- 15 (1) If the Integrity Commissioner investigates an ACLEI corruption  
16 issue that relates to a person who is, or has been, a staff member of  
17 ACLEI, the Integrity Commissioner may advise the person of the  
18 outcome of the investigation.
- 19 (2) Without limiting subsection (1), the Integrity Commissioner may  
20 advise the person by giving the person a copy of the whole or a  
21 part of the report prepared in relation to the investigation under  
22 subsection 162(1).
- 23 (3) If the Integrity Commissioner advises the person, the Integrity  
24 Commissioner:  
25 (a) must not disclose section 149 certified information to the  
26 person if the disclosure of the information to the person  
27 would contravene the certificate issued under section 149;  
28 and  
29 (b) may exclude information from the advice if the Integrity  
30 Commissioner is satisfied that:  
31 (i) the information is sensitive information; and  
32 (ii) it is desirable in the circumstances to exclude the  
33 information from the advice.

- 1                   (4) In deciding whether to exclude information from the advice under  
2                   paragraph (3)(b), the Integrity Commissioner must seek to achieve  
3                   an appropriate balance between:  
4                   (a) the person's interest in having the information included in the  
5                   advice; and  
6                   (b) the prejudicial consequences that might result from including  
7                   the information in the advice.

1

2 **Division 4—Special investigations**

3 **166 Application of Part**

4 This Part applies if the Minister authorises a person (the *special*  
5 *investigator*) to conduct a special investigation of an ACLEI  
6 corruption issue under this Division.

7 **167 Investigation and investigative powers**

8 (1) Subject to subsections (2), (3) and (4), Division 1 of Part 6 (other  
9 than section 49) and Parts 9 and 10 apply in relation to the  
10 investigation of the ACLEI corruption issue by the special  
11 investigator as if the following substitutions were made:  
12

<b>Substitutions to be made</b>		
<b>Item</b>	<b>For a reference to...</b>	<b>substitute a reference to...</b>
1	the Integrity Commissioner	a special investigator
2	a corruption issue	an ACLEI corruption issue
3	a staff member of a law enforcement agency	a staff member of ACLEI
4	a law enforcement agency	ACLEI
5	a report under section 54	a report under section 169

13 (2) The provisions referred to in subsection (1) apply in relation to the  
14 investigation with such further modifications as are specified in the  
15 regulations.

16 (3) For the purposes of applying section 86 in relation to the  
17 investigation of the ACLEI corruption issue by the special  
18 investigator, subsection 86(3) applies as if subparagraph 86(3)(c)(i)  
19 were omitted.

20 (4) Subsections 144(2), (5) and (6) and 145(2), (5) and (6) do not  
21 apply to the investigation of the ACLEI corruption issue by the  
22 special investigator.

- 1 (5) If the special investigator proposes to take action under section 142  
2 or 143 in relation to the investigation of the ACLEI corruption  
3 issue, the special investigator need not consult a person under  
4 subsection 142(3) or (4), or inform a person under subsection  
5 145(3) or (4), if doing so would be likely to prejudice:  
6 (a) the investigation of the ACLEI corruption issue or another  
7 corruption investigation; or  
8 (b) any action taken as a result of an investigation referred to in  
9 paragraph (a).
- 10 (6) If a special investigator does not consult or inform a person  
11 because of subsection (5), the special investigator must:  
12 (a) inform the Minister that the person has not been consulted or  
13 informed; and  
14 (b) give the Minister the Integrity Commissioner's reasons for  
15 not consulting or informing the person.

16 **168 Keeping Minister, and person who referred ACLEI corruption**  
17 **issue, informed of progress of the investigation**

- 18 (1) The special investigator must take such steps as the special  
19 investigator considers reasonable to keep the Minister informed of  
20 the progress of the special investigation of the ACLEI corruption  
21 issue.
- 22 (2) If:  
23 (a) a person refers to the Minister an allegation, or information,  
24 that raises an ACLEI corruption issue under section 154; and  
25 (b) a special investigator investigates the issue; and  
26 (c) the person elects under section 155 to be kept informed of the  
27 action taken in relation to the issue and has not revoked the  
28 election;  
29 the special investigator must take such steps as the special  
30 investigator considers reasonable to keep the person informed of  
31 the progress of the investigation of the issue.



1 **169 Report on investigation**

2 *Report and its contents*

3 (1) After completing the special investigation of the ACLEI corruption  
4 issue, the special investigator must prepare a report on the special  
5 investigation.

6 (2) The report must set out:

7 (a) the special investigator's findings on the ACLEI corruption  
8 issue; and

9 (b) the evidence and other material on which those findings are  
10 based; and

11 (c) any recommendations to the Minister or Integrity  
12 Commissioner that the special investigator thinks fit to make  
13 and, if recommendations are made, the reasons for those  
14 recommendations.

15 This subsection has effect subject to subsections (4), (5) and (6).

16 Note: See section 51 (as applied by section 167) for the need for the special  
17 investigator to give certain people an opportunity to be heard before  
18 including critical statements in a report.

19 (3) Without limiting paragraph (2)(c), the special investigator may  
20 recommend that the Integrity Commissioner consider:

21 (a) taking action in relation to a staff member of ACLEI with a  
22 view to the staff member improving his or her performance;  
23 or

24 (b) terminating the employment, or the secondment to ACLEI, of  
25 a staff member of ACLEI; or

26 (c) taking action to rectify or mitigate the effects of the conduct  
27 of a staff member of ACLEI; or

28 (d) adopting measures to remedy deficiencies in policy or  
29 practice that facilitated:

30 (i) an unsuitable person becoming a staff member of  
31 ACLEI; or

32 (ii) a staff member of ACLEI engaging in corrupt conduct;  
33 or

34 (iii) the failure to detect corrupt conduct engaged in by a  
35 staff member of ACLEI.

1                                    *Section 149 certified information and sensitive information*

- 2                    (4) The special investigator must exclude section 149 certified  
3                    information from the report if one or more public hearings were  
4                    held in relation to the investigation to which the report relates.

5                    Note:            Under section 203, the report must be laid before each House of the  
6                    Parliament.

- 7                    (5) The special investigator may exclude information from the report if  
8                    the special investigator is satisfied that:

- 9                                    (a) the information is sensitive information or section 149  
10                                    certified information; and  
11                                    (b) it is desirable in the circumstances to exclude the information  
12                                    from the report.

- 13                    (6) In deciding whether to exclude information from the report  
14                    prepared under subsection (5), the special investigator must seek to  
15                    achieve an appropriate balance between:

- 16                                    (a) the public interest that would be served by including the  
17                                    information in the report; and  
18                                    (b) the prejudicial consequences that might result from including  
19                                    the information in the report.

20                                    *Supplementary report*

- 21                    (7) If the special investigator excludes information from a report  
22                    prepared under subsection (4) or (5), the special investigator must  
23                    prepare a supplementary report that sets out:

- 24                                    (a) the information; or  
25                                    (b) the reasons for excluding the information from the report  
26                                    prepared under subsection (4) or (5).

27                    **170 Special investigator to give report to Minister**

- 28                    (1) The special investigator must give the Minister:  
29                                    (a) the report prepared under subsection 169(1); and  
30                                    (b) if a supplementary report is prepared under subsection 169(7)  
31                                    in relation to the investigation—the supplementary report.

32                    Note:            Section 203 provides that the Minister must lay a copy of the report  
33                    prepared under subsection 169(1) before each House of the Parliament

1 if a public hearing has been held in the course of the investigation to  
2 which the report relates. The Minister is not required, however, to lay  
3 a copy of a supplementary report under subsection 169(7) before each  
4 House of the Parliament.

5 (2) The Minister must give a copy of the report, and the supplementary  
6 report (if any), to the Integrity Commissioner.

