

EXPOSURE DRAFT

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Commonwealth Integrity Commission Bill 2020

No. , 2020

(Attorney-General)

**A Bill for an Act to provide for the establishment of
the Commonwealth Integrity Commission, and for
related purposes**

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1 **A Bill for an Act to provide for the establishment of**
2 **the Commonwealth Integrity Commission, and for**
3 **related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act is the *Commonwealth Integrity Commission Act 2020*.

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Part 1 Preliminary

Section 2

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

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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

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

13 **3 Simplified outline of this Act**

14 This Act creates a framework for the Integrity Commissioner,
15 assisted by the Commonwealth Integrity Commission (the CIC), to
16 deal with corruption issues relating to regulated entities and
17 parliamentarians. The regulated entities covered by this Act are law
18 enforcement agencies and public sector agencies of the
19 Commonwealth, offices of parliamentarians and certain higher
20 education providers and research bodies.

21 Broadly, a corruption issue is an issue of whether a person engaged
22 or is engaging in corrupt conduct while a staff member of a
23 regulated entity, or while a parliamentarian. For a staff member of

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a law enforcement agency, whether the staff member may engage in corrupt conduct in the future is also a corruption issue.

For staff members of law enforcement agencies, corrupt conduct by a person must involve abuse of office, perverting the course of justice or other conduct that, having regard to the person's duties and powers, involves, or is engaged in for the purpose of, corruption of any other kind.

For parliamentarians and staff members of public sector agencies or offices of parliamentarians, corrupt conduct by a person must involve abuse of office or perverting the course of justice. The conduct must also constitute a listed offence against a law of the Commonwealth.

For staff members of higher education providers and research bodies, corrupt conduct need only constitute a listed offence.

Generally, if the head of a regulated entity becomes aware of an allegation or information that raises a corruption issue relating to the entity, the head must notify the Integrity Commissioner of the issue. Notifications occur for intelligence agencies via the Inspector-General of Intelligence and Security.

Corruption issues may also be referred or notified to the Integrity Commissioner by the following:

- (a) the Attorney-General, except if the issue relates to another parliamentarian or the office of another parliamentarian;
- (b) the responsible Minister for a regulated entity, if the issue relates to that entity;
- (c) a parliamentarian, if the issue relates to the parliamentarian or the parliamentarian's office;
- (d) a member of the public, if the issue is a law enforcement corruption issue;
- (e) a Commonwealth integrity office holder.

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Part 1 Preliminary

Section 3

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There are protections for those who refer or notify allegations or information raising corruption issues and offences for entity heads who conceal corrupt conduct.

Corruption issues that do not relate to law enforcement agencies (referred to as public sector corruption issues) may generally only be referred or notified, and dealt with by the Integrity Commissioner, if there is a reasonable suspicion that the listed offence to which the issue relates has been, or is being, committed. If the Integrity Commissioner is able to deal with a corruption issue that is referred or notified, the Integrity Commissioner must do so, except in limited cases. The Integrity Commissioner may also deal with certain corruption issues on the Integrity Commissioner's own initiative.

The main ways the Integrity Commissioner may deal with a corruption issue are to investigate it or refer it for investigation by the AFP or to the regulated entity to which it relates (if the entity is a law enforcement agency, an intelligence agency or another public sector agency with appropriate capabilities).

The Integrity Commissioner may exercise a range of powers under this Act and other legislation in conducting an investigation. These include requiring the giving of information or production of documents, and conducting hearings. Hearings may be held in public when dealing with law enforcement corruption issues, but not when dealing with other corruption issues.

If a corruption issue is referred for investigation by the AFP or the entity to which the issue relates, the Integrity Commissioner may manage or oversee the investigation, and retain oversight by requesting progress reports and, in most cases, commenting on a final report on the investigation.

If a final report is prepared (whether by the Integrity Commissioner or another entity), the report may include certain findings and recommendations. However, findings may only be included about whether a person engaged in corrupt conduct if the conduct relates to a staff member of a law enforcement agency. The Integrity

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Preliminary **Part 1**

Section 4

1

Commissioner must give evidence of any wrongdoing to the appropriate authorities.

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In addition to dealing with corruption issues, the Integrity Commissioner must, if the Minister directs, conduct inquiries in relation to corruption and integrity more generally within certain regulated entities.