7 **171 Minister may direct Integrity Commissioner to consider taking**  
8 **action**

9 *Minister may give direction to Integrity Commissioner*

10 (1) If:

11 (a) the Minister authorises a person under paragraph 156(2)(b) to  
12 conduct a special investigation of the ACLEI corruption issue  
13 under Division 4; and

14 (b) the person gives the Minister the report prepared under  
15 section 169 in relation to the special investigation;

16 the Minister may direct the Integrity Commissioner:

17 (c) to consider whether action should be taken to terminate the  
18 appointment, or the secondment to ACLEI, of a person  
19 referred to in the report; or

20 (d) to consider whether disciplinary proceedings should be taken  
21 against a person referred to in the report.

22 (2) The Integrity Commissioner must comply with a direction under  
23 subsection (1).

24 (3) If the direction under subsection (1) relates to a member of the staff  
25 referred to in section 197 (persons appointed or employed under  
26 the *Public Service Act 1999*), the Integrity Commissioner must, in  
27 giving effect to the direction, also comply with:

28 (a) section 15 of the *Public Service Act 1999*; and

29 (b) regulations made for the purposes of that section; and

30 (c) procedures established and directions given under that  
31 section.

1                                    *Direction is not a legislative instrument*

2                                    (4) A direction given to the Integrity Commissioner under  
3                                    subsection (1) is not a legislative instrument.

4                                    **172 Advising person who referred allegation or information about**  
5                                    **the outcome of the investigation**

6                                    (1) If a person:

7    (a) refers an allegation, or information, that raises an ACLEI  
8    corruption issue under section 154; and

9    (b) the person elects under section 155 to be kept informed of the  
10    action taken in relation to the ACLEI corruption issue and  
11    has not revoked the election;

12                                    the special investigator must advise the person of the outcome of  
13                                    the special investigation.

14                                    (2) However, the special investigator need not advise the person if the  
15                                    special investigator is satisfied that doing so is likely to prejudice:

16    (a) the investigation of the ACLEI corruption issue or another  
17    corruption investigation; or

18    (b) any action taken as a result of an investigation referred to in  
19    paragraph (a).

20                                    (3) If the special investigator advises the person, the special  
21                                    investigator may do so by giving the person a copy of the whole or  
22                                    a part of the report prepared in relation to the special investigation  
23                                    under subsection 169(1).

24                                    (4) The special investigator:

25    (a) must not disclose section 149 certified information to the  
26    person if the disclosure of the information to the person  
27    would contravene the certificate issued under section 149;  
28    and

29    (b) may exclude information from the advice if the special  
30    investigator is satisfied that:

31    (i) the information is sensitive information; and

32    (ii) it is desirable in the circumstances to exclude the  
33    information from the advice.

- 1 (5) In deciding whether to exclude information from the advice under  
2 paragraph (4)(b), the special investigator must seek to achieve an  
3 appropriate balance between:  
4 (a) the person's interest in having the information included in the  
5 advice; and  
6 (b) the prejudicial consequences that might result from including  
7 the information in the advice.

8 **173 Advising person whose conduct is investigated of outcome of the**  
9 **investigation**

- 10 (1) If a special investigator investigates an ACLEI corruption issue  
11 that relates to a person who is, or has been, a staff member of  
12 ACLEI, the special investigator may advise the person of the  
13 outcome of the special investigation.
- 14 (2) Without limiting subsection (1), a special investigator may advise  
15 the person by giving the person a copy of the whole or a part of the  
16 report prepared in relation to the special investigation under  
17 subsection 169(1).
- 18 (3) If a special investigator advises the person, the special investigator:  
19 (a) must not disclose section 149 certified information to the  
20 person if the disclosure of the information to the person  
21 would contravene the certificate issued under section 149;  
22 and  
23 (b) may exclude information from the advice if the special  
24 investigator is satisfied that:  
25 (i) the information is sensitive information; and  
26 (ii) it is desirable in the circumstances to exclude the  
27 information from the advice.
- 28 (4) In deciding whether to exclude information from the advice under  
29 paragraph (3)(b), the special investigator must seek to achieve an  
30 appropriate balance between:  
31 (a) the person's interest in having the information included in the  
32 advice; and  
33 (b) the prejudicial consequences that might result from including  
34 the information in the advice.

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2 **Division 5—Staff members of ACLEI to report corrupt**

3 **conduct**

4 **174 Staff members of ACLEI to report corrupt conduct**

5 (1) The Integrity Commissioner commits an offence if the Integrity  
6 Commissioner:

- 7 (a) becomes aware of an ACLEI corruption issue that relates to  
8 the conduct of a person who is, or has been, a staff member  
9 of ACLEI (other than the Integrity Commissioner himself or  
10 herself); and  
11 (b) does not, as soon as practicable after becoming aware of the  
12 ACLEI corruption issue, notify the Minister of the issue in  
13 writing.

14 Penalty: Imprisonment for 6 months.

15 (2) Subsection (1) does not apply if the Integrity Commissioner has  
16 reasonable grounds to believe that the Minister has already been  
17 notified of the ACLEI corruption issue.

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

20 (3) A person commits an offence if the person:

- 21 (a) is a staff member of ACLEI (other than the Integrity  
22 Commissioner); and  
23 (b) becomes aware of an ACLEI corruption issue that relates to  
24 the conduct of the person who is the Integrity Commissioner;  
25 and  
26 (c) does not, as soon as practicable after becoming aware of the  
27 ACLEI corruption issue, notify the Minister of the issue in  
28 writing.

29 Penalty: Imprisonment for 6 months.

30 (4) Subsection (3) does not apply if the person has reasonable grounds  
31 to believe that the Minister has already been notified of the ACLEI  
32 corruption issue.

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

- (5) A person (the *first person*) commits an offence if the first person:
- (a) is a staff member of ACLEI (other than the Integrity Commissioner); and
  - (b) becomes aware of an ACLEI corruption issue that relates to the conduct of another person who is, or has been, a staff member of ACLEI (other than the person who is the Integrity Commissioner); and
  - (c) does not, as soon as practicable after becoming aware of the ACLEI corruption issue, notify the Integrity Commissioner of the issue in writing.

Penalty: Imprisonment for 6 months.

- (6) Subsection (5) does not apply if the person has reasonable grounds to believe that the Integrity Commissioner, has already been notified of the ACLEI corruption issue.

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

- (7) A notification given under this section is not a legislative instrument.

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2 **Part 13—Administrative provisions**

3 **Division 1—Appointment etc. of Integrity Commissioner**

4 **175 Appointment of Integrity Commissioner**

5 *Appointment by Governor-General*

- 6 (1) The Integrity Commissioner is to be appointed by the  
7 Governor-General by written instrument.

8 *Integrity Commissioner to be judge or legal practitioner*

- 9 (2) A person must not be appointed as the Integrity Commissioner  
10 unless he or she:  
11 (a) is a Judge; or  
12 (b) is enrolled as a legal practitioner and has been enrolled as a  
13 legal practitioner for at least 5 years.

14 Note: The Integrity Commissioner can be re-appointed under this section:  
15 see subsection 33(4A) of the *Acts Interpretation Act 1901*.

16 *Period of appointment*

- 17 (3) The Integrity Commissioner holds office for the period specified in  
18 the instrument of appointment. The period must not exceed 5 years.  
19 The sum of the periods for which the Integrity Commissioner holds  
20 office must not exceed 5 years.

21 *Full-time appointment*

- 22 (4) The Integrity Commissioner is to be appointed on a full-time basis.

23 *Arrangement with Governor of State or Administrator of Territory*

- 24 (5) The Governor-General may, for the purpose of appointing to the  
25 office of the Integrity Commissioner a person who is the holder of  
26 a judicial office of a State or Territory, enter into such arrangement  
27 with the Governor of that State or the Administrator of that



1 Territory, as the case may be, as is necessary to secure that  
2 person's services.

3 (6) An arrangement under subsection (5) may provide for the  
4 Commonwealth to reimburse a State or Territory with respect to  
5 the services of the person to whom the arrangement relates.

6 *Definition of Judge*

7 (7) In this section:

8 **Judge** means:

- 9 (a) a Judge of the Federal Court of Australia; or  
10 (b) a Judge of the Supreme Court of a State or Territory.

11 **176 Judge may be appointed as Integrity Commissioner**

12 *Application of section*

13 (1) This section applies if a person appointed as the Integrity  
14 Commissioner is a Judge.

15 *Effect of ceasing to be Judge*

16 (2) The person ceases to hold office as the Integrity Commissioner if  
17 he or she is no longer a Judge.

18 *Judge's privileges as holder of a judicial office unaffected*

19 (3) The appointment of the Judge as the Integrity Commissioner and  
20 the Judge's service as the Integrity Commissioner does not affect:

- 21 (a) his or her tenure of judicial office; or  
22 (b) the Judge's rank, title, status, precedence, salary or annual  
23 allowances or other judicial privileges as the holder of that  
24 judicial office.

25 (4) For all purposes, the Judge's service as the Integrity Commissioner  
26 is taken to be service as the holder of his or her judicial office.

27 *Definition of Judge*

28 (5) In this section:

- 1                    **Judge** means:  
2                    (a) a Judge of the Federal Court of Australia; or  
3                    (b) a Judge of the Supreme Court of a State or Territory.

4                    **177 Acting appointment**

- 5                    (1) The Minister may appoint a person to act as the Integrity  
6                    Commissioner:  
7                    (a) during a vacancy in the office of Integrity Commissioner  
8                    (whether or not an appointment has previously been made to  
9                    the office); or  
10                    (b) during any period, or during all periods, when the Integrity  
11                    Commissioner is absent from duty or from Australia, or is,  
12                    for any reason, unable to perform the duties of the office.

13                    Note:            See also section 33A of the *Acts Interpretation Act 1901*, which  
14                    contains extra rules about acting appointments.

- 15                    (2) A person may only be appointed as the acting Integrity  
16                    Commissioner if he or she:  
17                    (a) is enrolled as a legal practitioner; and  
18                    (b) has been enrolled as a legal practitioner for at least 5 years.
- 19                    (3) Anything done by or in relation to a person purporting to act under  
20                    an appointment is not invalid merely because:  
21                    (a) the occasion for the appointment had not arisen; or  
22                    (b) there was a defect or irregularity in connection with the  
23                    appointment; or  
24                    (c) the appointment had ceased to have effect; or  
25                    (d) the occasion to act had not arisen or had ceased.

26                    **178 Remuneration**

- 27                    (1) The Integrity Commissioner is to be paid the remuneration that is  
28                    determined by the Remuneration Tribunal. If no determination of  
29                    that remuneration by the Tribunal is in operation, the Integrity  
30                    Commissioner is to be paid the remuneration that is prescribed by  
31                    the regulations.

- 1 (2) The Integrity Commissioner is to be paid the allowances that are  
2 prescribed by the regulations.
- 3 (3) Subsections (1) and (2) have effect subject to the *Remuneration*  
4 *Tribunal Act 1973*.
- 5 (4) If a person who is a Judge is appointed as Integrity Commissioner,  
6 the person is not, while receiving salary or annual allowance as a  
7 Judge, entitled to remuneration under this Act.

8 **179 Leave**

- 9 (1) The Integrity Commissioner has the recreation leave entitlements  
10 that are determined by the Remuneration Tribunal.
- 11 (2) The Minister may grant the Integrity Commissioner leave of  
12 absence, other than recreation leave, on the terms and conditions as  
13 to remuneration or otherwise that the Minister determines.

14 **180 Outside employment**

15 The Integrity Commissioner must not engage in paid employment  
16 outside the duties of his or her office without the Minister's  
17 consent.

18 **181 Other terms and conditions**

19 A person holding office as Integrity Commissioner, other than a  
20 person who is a Judge, holds office on the terms and conditions (if  
21 any) in relation to matters not provided for by this Act as are  
22 determined by the Governor-General.

23 **182 Resignation**

24 The Integrity Commissioner may resign his or her appointment by  
25 giving the Governor-General a written resignation.

1 **183 Termination of employment**

- 2 (1) The Governor-General may terminate the appointment of the  
3 Integrity Commissioner by reason of misbehaviour or physical or  
4 mental incapacity.
- 5 (2) The Governor-General must terminate the appointment of the  
6 Integrity Commissioner if:
- 7 (a) the Integrity Commissioner becomes bankrupt, applies to  
8 take the benefit of any law for the relief of bankrupt or  
9 insolvent debtors, compounds with creditors or makes an  
10 assignment of remuneration for their benefit; or
- 11 (b) the Integrity Commissioner is absent from duty, except on  
12 leave, for 14 consecutive days or for 28 days in any period of  
13 12 months; or
- 14 (c) the Integrity Commissioner engages, except with the  
15 Minister's consent, in paid employment outside the duties of  
16 his or her office; or
- 17 (d) the Integrity Commissioner fails to comply with section 184.
- 18 (3) A reference in subsections (1) and (2) to a person holding office as  
19 Integrity Commissioner does not include a reference to a person  
20 who is a Judge.

21 **184 Disclosure of interests**

22 The Integrity Commissioner must give written notice to the  
23 Minister of all interests (financial or otherwise) that the Integrity  
24 Commissioner has or acquires and that could conflict with the  
25 proper performance of the Integrity Commissioner's functions.

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2 **Division 2—Appointment etc. of Assistant Integrity**

3 **Commissioners**

4 **185 Appointment of Assistant Integrity Commissioners**

5 *Appointment by Governor-General*

6 (1) An Assistant Integrity Commissioner is to be appointed by the  
7 Governor-General by written instrument.

8 *Assistant Integrity Commissioner to be judge or legal practitioner*

9 (2) A person must not be appointed as an Assistant Integrity  
10 Commissioner unless he or she:  
11 (a) is a Judge; or  
12 (b) is enrolled as a legal practitioner and has been enrolled as a  
13 legal practitioner for at least 5 years.

14 *Period of appointment*

15 (3) An Assistant Integrity Commissioner holds office for the period  
16 specified in the instrument of appointment. The period must not  
17 exceed 5 years. The sum of the periods for which a person holds  
18 office as an Assistant Integrity Commissioner must not exceed 5  
19 years.

20 *Full-time or part-time appointment*

21 (4) An Assistant Integrity Commissioner may be appointed on either a  
22 full-time or part-time basis.

23 (5) However, a Judge may only be appointed as an Assistant Integrity  
24 Commissioner on a full-time basis.

25 *Arrangement with Governor of State or Administrator of Territory*

26 (6) The Governor-General may, for the purpose of appointing to the  
27 office of an Assistant Integrity Commissioner a person who is the  
28 holder of a judicial office of a State or Territory, enter into such

1 arrangement with the Governor of that State or the Administrator  
2 of that Territory, as the case may be, as is necessary to secure that  
3 person's services.

4 (7) An arrangement under subsection (6) may provide for the  
5 Commonwealth to reimburse a State or Territory with respect to  
6 the services of the person to whom the arrangement relates.

7 *Definition of Judge*

8 (8) In this section:

9 *Judge* means:

- 10 (a) a Judge of the Federal Court of Australia; or  
11 (b) a Judge of the Supreme Court of a State or Territory.

12 **186 Judge may be appointed as an Assistant Integrity Commissioner**

13 *Application of section*

14 (1) This section applies if a person appointed as an Assistant Integrity  
15 Commissioner is a Judge.

16 *Effect of ceasing to be Judge*

17 (2) The person ceases to hold office as an Assistant Integrity  
18 Commissioner if he or she is no longer a Judge.