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Certain reports on investigations and inquiries must be tabled in the Parliament. The Integrity Commissioner may take steps to ensure follow-up action is taken on recommendations in reports relating to certain regulated entities.

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The Inspector-General of the Commonwealth Integrity Commission may inquire into the performance of functions, or exercise of powers, by the Integrity Commissioner (or any other staff member of the CIC) and conduct special investigations of CIC corruption issues if authorised by the Minister.

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The Parliamentary Joint Committee on the Commonwealth Integrity Commission oversees the work of both the CIC and the Inspector-General.

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4 Application of this Act

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This Act applies both within and outside Australia and extends to the external Territories.

21

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Part 2 Interpretation
Division 1 The Dictionary

Section 5

1 **Part 2—Interpretation**

2 **Division 1—The Dictionary**

3 **5 The Dictionary**

4 In this Act:

5 *ACCC* means the Australian Competition and Consumer
6 Commission.

7 *ACIC* means the agency known as the Australian Criminal
8 Intelligence Commission established by the *Australian Crime*
9 *Commission Act 2002*.

10 *AFP* means the Australian Federal Police.

11 *AFP Commissioner* means the Commissioner of Police (within the
12 meaning of the *Australian Federal Police Act 1979*).

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

14 (a) for a proceeding under the *Proceeds of Crime Act 2002*—the
15 person is a suspect (within the meaning of that Act) for the
16 proceeding; or

17 (b) for a proceeding under a law of a State or Territory—the
18 person is in a corresponding category for that law.

19 *Agriculture Department* means the Department administered by
20 the Minister administering the *Primary Industries Levies and*
21 *Charges Collection Act 1991*.

22 *ancillary offence*: see subsection 23(6).

23 *Anti-Money Laundering Act* means the *Anti-Money Laundering*
24 *and Counter-Terrorism Financing Act 2006*.

25 *APRA* means the Australian Prudential Regulation Authority.

26 *ASIC* means the Australian Securities and Investments
27 Commission.

EXPOSURE DRAFT

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

- 3 (a) a person who:
4 (i) is an authorised officer or a member or special member
5 of the AFP; and
6 (ii) is assisting in executing the warrant; or
7 (b) a person who:
8 (i) is not an authorised officer; and
9 (ii) is not a member or special member of the AFP; and
10 (iii) has been authorised by the authorised officer who is
11 executing the warrant to assist in executing the warrant.

12 ***ATO*** means the listed entity known as the Australian Taxation
13 Office for the purposes of the finance law (within the meaning of
14 the *Public Governance, Performance and Accountability Act*
15 *2013*).

16 ***AUSTRAC*** has the same meaning as in the Anti-Money
17 Laundering Act.

18 ***Australian Geospatial-Intelligence Organisation*** means that part
19 of the Defence Department known as the Australian
20 Geospatial-Intelligence Organisation.

21 ***Australian travel document*** has the same meaning as in the
22 *Australian Passports Act 2005*.

23 ***authorised discloser***: see subsection 263(1).

24 ***authorised officer*** means:

- 25 (a) the Integrity Commissioner; or
26 (b) the Law Enforcement Integrity Commissioner; or
27 (c) the Public Sector Integrity Commissioner; or
28 (d) an Assistant Integrity Commissioner; or
29 (e) a person for whom an appointment under section 171 is in
30 force.

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

EXPOSURE DRAFT

Part 2 Interpretation
Division 1 The Dictionary

Section 5

- 1 **CIC**: see *Commonwealth Integrity Commission*.
- 2 **CIC corruption issue** see section 16.
- 3 **CIC determination** means a determination in force under
4 section 290.
- 5 **CIC office holder** means:
6 (a) the Integrity Commissioner; or
7 (b) the Law Enforcement Integrity Commissioner; or
8 (c) the Public Sector Integrity Commissioner; or
9 (d) an Assistant Integrity Commissioner.
- 10 **civil penalty proceeding** means a proceeding for a civil penalty in
11 relation to a contravention of a law of the Commonwealth or of a
12 State or Territory.
- 13 **civil penalty provision** means a provision of a law of the
14 Commonwealth or of a State or Territory in relation to a
15 contravention of which a civil penalty may be imposed.
- 16 **Committee** means the Parliamentary Joint Committee on the
17 Commonwealth Integrity Commission for the time being
18 constituted under Part 13.
- 19 **Commonwealth contract**: see subsection 13(2).
- 20 **Commonwealth integrity agency**: see subsection 20(2).
- 21 **Commonwealth Integrity Commission** or **CIC** means the
22 Commonwealth Integrity Commission established by section 31.
- 23 **Commonwealth integrity office holder**: see subsection 20(1).
- 24 **Commonwealth place**: see subsection 23(6).
- 25 **confiscation proceeding** means a proceeding under:
26 (a) the *Proceeds of Crime Act 2002*; or
27 (b) a corresponding law within the meaning of that Act;
28 but does not include a criminal prosecution for an offence under
29 that Act or a corresponding law.

EXPOSURE DRAFT

- 1 **constable** means:
- 2 (a) a member or special member of the AFP; or
- 3 (b) a member of the police force or police service of a State or
- 4 Territory.
- 5 **constitutional corporation**: see subsection 23(6).
- 6 **contract** includes any arrangement, agreement, deed or
- 7 understanding.
- 8 **contracted service provider** for a Commonwealth contract: see
- 9 subsections 13(1) and (3).
- 10 **contravene** a certificate issued under section 270: see
- 11 subsection 270(7).
- 12 **corrupt conduct**: see *engages in corrupt conduct*.
- 13 **corruption inquiry** means a corruption inquiry conducted by the
- 14 Integrity Commissioner under Part 7.
- 15 **corruption investigation** means:
- 16 (a) an investigation of a corruption issue under this Act; or
- 17 (b) an investigation of a CIC corruption issue under this Act
- 18 (including a special investigation).
- 19 **corruption issue**: see section 16.
- 20 **criminal proceeding** means a prosecution for an offence against a
- 21 law of the Commonwealth or of a State or Territory.
- 22 **damage**, in relation to data: see subsection 158(5).
- 23 **data** has the same meaning as in Part IAA of the *Crimes Act 1914*.
- 24 **data held in a computer** has the same meaning as in Part IAA of
- 25 the *Crimes Act 1914*.
- 26 **data storage device** has the same meaning as in Part IAA of the
- 27 *Crimes Act 1914*.
- 28 **Defence Department** means the Department administered by the
- 29 Minister administering Part III of the *Defence Act 1903*.
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EXPOSURE DRAFT

Part 2 Interpretation
Division 1 The Dictionary

Section 5

1 ***Defence Intelligence Organisation*** means that part of the Defence
2 Department known as the Defence Intelligence Organisation.

3 ***Department of Home Affairs*** means the Department administered
4 by the Minister administering the *Australian Border Force Act*
5 2015.

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

8 ***designated publication restriction***: see subsection 279(8).

9 ***disciplinary proceeding***:

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

12 (b) includes action taken under Subdivision D of Division 3 of
13 Part V of the *Australian Federal Police Act 1979*.

14 ***disclose***, for hearing material or derivative material, includes:

15 (a) to make available; and

16 (b) to disclose copies, contents or descriptions of that material.

17 ***dwelling house***: see subsection 130(11).

18 ***electronic communication***: see subsection 23(6).

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

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

21 (b) could be used to assist a person to escape from lawful
22 custody.

23 ***employee***, in relation to a regulated entity or a State or Territory
24 government entity, includes:

25 (a) in relation to a police force of a State or Territory—a member
26 of the police force; and

27 (b) in relation to the Australian Defence Force—a member of the
28 Australian Defence Force.

29 ***engage in conduct*** means:

30 (a) do an act; or

31 (b) omit to do an act.

EXPOSURE DRAFT

1 ***engages in corrupt conduct***: see section 17.

2 ***entity head*** means the head of a regulated entity or of a State or
3 Territory government entity.

4 ***entrusted person***: see subsection 263(2).

5 ***evidential material*** means:

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

8 (i) a corruption investigation; or

9 (ii) a corruption inquiry; or

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

12 ***federal aspect***: for when a State offence has a ***federal aspect***, see
13 section 23.

14 ***Federal Circuit Court*** means the Federal Circuit Court of
15 Australia.

16 ***Federal Court*** means the Federal Court of Australia.

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

19 ***head***:

20 (a) in relation to a law enforcement agency—see section 7; and

21 (b) in relation to a public sector agency—see section 8; and

22 (c) in relation to the office of a parliamentarian—see section 9;
23 and

24 (d) in relation to a higher education provider—see section 10;
25 and

26 (e) in relation to a research body—see section 11; and

27 (f) in relation to a State or Territory government entity—means:

28 (i) the person holding, or performing the duties of, the
29 principal office in respect of the entity (unless
30 subparagraph (ii) applies); or

31 (ii) if the rules prescribe that another person is the head of
32 the entity—that other person.