19 *Judge's privileges as holder of a judicial office unaffected*

20 (3) The appointment of the Judge as an Assistant Integrity  
21 Commissioner and the Judge's service as an Assistant Integrity  
22 Commissioner does not affect:

- 23 (a) his or her tenure of judicial office; or  
24 (b) the Judge's rank, title, status, precedence, salary or annual  
25 allowances or other judicial privileges as the holder of that  
26 judicial office.

27 (4) For all purposes, the Judge's service as an Assistant Integrity  
28 Commissioner is taken to be service as the holder of his or her  
29 judicial office.

1                    *Definition of Judge*

2                    (5) In this section:

3                    **Judge** means:

- 4                    (a) a Judge of the Federal Court of Australia; or  
5                    (b) a Judge of the Supreme Court of a State or Territory.

6                    **187 Acting appointments**

7                    (1) The Minister may appoint a person to act as an Assistant Integrity  
8                    Commissioner:

- 9                    (a) during a vacancy in the office of the Assistant Integrity  
10                    Commissioner (whether or not an appointment has  
11                    previously been made to the office); or  
12                    (b) during any period, or during all periods, when the Assistant  
13                    Integrity Commissioner is absent from duty or from  
14                    Australia, or is, for any reason, unable to perform the duties  
15                    of the office.

16                    Note:            See also section 33A of the *Acts Interpretation Act 1901*, which  
17                    contains extra rules about acting appointments.

18                    (2) A person may only be appointed as the acting Integrity  
19                    Commissioner if he or she:

- 20                    (a) is enrolled as a legal practitioner; and  
21                    (b) has been enrolled as a legal practitioner for at least 5 years.

22                    (3) Anything done by or in relation to a person purporting to act under  
23                    an appointment is not invalid merely because:

- 24                    (a) the occasion for the appointment had not arisen; or  
25                    (b) there was a defect or irregularity in connection with the  
26                    appointment; or  
27                    (c) the appointment had ceased to have effect; or  
28                    (d) the occasion to act had not arisen or had ceased.

29                    **188 Remuneration**

30                    (1) An Assistant Integrity Commissioner is to be paid the  
31                    remuneration that is determined by the Remuneration Tribunal. If  
32                    no determination of that remuneration by the Tribunal is in

- 1 operation, an Assistant Integrity Commissioner is to be paid the  
2 remuneration that is prescribed by the regulations.
- 3 (2) An Assistant Integrity Commissioner is to be paid the allowances  
4 that are prescribed by the regulations.
- 5 (3) Subsections (1) and (2) have effect subject to the *Remuneration*  
6 *Tribunal Act 1973*.
- 7 (4) If a person who is a Judge is appointed as an Assistant Integrity  
8 Commissioner, the person is not, while receiving salary or annual  
9 allowance as a Judge, entitled to remuneration under this Act.

10 **189 Leave**

- 11 (1) A full-time Assistant Integrity Commissioner has the recreation  
12 leave entitlements that are determined by the Remuneration  
13 Tribunal.
- 14 (2) The Minister may grant a full-time Assistant Integrity  
15 Commissioner leave of absence, other than recreation leave, on the  
16 terms and conditions as to remuneration or otherwise that the  
17 Minister determines.
- 18 (3) The Integrity Commissioner may grant leave of absence to any  
19 part-time Assistant Integrity Commissioner on the terms and  
20 conditions that the Integrity Commissioner determines.

21 **190 Outside employment**

- 22 (1) A full-time Assistant Integrity Commissioner must not engage in  
23 paid employment outside the duties of his or her office without the  
24 Minister's consent.
- 25 (2) A part-time Assistant Integrity Commissioner must not engage in  
26 paid employment that, in the Minister's opinion, conflicts or could  
27 conflict with the proper performance of the Assistant Integrity  
28 Commissioner's duties.



1 **191 Other terms and conditions**

2 A person holding office as an Assistant Integrity Commissioner,  
3 other than a person who is a Judge, holds office on the terms and  
4 conditions (if any) in relation to matters not provided for by this  
5 Act as are determined by the Governor-General.

6 **192 Resignation**

7 An Assistant Integrity Commissioner may resign his or her  
8 appointment by giving the Governor-General a written resignation.

9 **193 Termination of employment**

10 *All Assistant Integrity Commissioners*

- 11 (1) The Governor-General may terminate the appointment of an  
12 Assistant Integrity Commissioner:
- 13 (a) for misbehaviour or physical or mental incapacity; or
  - 14 (b) if the Assistant Integrity Commissioner:
    - 15 (i) becomes bankrupt; or
    - 16 (ii) applies to take the benefit of any law for the relief of  
17 bankrupt or insolvent debtors; or
    - 18 (iii) compounds with creditors; or
    - 19 (iv) makes an assignment of remuneration for their benefit;  
20 or
  - 21 (c) if the Assistant Integrity Commissioner fails to comply with  
22 section 194.

23 *Additional grounds (full-time Assistant Integrity Commissioners)*

- 24 (2) The Governor-General may terminate the appointment of a  
25 full-time Assistant Integrity Commissioner, if:
- 26 (a) the Assistant Integrity Commissioner is absent from duty,  
27 except on leave, for 14 consecutive days or for 28 days in  
28 any period of 12 months; or
  - 29 (b) the Assistant Integrity Commissioner engages, except with  
30 the Minister's consent, in paid employment outside the duties  
31 of his or her office.

1 *Additional grounds (part-time Assistant Integrity Commissioners)*

2 (3) The Governor-General may terminate the appointment of a  
3 part-time Assistant Integrity Commissioner, if the Assistant  
4 Integrity Commissioner engages, except with the Minister's  
5 approval, in paid employment that conflicts or could conflict with  
6 the proper performance of the duties of his or her office.

7 (4) A reference in subsections (1) and (2) to a person holding office as  
8 an Assistant Integrity Commissioner does not include a reference  
9 to a person who is a Judge.

10 **194 Disclosure of interests**

11 An Assistant Integrity Commissioner must give written notice to  
12 the Minister of all interests (financial or otherwise) that the  
13 Assistant Integrity Commissioner has or acquires and that could  
14 conflict with the proper performance of the Assistant Integrity  
15 Commissioner's duties.

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2 **Division 3—The Australian Commission for Law**  
3 **Enforcement Integrity**

4 **195 Establishment**

- 5 (1) The Australian Commission for Law Enforcement Integrity  
6 (ACLEI) is established by this section.
- 7 (2) ACLEI consists of the Integrity Commissioner, any Assistant  
8 Integrity Commissioner and the staff referred to in section 197.

9 **196 Function**

10 The function of ACLEI is to assist the Integrity Commissioner in  
11 performing the Integrity Commissioner's functions.

12 Note: See section 15 for the functions of the Integrity Commissioner.

13 **197 Staff**

- 14 (1) The staff of ACLEI are to be persons appointed or employed under  
15 the *Public Service Act 1999*.
- 16 (2) For the purposes of the *Public Service Act 1999*:  
17 (a) the Integrity Commissioner and the APS employees assisting  
18 the Integrity Commissioner together constitute a Statutory  
19 Agency; and  
20 (b) the Integrity Commissioner is the Head of that Statutory  
21 Agency.

22 **198 Engagement of consultants**

- 23 (1) The Integrity Commissioner may engage persons having suitable  
24 qualifications and experience as consultants to ACLEI.
- 25 (2) A person may only be engaged for a period of up to 2 years.  
26 However, a person's contract may be extended beyond 2 years for  
27 the sole purpose of completing a particular task or project begun in  
28 the initial 2 year period.

- 1 (3) Other terms and conditions of appointment are to be determined by  
2 the Integrity Commissioner.

3 **199 Secondment of persons to assist Integrity Commissioner**

4 *Police officers*

- 5 (1) The Integrity Commissioner may make an arrangement with:  
6 (a) the Commissioner of the AFP; or  
7 (b) the head (however described) of the police force of:  
8 (i) a State or Territory; or  
9 (ii) a foreign country;  
10 under which the AFP or the police force may make its members  
11 available to the Integrity Commissioner to perform services in  
12 connection with the performance or exercise of any of the Integrity  
13 Commissioner's functions or powers.