EXPOSURE DRAFT

Part 2 Interpretation
Division 1 The Dictionary

Section 5

- 1 **hearing material**: see subsection 21(1).
- 2 **higher education provider**: see section 10.
- 3 **IGIS** means the Inspector-General of Intelligence and Security.
- 4 **imminent**:
- 5 (a) a charge against a person is **imminent** if:
- 6 (i) the person is a protected suspect; or
- 7 (ii) the person is under arrest for an offence, but has not
- 8 been charged with the offence; or
- 9 (iii) a person with authority to commence a process for
- 10 prosecuting the person for an offence has decided to
- 11 commence, but not yet commenced, the process; or
- 12 (b) a confiscation proceeding against a person is **imminent** if a
- 13 person with authority to commence the proceeding has
- 14 decided to commence, but has not yet commenced, the
- 15 proceeding.
- 16 Note: Subparagraph (a)(iii) applies, for example, if a person with authority
- 17 to lay a charge has decided to lay, but not yet laid, the charge.
- 18 **in contempt of the CIC**: see section 121.
- 19 **informant**: see subsection 284(3).
- 20 **Inspector-General** means the Inspector-General of the
- 21 Commonwealth Integrity Commission appointed under
- 22 section 244.
- 23 **integrity agency** means:
- 24 (a) a Commonwealth integrity agency; or
- 25 (b) a State or Territory integrity agency.
- 26 **intelligence agency** means:
- 27 (a) the Australian Geospatial-Intelligence Organisation; or
- 28 (b) the Australian Secret Intelligence Service; or
- 29 (c) the Australian Security Intelligence Organisation; or
- 30 (d) the Australian Signals Directorate; or
- 31 (e) the Defence Intelligence Organisation; or
- 32 (f) the Office of National Intelligence; or
-

EXPOSURE DRAFT

- 1 (g) a body (whether incorporated or not) established for a public
2 purpose by, or under, a law of the Commonwealth that:
3 (i) has responsibilities that include intelligence gathering or
4 security; and
5 (ii) is prescribed by the rules for the purposes of this
6 subparagraph.

7 ***investigation warrant*** means a warrant to search for a thing that
8 may be relevant to:

- 9 (a) a corruption investigation; or
10 (b) a corruption inquiry.

11 ***issuing officer*** means:

- 12 (a) for an investigation warrant:
13 (i) a Judge of the Federal Court sitting in Chambers; or
14 (ii) a Judge of the Federal Circuit Court sitting in
15 Chambers; or
16 (iii) a Judge of a court of a State or Territory; or
17 (b) for an offence warrant—a magistrate.

18 ***journalist***: see subsection 284(3).

19 ***law enforcement agency***: see section 7.

20 ***law enforcement corruption issue*** means a corruption issue
21 relating to a law enforcement agency.

22 Note: For when a corruption issue *relates to* a regulated entity or a
23 parliamentarian, see section 19.

24 ***law enforcement secrecy provision*** means:

- 25 (a) Part 11 of the Anti-Money Laundering Act; or
26 (b) section 45 of the *Surveillance Devices Act 2004*; or
27 (c) sections 63 and 133 of the *Telecommunications (Interception
28 and Access) Act 1979*; or
29 (d) anything done under a provision referred to in paragraphs (a)
30 to (c).

31 ***law of the Commonwealth*** includes a law in force in an external
32 Territory or the Jervis Bay Territory, so far as the law is so in force

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Part 2 Interpretation
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1 because of an Act providing for the acceptance, administration or
2 government of that Territory, and *criminal law of the*
3 *Commonwealth* has a corresponding meaning.

4 *legal aid officer* means:

- 5 (a) a member, or member of staff, of an authority established by
6 or under a law of a State or Territory for purposes that
7 include providing legal assistance; or
8 (b) a person to whom the Attorney-General has delegated the
9 Attorney-General's powers and functions under section 133.

10 *legal practitioner* means a barrister, a solicitor, a barrister and
11 solicitor or a legal practitioner, of the High Court or of the
12 Supreme Court of a State or Territory.

13 *listed offence*: see section 18.

14 *magistrate* means a magistrate who is remunerated by salary or
15 otherwise, and includes a Judge, or acting Judge, of the Local
16 Court of the Northern Territory.

17 *manage* an investigation of a corruption issue by a regulated entity:
18 see section 77.

19 *nominated contact* of a regulated entity for an investigation of a
20 corruption issue means:

- 21 (a) a staff member of the entity nominated under section 76 as
22 the nominated contact for the investigation; or
23 (b) if a staff member is not nominated—the head of the entity.

24 *notify*:

- 25 (a) in relation to an allegation, includes make the allegation; and
26 (b) in relation to information, includes give the information; and
27 (c) in relation to a corruption issue or a CIC corruption issue,
28 includes notify an allegation or information that raises the
29 issue.

30 *occupier* of premises means the person apparently in charge of the
31 premises.

32 *offence*:

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- 1 (a) a reference in this Act to an offence against a law of the
2 Commonwealth (including this Act) includes a reference to
3 an offence against section 6 of the *Crimes Act 1914* that
4 relates to such an offence; and
5 (b) a reference in this Act to a particular offence includes a
6 reference to an offence against section 6 of the *Crimes Act*
7 *1914* that relates to the particular offence.

8 Note: For other ancillary offences, see section 11.6 of the *Criminal Code*.

9 ***offence warrant*** means a warrant to search for a thing relevant to
10 an offence against a law of the Commonwealth.

11 ***office*** of a parliamentarian: see section 9.

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

- 14 (a) a corruption investigation;
15 (b) a hearing held by the Integrity Commissioner or a special
16 investigator in relation to a corruption investigation;
17 (c) court proceedings.

18 ***ordinary search*** means a search of a person or of articles in the
19 possession of a person that may include:

- 20 (a) requiring the person to remove the person's overcoat, coat or
21 jacket or any gloves, shoes or hat; and
22 (b) an examination of those items.

23 ***oversee*** an investigation of a corruption issue by a regulated entity:
24 see section 78.

25 ***paid work*** means work for financial gain or reward (whether as an
26 employee, a self-employed person or otherwise).

27 ***parliamentarian*** means:

- 28 (a) a senator; or
29 (b) a member of the House of Representatives; or
30 (c) a Minister of State who is not a senator or member of the
31 House of Representatives; or

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- 1 (d) a person who is taken to be the President of the Senate under
2 the *Parliamentary Presiding Officers Act 1965* and who is
3 not a senator or member of the House of Representatives; or
4 (e) a person who is taken to be the Speaker of the House of
5 Representatives under the *Parliamentary Presiding Officers*
6 *Act 1965* and who is not a senator or member of the House of
7 Representatives.

8 ***person assisting*** the Inspector-General: see subsection 253(8).

9 ***post-charge***:

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

31 ***post-confiscation application***:

- 32 (a) a use or disclosure of hearing material or derivative material
33 is a ***post-confiscation application*** use or disclosure if the use
34 or disclosure happens at a time when:

EXPOSURE DRAFT

- 1 (i) a related confiscation proceeding has commenced
2 against the witness and that proceeding is still to be
3 resolved; or
4 (ii) such a proceeding is imminent; or
5 (b) material is ***post-confiscation application*** hearing material if
6 the material becomes hearing material at a time when:
7 (i) a related confiscation proceeding has commenced
8 against the witness and that proceeding is still to be
9 resolved; or
10 (ii) such a proceeding is imminent; or
11 (c) a hearing is a ***post-confiscation application*** hearing if the
12 hearing commences at a time when:
13 (i) a related confiscation proceeding has commenced
14 against the witness and that proceeding is still to be
15 resolved; or
16 (ii) such a proceeding is imminent; or
17 (d) a summons is a ***post-confiscation application*** summons if the
18 summons is issued to a person at a time when:
19 (i) a related confiscation proceeding has commenced
20 against the person and that proceeding is still to be
21 resolved; or
22 (ii) such a proceeding is imminent.
- 23 ***pre-charge:***
24 (a) a use or disclosure of hearing material or derivative material
25 is a ***pre-charge*** use or disclosure if the use or disclosure
26 happens at a time when:
27 (i) the witness has not been charged with a related offence,
28 and such a charge is not imminent; or
29 (ii) all such charges have been resolved; or
30 (b) material is ***pre-charge*** hearing material if the material
31 becomes hearing material at a time when:
32 (i) the witness has not been charged with a related offence,
33 and such a charge is not imminent; or
34 (ii) all such charges have been resolved; or
35 (c) a hearing is a ***pre-charge*** hearing if the hearing commences
36 at a time when:
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- 1 (i) the witness has not been charged with a related offence,
2 and such a charge is not imminent; or
3 (ii) all such charges have been resolved.