14 *Officers and employees*

- 15 (2) The Integrity Commissioner may make an arrangement with:  
16 (a) the Agency Head (within the meaning of the *Public Service*  
17 *Act 1999*) of a Commonwealth government agency (other  
18 than the AFP); or  
19 (b) the head of an integrity agency for a State or Territory; or  
20 (c) the head of an overseas government agency that has similar  
21 functions to an integrity agency for a State or Territory;  
22 under which the agency concerned may make its officers or  
23 employees available to the Integrity Commissioner to perform  
24 services in connection with the performance or exercise of any of  
25 the Integrity Commissioner's functions or powers.
- 26 (3) A person made available under an arrangement under  
27 subsection (1) or (2) may only be engaged for a period of up to 2  
28 years. However, a person's engagement may be extended beyond 2  
29 years for the sole purpose of completing a particular task or project  
30 begun in the initial 2 year period.

- 31 (4) An arrangement under subsection (1) or (2) may provide for the  
32 Commonwealth to reimburse a State or Territory, or the

1 government of a foreign country, with respect to the services of a  
2 person or persons to whom the arrangement relates.

3 **200 Counsel assisting Integrity Commissioner**

4 The Integrity Commissioner may appoint a legal practitioner to  
5 assist the Integrity Commissioner as counsel:

- 6 (a) generally; or  
7 (b) in relation to a particular investigation of a corruption issue  
8 or ACLEI corruption issue; or  
9 (c) in relation to a public inquiry.

1

2 **Division 4—Public reporting**

3 **201 Annual report**

4 (1) The Integrity Commissioner must give the Minister, for  
5 presentation to the Parliament, a report (the **annual report**) on the  
6 performance of the Integrity Commissioner's functions during each  
7 financial year.

8 Note: See also section 34C of the *Acts Interpretation Act 1901*, which  
9 contains extra rules about annual reports.

10 (2) The annual report for the financial year must include the following:

11 (a) the prescribed particulars of:

12 (i) corruption issues notified to the Integrity Commissioner  
13 under section 19 during the financial year; and

14 (ii) corruption issues raised by allegations or information  
15 referred to the Integrity Commissioner under  
16 sections 18 and 23 during that year; and

17 (iii) corruption issues dealt with by the Integrity  
18 Commissioner on his or her own initiative during that  
19 year; and

20 (iv) corruption issues investigated by the Integrity  
21 Commissioner during that year; and

22 (v) corruption issues that the Integrity Commissioner  
23 referred to a government agency for investigation  
24 during that year; and

25 (vi) ACLEI corruption issues investigated during that year;

26 (b) a description of investigations conducted by the Integrity  
27 Commissioner during the financial year that the Integrity  
28 Commissioner considers raise significant issues or  
29 developments in law enforcement;

30 (c) a description, which may include statistics, of any patterns or  
31 trends, and the nature and scope, of corruption in:

32 (i) law enforcement agencies; and

33 (ii) other Commonwealth government agencies that have  
34 law enforcement functions;

- 1 that have come to the Integrity Commissioner's attention  
2 during that year in the performance of his or her functions;  
3 (d) any recommendations for changes to:  
4 (i) the laws of the Commonwealth; or  
5 (ii) administrative practices of Commonwealth government  
6 agencies;  
7 that the Integrity Commissioner, as a result of performing his  
8 or her functions during that year, considers should be made;  
9 (e) the extent to which investigations by the Integrity  
10 Commissioner have resulted in the prosecution in that year of  
11 persons for offences;  
12 (f) the extent to which investigations by the Integrity  
13 Commissioner have resulted in confiscation proceedings in  
14 that year;  
15 (g) details of the number and results of:  
16 (i) applications made to the Federal Court or the Federal  
17 Magistrates Court under the *Administrative Decisions*  
18 *(Judicial Review) Act 1977* for orders of review in  
19 respect of matters arising under this Act; and  
20 (ii) other court proceedings involving the Integrity  
21 Commissioner;  
22 being applications and proceedings that were determined, or  
23 otherwise disposed of, during that year.

24 **202 Inter-Governmental Committee comments on annual report**

- 25 If an annual report under section 201 mentions the ACC, the  
26 Minister must:  
27 (a) give a copy of the annual report to the Inter-Governmental  
28 Committee; and  
29 (b) if the Inter-Governmental Committee gives the Minister  
30 comments in writing in relation to the annual report—cause a  
31 copy of those comments to be laid before each House of the  
32 Parliament within 15 sitting days of that House after the day  
33 on which the Minister receives those comments.

1     **203 Reports on investigations and public inquiries**

2             (1) If:

3                 (a) both:

4                     (i) the Integrity Commissioner gives the Minister a report  
5                         prepared under subsection 54(1) or 162(1); and

6                     (ii) one or more public hearings were held in the course of  
7                         the investigation to which the report relates; or

8                 (b) the Integrity Commissioner gives the Minister a report  
9                     prepared under subsection 73(1); or

10                (c) both:

11                    (i) a special investigator gives the Minister a report  
12                        prepared under subsection 169(1); and

13                    (ii) one or more public hearings were held in the course of  
14                        the special investigation to which the report relates;

15             the Minister must cause the report to be laid before each House of  
16             Parliament within 15 sitting days of that House after its receipt by  
17             the Minister.

18             (2) Before the report is laid before each House of Parliament, the  
19             Minister must remove information from the report if the Minister is  
20             of the view that its inclusion may:

21                 (a) endanger a person's life or physical safety; or

22                 (b) prejudice proceedings brought as a result of:

23                     (i) a corruption investigation or public inquiry; or

24                     (ii) an investigation of a corruption issue that the Integrity  
25                         Commissioner manages or oversees; or

26                 (c) compromise operational activities, or methodologies, of  
27                     ACLEI or a law enforcement agency.

28             (3) To avoid doubt, the Minister is not required by subsection (1) to  
29             cause a supplementary report prepared under subsection 54(7),  
30             73(6), 162(7) or 169(7) to be laid before each House of Parliament.



1     **204 Special reports**

2                     *Integrity Commissioner may give Minister special reports*

- 3             (1) The Integrity Commissioner may, from time to time, give the  
4             Minister, for presentation to the Parliament, a special report on:  
5                 (a) the operations of the Integrity Commissioner for a part of a  
6                 financial year; or  
7                 (b) any matter relating to, or arising in connection with, the  
8                 performance of the Integrity Commissioner's functions, or  
9                 the exercise of the Integrity Commissioner's powers, under  
10                 this Act.

- 11             (2) If the Integrity Commissioner gives a special report to the Minister  
12             under subsection (1), the Minister must cause the report to be laid  
13             before each House of the Parliament within 15 sitting days of that  
14             House after its receipt by the Minister.

15                     *Opinion or finding critical of a government agency or person*

- 16             (3) The Integrity Commissioner must not disclose information in a  
17             special report prepared under subsection (1) that includes an  
18             opinion or finding that is critical of a government agency or person  
19             (either expressly or impliedly) unless the Integrity Commissioner  
20             has taken the action required by subsection (4) or (5) before  
21             disclosing the information.
- 22             (4) If the opinion or finding is critical of a government agency, the  
23             Integrity Commissioner must give the head of the agency:  
24                 (a) a statement setting out the opinion or finding; and  
25                 (b) a reasonable opportunity to appear before him or her and to  
26                 make submissions in relation to the opinion or finding.
- 27             (5) If the opinion or finding is critical of a person, the Integrity  
28             Commissioner must give the person:  
29                 (a) a statement setting out the opinion or finding; and  
30                 (b) a reasonable opportunity to appear before him or her and to  
31                 make submissions in relation to the opinion or finding.
- 32             (6) The submissions may be made orally or in writing.