4 ***pre-confiscation application:***

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

24 ***premises*** includes a place, vehicle, vessel and aircraft.

25 ***prescribed*** means prescribed by the rules.

26 ***Presiding Officer*** means:

- 27 (a) in relation to the Senate—the President of the Senate; and
28 (b) in relation to the House of Representatives—the Speaker of
29 the House of Representatives.

30 ***proceeds of crime authority*** means:

- 31 (a) a proceeds of crime authority within the meaning of the
32 *Proceeds of Crime Act 2002*; or

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1 (b) an authority of a State or Territory responsible for conducting
2 a confiscation proceeding under a corresponding law (within
3 the meaning of the *Proceeds of Crime Act 2002*).

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

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

8 (a) who is a prosecuting authority or is employed or engaged by
9 a prosecuting authority; and

10 (b) who:

11 (i) makes, or is involved in the making of, a decision
12 whether to prosecute the witness for a related offence;
13 or

14 (ii) is one of the individuals engaging in such a prosecution
15 of the witness.

16 ***protected suspect*** means:

17 (a) a protected suspect (within the meaning of Part IC of the
18 *Crimes Act 1914*); or

19 (b) a person who would be covered by paragraph (a) if the
20 definition of ***Commonwealth offence*** in section 23B of that
21 Act included any offence against a law of a State or
22 Territory.

23 ***public sector agency***: see section 8.

24 ***public sector corruption issue*** means:

25 (a) a corruption issue relating to a public sector agency; or

26 (b) a corruption issue relating to the office of a parliamentarian;
27 or

28 (c) a corruption issue relating to a parliamentarian; or

29 (d) a corruption issue relating to a higher education provider; or

30 (e) a corruption issue relating to a research body.

31 Note: For when a corruption issue ***relates to*** a regulated entity or a
32 parliamentarian, see section 19.

33 ***refer***:

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- 1 (a) in relation to an allegation, includes make the allegation; and
2 (b) in relation to information, includes give the information; and
3 (c) in relation to a corruption issue or a CIC corruption issue,
4 includes refer an allegation or information that raises the
5 issue.

6 **regulated entity**: see section 6.

7 **related confiscation proceeding** means:

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

14 **related offence** means:

- 15 (a) for hearing material, derivative material or a witness—an
16 offence if the subject matter of the relevant hearing relates to
17 the subject matter of the offence; or
18 (b) for a summons—an offence if the subject matter of the
19 summons relates to the subject matter of the offence.

20 **relates to**: for when a corruption issue **relates to** a regulated entity
21 or a parliamentarian, see section 19.

22 **research body**: see section 11.

23 **resolved**: for when a charge for an offence, or a confiscation
24 proceeding, is **resolved** in relation to a person, see section 22.

25 **responsible Minister**, in relation to a regulated entity, means:

- 26 (a) if the entity is a law enforcement agency or public sector
27 agency and the entity is established or continued in existence
28 by an Act—the Minister administering that Act (subject to
29 paragraph (b)); or
30 (b) if the entity is a Department of the Parliament established
31 under the *Parliamentary Service Act 1999*:
32 (i) for the Department of the Senate—the President of the
33 Senate; or

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- 1 (ii) for the Department of the House of Representatives—
2 the Speaker of the House of Representatives; or
3 (iii) otherwise—both the President of the Senate and the
4 Speaker of the House of Representatives; or
5 (c) if the entity is a law enforcement agency or public sector
6 agency and neither paragraph (a) nor (b) applies—the
7 Minister having general responsibility for the activities of the
8 entity; or
9 (d) if the entity is a higher education provider or a research
10 body—the Minister administering the *Tertiary Education*
11 *Quality and Standards Agency Act 2011*.

12 **rules** means the rules made under section 291.

13 **search warrant** means an investigation warrant, or an offence
14 warrant, that is issued under section 140:

- 15 (a) to search premises; or
16 (b) to carry out an ordinary search, or frisk search, of a person.

17 **seconded:**

- 18 (a) in relation to a regulated entity—see section 14; and
19 (b) in relation to the CIC—see subsection 225(2).