- 1 (7) The head of a government agency may:  
2 (a) appear before the Integrity Commissioner personally; or  
3 (b) authorise another person to appear before the Integrity  
4 Commissioner on his or her behalf.
- 5 (8) A person referred to in subsection (5):  
6 (a) may appear before the Integrity Commissioner personally; or  
7 (b) may, with the Integrity Commissioner's approval, be  
8 represented by another person.

9 **205 Inter-Governmental Committee comments on special report in**  
10 **relation to ACC**

- 11 If a special report under section 204 relates to the ACC, the  
12 Minister must:  
13 (a) give a copy of the report to the Inter-Governmental  
14 Committee; and  
15 (b) if the Inter-Governmental Committee gives the Minister  
16 comments, in writing, in relation to the report—cause a copy  
17 of those comments to be laid before each House of the  
18 Parliament within 15 sitting days of that House after their  
19 receipt by the Minister.

20 **206 Contents of annual or special report**

- 21 (1) An annual report under section 201, or a special report under  
22 section 204, must not include section 149 certified information.
- 23 (2) The Integrity Commissioner may exclude information from an  
24 annual report under section 201, or a special report under  
25 section 204, if the Integrity Commissioner is satisfied that:  
26 (a) the information is sensitive information; and  
27 (b) it is desirable in the circumstances to exclude the information  
28 from the report.
- 29 (3) In deciding whether to exclude information under subsection (2),  
30 the Integrity Commissioner must seek to achieve an appropriate  
31 balance between:

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- (a) the public interest that would be served by including the information in the report; and
- (b) the prejudicial consequences that might result from including the information in the report.

1

2 **Division 5—Confidentiality requirements**

3 **207 Confidentiality requirements for ACLEI staff**

- 4 (1) A person who is, or has been, a staff member of ACLEI commits  
5 an offence if:
- 6 (a) the person (either directly or indirectly and either while he or  
7 she is, or after he or she ceases to be, a staff member of  
8 ACLEI):
    - 9 (i) makes a record of any information; or
    - 10 (ii) divulges or communicates any information; and
  - 11 (b) the person acquired the information:
    - 12 (i) because of his or her being a staff member of ACLEI; or
    - 13 (ii) in the course of the carrying out his or her duties as a  
14 staff member of ACLEI; and
  - 15 (c) the information was disclosed or obtained under the  
16 provisions of, or for the purposes of, this Act.
- 17 Penalty: Imprisonment for 12 months or 60 penalty units, or both.
- 18 (2) Subsection (1) has effect subject to sections 208 and 209.
- 19 (3) To avoid doubt, if a corruption issue is investigated jointly by the  
20 Integrity Commissioner and a government agency, any information  
21 that a staff member of ACLEI acquires in the course of  
22 participating the joint investigation is taken:
  - 23 (a) to have been acquired by the staff member because of his or  
24 her being a staff member of ACLEI; and
  - 25 (b) to have been disclosed or obtained under the provisions of, or  
26 for the purposes of, this Act.

1 **208 Exceptions to confidentiality requirements**

2 *Purposes connected with Integrity Commissioner's functions and*  
3 *powers*

4 (1) Subsection 207(1) does not prevent a person from making a record  
5 of information, or divulging or communicating information, if the  
6 person:

- 7 (a) acquired the information in the performance of his or her  
8 duties as a staff member of ACLEI; and  
9 (b) makes the record, or divulges or communicates the  
10 information:  
11 (i) for the purposes of a corruption investigation; or  
12 (ii) for purposes otherwise connected with the exercise of  
13 the powers, or the performance of the functions, of the  
14 Integrity Commissioner under this Act.

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

17 (2) Without limiting subsection (1), subsection 207(1) does not  
18 prevent a person from communicating information to another  
19 person if:

- 20 (a) the person acquired the information in the performance of his  
21 or her duties as a staff member of ACLEI; and  
22 (b) a provision of this Act requires or permits the Integrity  
23 Commissioner to communicate that information to the other  
24 person.

25 Note 1: Various provisions in this Act require information sharing in relation  
26 to a corruption issue: see, for example, sections 44, 50 and 70.

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

29 *Redirecting information to appropriate agency*

30 (3) Subsection 207(1) does not prevent the Integrity Commissioner  
31 from disclosing information to:

- 32 (a) the Commonwealth Ombudsman; or  
33 (b) an Ombudsman of a State or Territory; or  
34 (c) the head of a law enforcement agency; or

- 1 (d) the head of a police force of a State or Territory; or  
2 (e) the head of an integrity agency for a State or Territory; or  
3 (f) the head of another government agency;  
4 if the Integrity Commissioner is satisfied that the information does  
5 not relate to a corruption issue and should more appropriately be  
6 dealt with by the person to whom it is disclosed.

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

9 *Integrity Commissioner to be satisfied that confidentiality regime*  
10 *in place*

- 11 (4) If the Integrity Commissioner proposes to disclose information to a  
12 person under subsection (3), the Integrity Commissioner must  
13 satisfy himself or herself that a law of the Commonwealth, a State  
14 or Territory makes provision corresponding to the provision made  
15 by section 207 and this section with respect to the confidentiality  
16 of information acquired by that person.

17 *Disclosure required by another Commonwealth law*

- 18 (5) Subsection 207(1) does not prevent a person from disclosing  
19 information if the disclosure is required under another law of the  
20 Commonwealth.

21 Note: A defendant bears an evidential burden in relation to the matter in  
22 subsection (5); see subsection 13.3(3) of the *Criminal Code*.

23 *Disclosure to particular person*

- 24 (6) The Integrity Commissioner may disclose information to a  
25 particular person if the Integrity Commissioner is satisfied that it is  
26 necessary to do so in order to protect the person's life or physical  
27 safety.

28 *Section 149 certified information*

- 29 (7) The Integrity Commissioner must not disclose information to a  
30 person under subsection (3) or (6) if:  
31 (a) the information is section 149 certified information; and

1 (b) the disclosure of the information to the person would  
2 contravene the certificate issued under section 149.

3 **209 Disclosure by Integrity Commissioner in public interest etc.**

- 4 (1) If the Integrity Commissioner is satisfied that it is in the public  
5 interest to do so, the Integrity Commissioner may disclose  
6 information to the public, or a section of the public, about:  
7 (a) the performance of the Integrity Commissioner's functions;  
8 or  
9 (b) the exercise of the Integrity Commissioner's powers; or  
10 (c) an investigation of a corruption issue conducted by the  
11 Integrity Commissioner; or  
12 (d) a public inquiry conducted by the Integrity Commissioner.
- 13 (2) Subsection (1) has effect:  
14 (a) subject to subsections (3) and (4) and section 210; and  
15 (b) despite any other provision of this Act.
- 16 (3) The Integrity Commissioner must not disclose under subsection (1)  
17 information that is section 149 certified information.
- 18 (4) In deciding whether to disclose under subsection (1) information  
19 that the Integrity Commissioner is satisfied is sensitive  
20 information, the Integrity Commissioner must seek to achieve an  
21 appropriate balance between:  
22 (a) the public interest that would be served by disclosing the  
23 information; and  
24 (b) the prejudicial consequences that might result from  
25 disclosing the information.

26 **210 Opportunity to be heard**

27 *Opinion or finding critical of a government agency or person*

- 28 (1) The Integrity Commissioner must not disclose information under  
29 section 209 in relation to an investigation of a corruption issue  
30 under this Act that includes an opinion or finding that is critical of  
31 a government agency or person (either expressly or impliedly)

1 unless the Integrity Commissioner has taken the action required by  
2 subsection (2) or (3) before disclosing the information.