20 **secrecy provision** means:

- 21 (a) a provision of a law of the Commonwealth that purports to
22 prohibit; or
23 (b) anything done, under a provision of a law of the
24 Commonwealth, to prohibit;

25 any of the following:

- 26 (c) the communication, divulging or publication of information;
27 (d) the production of, or the publication of the contents of, a
28 document;
29 (e) the production of a thing;

30 regardless of whether the provision of the law of the
31 Commonwealth:

- 32 (f) commenced before the commencement of this Act; or
33 (g) is expressed to apply despite any other law.

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section 270 certified information means:

- (a) information that is about a matter specified in a certificate in force under section 270; or
- (b) information contained in a document specified in a certificate in force under section 270.

sensitive information means information the disclosure of which:

- (a) could prejudice:
 - (i) the security, defence or international relations of Australia; or
 - (ii) relations between the Commonwealth Government and the Government of a State or Territory; or
 - (iii) relations between the Government of a State or Territory and the Government of another State or Territory; or
- (b) would involve disclosing:
 - (i) deliberations or decisions of the Cabinet, or of a Committee of the Cabinet, of the Commonwealth or of a State; or
 - (ii) deliberations or advice of the Federal Executive Council or the Executive Council of a State or the Northern Territory; or
 - (iii) deliberations or decisions of the Australian Capital Territory Executive or of a committee of that Executive; or
- (c) could reveal, or enable a person to ascertain, the existence or identity of a confidential source of information in relation to:
 - (i) the enforcement of the criminal law of the Commonwealth, a State or Territory or a foreign country; or
 - (ii) a corruption investigation; or
 - (iii) a corruption inquiry; or
- (d) could endanger a person's life or physical safety; or
- (e) could prejudice the protection of public safety; or
- (f) could prejudice the fair trial of a person or the impartial adjudication of a matter; or

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- 1 (g) could prejudice the proper enforcement of the law (including
2 through corruption investigations); or
3 (h) would involve disclosing information whose disclosure is
4 prohibited (absolutely or subject to qualifications) by or
5 under another law of the Commonwealth; or
6 (i) would involve unreasonably disclosing a person's personal
7 affairs; or
8 (j) would involve unreasonably disclosing confidential
9 commercial information.

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

14 **significant corruption issue** means a corruption issue that relates
15 to a law enforcement agency and:

- 16 (a) if an agreement under subsection 27(1) is in force for the
17 agency—is of a kind agreed under that subsection to be a
18 significant corruption issue; or
19 (b) if no such agreement is in force for the agency—relates to
20 serious corruption or systemic corruption; or
21 (c) in any case—is of a kind that is prescribed by the rules for
22 the purposes of this paragraph.

23 **special investigation** means a special investigation of a CIC
24 corruption issue conducted under Division 4 of Part 10.

25 **special investigator** means a person authorised under
26 paragraph 194(2)(b) to conduct a special investigation.

27 **staff member**:

- 28 (a) in relation to a regulated entity—see section 12; and
29 (b) in relation to the CIC—see subsection 225(1).

30 **State offence**: see subsection 23(6).

31 **State or Territory government entity** means:

- 32 (a) a Department of a State or Territory; or

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1 (b) a body (whether incorporated or not) established for a public
2 purpose by or under a law of a State or Territory.

3 ***State or Territory integrity agency*** means a body (whether
4 incorporated or not) that:

5 (a) is established by the law of a State or Territory for purposes
6 that include the purpose of investigating corruption in State
7 or Territory government entities; and

8 (b) is prescribed by the rules for the purposes of this paragraph.

9 ***statutory office holder***: see section 15.

10 ***strip search*** has the same meaning as in Part IAA of the *Crimes*
11 *Act 1914*.

12 ***superior court Judge*** means:

13 (a) a Judge of the Federal Court; or

14 (b) a Judge of the Supreme Court of a State or Territory.

15 ***systemic corruption*** means instances of corrupt conduct that reveal
16 a pattern of corrupt conduct in a regulated entity or regulated
17 entities.

18 ***taxation secrecy provision*** means a secrecy provision that is a
19 provision of a taxation law within the meaning of the *Taxation*
20 *Administration Act 1953*.

21 ***thing relevant to an indictable offence*** has the same meaning as in
22 the *Crimes Act 1914*.

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

25 ***vexatious complainant declaration*** has the meaning given by
26 section 67.