3 *Opportunity to appear and make submissions*

- 4 (2) If the opinion or finding is critical of a government agency, the  
5 Integrity Commissioner must give the head of the agency:  
6 (a) a statement setting out the opinion or finding; and  
7 (b) a reasonable opportunity to appear before him or her and to  
8 make submissions in relation to the opinion or finding.
- 9 (3) If the opinion or finding is critical of a person, the Integrity  
10 Commissioner must give the person:  
11 (a) a statement setting out the opinion or finding; and  
12 (b) a reasonable opportunity to appear before him or her and to  
13 make submissions in relation to the opinion or finding.
- 14 (4) The submissions may be made orally or in writing.
- 15 (5) The head of a government agency may:  
16 (a) appear before the Integrity Commissioner personally; or  
17 (b) authorise another person to appear before the Integrity  
18 Commissioner on his or her behalf.
- 19 (6) A person referred to in subsection (3):  
20 (a) may appear before the Integrity Commissioner personally; or  
21 (b) may, with the Integrity Commissioner's approval, be  
22 represented by another person.

23 **211 ACLEI staff generally not compellable in court proceedings**

- 24 (1) This section applies to:  
25 (a) proceedings before a court (whether exercising federal  
26 jurisdiction or not); and  
27 (b) proceedings before any tribunal, authority or person having  
28 power to require the production of documents or the  
29 answering of questions.
- 30 (2) A person who is, or has been, a staff member of ACLEI is not  
31 compellable in any proceedings to which this section applies:



- 1 (a) to disclose any information that:  
2 (i) he or she acquired because of his or her being or having  
3 been a staff member of ACLEI; and  
4 (ii) was disclosed or obtained under the provisions of, or for  
5 the purposes of, this Act; or  
6 (b) to produce any document that:  
7 (i) has come into his or her custody or control in the course  
8 of, or because of, the performance of his or her duties  
9 under this Act; and  
10 (ii) was produced under the provisions of, or for the  
11 purposes of, this Act.
- 12 (3) Subsection (1) does not apply to a proceeding if:  
13 (a) any of the following is a party to the proceedings in his or her  
14 official capacity:  
15 (i) the Integrity Commissioner;  
16 (ii) a delegate of the Integrity Commissioner;  
17 (iii) a person authorised by the Integrity Commissioner to  
18 exercise a power or perform a function under this Act;  
19 or  
20 (b) the proceeding is brought for the purposes of carrying into  
21 effect a provision of this Act; or  
22 (c) the proceeding is a prosecution, civil penalty proceeding or  
23 confiscation proceeding brought as a result of:  
24 (i) a corruption investigation or public inquiry; or  
25 (ii) an investigation of a corruption issue that the Integrity  
26 Commissioner manages or oversees.
- 27 (4) In this section:  
28 **produce** includes permit access to, and **production** has a  
29 corresponding meaning.

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2 **Part 14—Parliamentary Joint Committee on the**  
3 **Australian Commission for Law**  
4 **Enforcement Integrity**  
5

6 **212 Definitions**

7 In this Part:

8 *Committee* means the Parliamentary Joint Committee on the  
9 Australian Commission for Law Enforcement Integrity for the time  
10 being constituted under this Part.

11 *member* means a member of the Committee.

12 **213 Joint Committee on the Australian Commission for Law**  
13 **Enforcement Integrity**

14 (1) As soon as practicable after the commencement of the first session  
15 of each Parliament, a joint committee of members of the  
16 Parliament to be known as the Parliamentary Joint Committee on  
17 the Australian Commission for Law Enforcement Integrity is to be  
18 appointed according to the practice of the Parliament with  
19 reference to the appointment of members to serve on joint select  
20 committees of both Houses of the Parliament.

21 (2) The Committee shall consist of 10 members, namely, 5 members  
22 of the Senate appointed by the Senate, and 5 members of the House  
23 of Representatives appointed by that House.

24 (3) A member of the Parliament is not eligible for appointment as a  
25 member of the Committee if he or she is:  
26 (a) a Minister; or  
27 (b) the President of the Senate; or  
28 (c) the Speaker of the House of Representatives; or  
29 (d) the Deputy President and Chair of Committees of the Senate  
30 or the Chair of Committees of the House of Representatives.

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- 1 (4) A member ceases to hold office:  
2 (a) when the House of Representatives expires by the passing of  
3 time or is dissolved; or  
4 (b) if he or she becomes the holder of an office specified in any  
5 of the paragraphs of subsection (3); or  
6 (c) if he or she ceases to be a member of the House of the  
7 Parliament by which he or she was appointed; or  
8 (d) if he or she resigns his or her office as provided by  
9 subsection (5) or (6).
- 10 (5) A member appointed by the Senate may resign his or her office by  
11 writing signed by him or her and delivered to the President of the  
12 Senate.
- 13 (6) A member appointed by the House of Representatives may resign  
14 his or her office by writing signed by him or her and delivered to  
15 the Speaker of that House.
- 16 (7) Either House of the Parliament may appoint one of its members to  
17 fill a vacancy amongst the members of the Committee appointed  
18 by that House.

19 **214 Powers and proceedings of the Committee**

20 All matters relating to the powers and proceedings of the  
21 Committee are to be determined by resolution of both Houses of  
22 the Parliament.

23 **215 Duties of the Committee**

- 24 (1) The Committee has the following duties:  
25 (a) to monitor and review the Integrity Commissioner's  
26 performance of his or her functions;  
27 (b) to report to both Houses of the Parliament, with such  
28 comments as it thinks fit, on any matter:  
29 (i) connected with the performance of the Integrity  
30 Commissioner's functions; or  
31 (ii) relating to ACLEI;

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- 1                   that the Committee considers should be directed to the  
2                   attention of Parliament;
- 3                   (c) to examine:
- 4                   (i) each annual report prepared by the Integrity  
5                   Commissioner under section 201; and
- 6                   (ii) any special report prepared by the Integrity  
7                   Commissioner under section 204;
- 8                   and report to the Parliament on any matter appearing in, or  
9                   arising out of, any such annual report or special report;
- 10                  (d) to examine trends and changes in:
- 11                  (i) law enforcement in so far as they relate to corruption;  
12                  and
- 13                  (ii) corruption generally in, or the integrity of staff members  
14                  of, Commonwealth government agencies with a law  
15                  enforcement function;
- 16                  and report to both Houses of the Parliament on any change  
17                  that the Committee thinks desirable:
- 18                  (iii) to the Integrity Commissioner's functions or powers; or  
19                  (iv) to the procedures followed by the Integrity  
20                  Commissioner; or
- 21                  (v) to ACLEI's structure;
- 22                  (e) to inquire into any question in connection with the  
23                  Committee's duties that is referred to it by either House of  
24                  the Parliament, and to report to that House upon that  
25                  question.
- 26                  (2) Subsection (1) does not authorise the Committee:
- 27                  (a) to investigate a corruption issue or an ACLEI corruption  
28                  issue; or
- 29                  (b) to reconsider the Integrity Commissioner's decisions or  
30                  recommendations in relation to a particular corruption issue  
31                  or ACLEI corruption issue; or
- 32                  (c) to reconsider a special investigator's decisions or  
33                  recommendations in relation to an ACLEI corruption issue.

34                  **216 Disclosure to Committee by Integrity Commissioner**

- 35                  (1) Subject to subsections (2) and (3), the Integrity Commissioner:

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- 1 (a) must comply with a request by the Committee to give the  
2 Committee information in relation to:  
3 (i) an investigation of a corruption issue; or  
4 (ii) a public inquiry;  
5 that the Integrity Commissioner has conducted or is  
6 conducting; and  
7 (b) must when requested by the Committee, and may at such  
8 other times as the Integrity Commissioner thinks appropriate,  
9 inform the Committee concerning the general performance of  
10 the Integrity Commissioner's functions.
- 11 (2) The Integrity Commissioner must not comply with the request if:  
12 (a) the information is section 149 certified information; and  
13 (b) the disclosure of the information to the Committee would  
14 contravene the certificate issued under section 149.
- 15 (3) The Integrity Commissioner may decide not to comply with the  
16 request if the Integrity Commissioner is satisfied that:  
17 (a) the information is sensitive information; and  
18 (b) the public interest that would be served by giving the  
19 information to the Committee is outweighed by the  
20 prejudicial consequences that might result from giving the  
21 information to the Committee.
- 22 (4) If the Integrity Commissioner does not give information to the  
23 Committee because of subsection (3), the Committee may refer the  
24 request to the Minister.
- 25 (5) If the Committee refers the request to the Minister, the Minister:  
26 (a) must determine in writing whether:  
27 (i) the information is sensitive information; and  
28 (ii) if it is, whether the public interest that would be served  
29 by giving the information to the Committee is  
30 outweighed by the prejudicial consequences that might  
31 result from giving the information to the Committee;  
32 and  
33 (b) must provide copies of that determination to the Integrity  
34 Commissioner and the Committee; and

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- 1 (c) must not disclose his or her reasons for determining the  
2 question referred to in subparagraph (a)(ii) in the way stated  
3 in the determination.
- 4 (6) A determination made by the Minister under subsection (5) is not a  
5 legislative instrument.

6 **217 Disclosure to Committee by Minister**

- 7 (1) Subject to subsections (2) and (3), the Minister must comply with a  
8 request by the Committee to give the Committee information in  
9 relation to an investigation of a corruption issue that a special  
10 investigator has conducted or is conducting.
- 11 (2) The Minister must not comply with the request if:  
12 (a) the information is section 149 certified information; and  
13 (b) the disclosure of the information to the Committee would  
14 contravene the certificate issued under section 149.
- 15 (3) The Minister may decide not to comply with the request if the  
16 Minister is satisfied that:  
17 (a) the information is sensitive information; and  
18 (b) the public interest that would be served by giving the  
19 information to the Committee is outweighed by the  
20 prejudicial consequences that might result from giving the  
21 information to the Committee.

22 **218 Ombudsman to brief committee about controlled operations**

- 23 (1) At least once in each year the Ombudsman must provide a briefing  
24 to the Committee about the Integrity Commissioner's involvement  
25 in controlled operations under Part IAB of the *Crimes Act 1914*  
26 during the preceding 12 months.
- 27 (2) For the purposes of receiving a briefing from the Ombudsman  
28 under subsection (1), the Committee must meet in private.

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3**Part 15—Miscellaneous**

4

**219 Delegation**

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*Delegation to an Assistant Integrity Commissioner*

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- (1) The Integrity Commissioner may delegate all or any of his or her functions or powers to an Assistant Integrity Commissioner.

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- (2) Subsection (1) does not apply to the power to hold a hearing for the purpose of conducting a public inquiry.

9

10

*Delegation to certain staff members of ACLEI*

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- (3) The Integrity Commissioner may delegate all or any of his or her functions or powers to a staff member of ACLEI who is an SES employee or acting SES employee.

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14

- (4) Subsection (3) does not apply to:

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- (a) the power to hold a hearing for the purpose of conducting a public inquiry; or

16

17

- (b) a power under Division 1, 2 or 3 of Part 9.

18

*Form of delegation*

19

- (5) A delegation under this section must be in writing and signed by the Integrity Commissioner.

20

21

**220 Offence of victimisation**

22

- (1) A person commits an offence if the person causes, or threatens to cause, detriment to another person (the *victim*) on the ground that the victim, or any other person:

23

24

25

- (a) has referred, or may refer, to the Integrity Commissioner an allegation, or information, that raises a corruption issue; or

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27

- (b) has referred, or may refer, to the Minister an allegation, or information, that raises an ACLEI corruption issue; or

28

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- 1 (c) has notified, or may notify, the Integrity Commissioner of an  
 2 allegation, or information, that raises an ACLEI corruption  
 3 issue; or  
 4 (d) has given, or may give, information to the Integrity  
 5 Commissioner or a special investigator; or  
 6 (e) has produced, or may produce, a document or thing to the  
 7 Integrity Commissioner or a special investigator.
- 8 Penalty: Imprisonment for 2 years.
- 9 (2) For the purpose of subsection (1), a threat may be:  
 10 (a) express or implied; or  
 11 (b) conditional or unconditional.
- 12 (3) In a prosecution for an offence against subsection (1), it is not  
 13 necessary to prove that the person threatened actually feared that  
 14 the threat would be carried out.

15 **221 Legal and financial assistance in relation to applications for**  
 16 **administrative review**

- 17 (1) A person may apply to the Attorney-General for assistance in  
 18 respect of the person's application, or proposed application, to the  
 19 Federal Court or the Federal Magistrates Court under the  
 20 *Administrative Decisions (Judicial Review) Act 1977* for an order  
 21 of review in respect of a matter arising under this Act.
- 22 (2) The Attorney-General may, if he or she is satisfied that:  
 23 (a) it would involve substantial hardship to the person to refuse  
 24 the application; or  
 25 (b) the circumstances of the case are of such a special nature that  
 26 the application should be granted;  
 27 authorise the Commonwealth to provide the person with legal or  
 28 financial assistance, determined by the Attorney-General, in  
 29 respect of the person's application to the Federal Court or the  
 30 Federal Magistrates Court, as the case may be.
- 31 (3) Legal or financial assistance may be given:  
 32 (a) unconditionally; or



1 (b) subject to such conditions as the Attorney-General  
2 determines.

3 (4) An instrument that determines the conditions on which legal or  
4 financial assistance may be given is not a legislative instrument.

5 **222 Immunity from civil proceedings**

6 (1) A staff member of ACLEI is not liable to civil proceedings in  
7 relation to an act done, or omitted to be done, in good faith, in the  
8 performance or purported performance, or exercise or purported  
9 exercise, of the staff member's functions, powers or duties under,  
10 or in relation to, this Act.

11 (2) A person whom the Integrity Commissioner requests, in writing, to  
12 assist a staff member of ACLEI is not liable to civil proceedings in  
13 relation to an act done, or omitted to be done, in good faith for the  
14 purpose of assisting the staff member.

15 (3) A special investigator is not liable to civil proceedings in relation  
16 to an act done, or omitted to be done, in good faith, in the  
17 performance or purported performance, or exercise or purported  
18 exercise, of the special investigator's functions, powers or duties  
19 under, or in relation to, this Act.

20 (4) A person whom a special investigator requests, in writing, to assist  
21 the special investigator is not liable to civil proceedings in relation  
22 to an act done, or omitted to be done, in good faith for the purpose  
23 of assisting the special investigator.

24 (5) If:

25 (a) information or evidence has been given to the Integrity  
26 Commissioner or a special investigator; or

27 (b) a document or thing has been produced to the Integrity  
28 Commissioner or a special investigator;

29 a person is not liable to an action, suit or proceeding in respect of  
30 loss, damage or injury of any kind suffered by another person by  
31 reason only that the information or evidence was given or the  
32 document or thing was produced.

1       **223 Immunities from certain State and Territory laws**

2                   The Integrity Commissioner, an Assistant Integrity Commissioner  
3                   or a staff member of ACLEI is not required under, or by reason of,  
4                   a law of a State or Territory:

5                   (a) to obtain or have a licence or permission for doing any act or  
6                   thing in the exercise of his or her powers or the performance  
7                   of his or her duties as the Integrity Commissioner, an  
8                   Assistant Integrity Commissioner or a staff member of  
9                   ACLEI; or

10                   (b) to register any vehicle, vessel, animal or article belonging to  
11                   the Commonwealth.

12       **224 Regulations**

13                   The Governor-General may make regulations prescribing matters:

14                   (a) required or permitted by this Act to be prescribed; or

15                   (b) necessary or convenient to be prescribed for carrying out or  
16                   giving effect to this Act.  
17