27 ***witness***, for a hearing under Part 8, hearing material or derivative
28 material: see subsection 21(3).

EXPOSURE DRAFT

Division 2—Definitions relevant to regulated entities

6 Meaning of *regulated entity*

A *regulated entity* is:

- (a) a law enforcement agency; or
- (b) a public sector agency; or
- (c) the office of a parliamentarian; or
- (d) a higher education provider; or
- (e) a research body.

7 *Law enforcement agencies and the heads of those agencies*

For the purposes of this Act:

- (a) a body is a *law enforcement agency* if the body is covered by column 1 of an item in the following table; and
- (b) the *head* of that agency is the person specified in column 2 of that item.

Law enforcement agencies and the heads of those agencies

Item	Column 1 Law enforcement agency	Column 2 Head of law enforcement agency
1	The AFP	The AFP Commissioner
2	ACIC	The CEO of ACIC (within the meaning of the <i>Australian Crime Commission Act 2002</i>)
3	The Department of Home Affairs	The Secretary of that Department
4	AUSTRAC	The AUSTRAC CEO (within the meaning of the <i>Anti-Money Laundering Act</i>)
5	The Agriculture Department	The Secretary of that Department
6	The ACCC	The Chairperson of the ACCC
7	APRA	The Chair of APRA
8	ASIC	The Chairperson of ASIC
9	The ATO	The Commissioner of Taxation

EXPOSURE DRAFT

Part 2 Interpretation

Division 2 Definitions relevant to regulated entities

Section 8

Law enforcement agencies and the heads of those agencies

Item	Column 1	Column 2
	Law enforcement agency	Head of law enforcement agency
10	Any other: (a) Department of State of the Commonwealth; or (b) body (whether incorporated or not) established for a public purpose by, or under, a law of the Commonwealth; that is prescribed by the rules for the purposes of this item	The person prescribed by the rules for the purposes of this item

8 *Public sector agencies and the heads of those agencies*

(1) For the purposes of this Act:

- (a) a body (whether incorporated or not) is a *public sector agency* if the body is covered by column 1 of an item in the following table and is not a law enforcement agency; and
- (b) the *head* of that agency is the person specified in column 2 of that item.

Public sector agencies and the heads of those agencies

Item	Column 1	Column 2
	Public sector agency	Head of public sector agency
1	A Commonwealth entity	Whichever of the following applies: (a) if the accountable authority of the entity is a single person—that person; (b) if the accountable authority of the entity is a governing body or other group of persons—the chair (however described) of that body or group
2	A Commonwealth company	The chair (however described) of the Commonwealth company’s governing body
3	A subsidiary of:	The chair (however described) of the

EXPOSURE DRAFT

Public sector agencies and the heads of those agencies

Item	Column 1	Column 2
	Public sector agency	Head of public sector agency
	(a) a Commonwealth company; or (b) a corporate Commonwealth entity	subsidiary's governing body
4	The Registry of the High Court	The Chief Executive and Principal Registrar of the High Court
5	The Australian Geospatial-Intelligence Organisation	The Director of the Australian Geospatial-Intelligence Organisation
6	The Defence Intelligence Organisation	The Director of the Defence Intelligence Organisation
7	A body prescribed by the rules for the purposes of this item that is established for a public purpose by, or under, a law of the Commonwealth (other than a general law allowing incorporation as a company or body corporate)	The person prescribed by the rules for the purposes of this item

- 1 (2) An expression used in the table in subsection (1) that is defined for
2 the purposes of the *Public Governance, Performance and*
3 *Accountability Act 2013* has the same meaning in the table as it has
4 in that Act.
- 5 (3) For the purposes of this Act, each of the following is taken to be a
6 public sector agency in its own right, and not to be part of the
7 Defence Department:
8 (a) the Australian Geospatial-Intelligence Organisation;
9 (b) the Defence Intelligence Organisation.
- 10 (4) Despite subsection (1), the CIC is not a **public sector agency**.

EXPOSURE DRAFT

Part 2 Interpretation

Division 2 Definitions relevant to regulated entities

Section 9

1 **9 Offices of parliamentarians and the heads of those offices**

- 2 (1) The *office* of a parliamentarian consists of the staff members
3 mentioned in subsection 12(5) in relation to the parliamentarian.
- 4 (2) The parliamentarian is the *head* of the parliamentarian’s office.

5 Note: However, the parliamentarian is not a staff member of the
6 parliamentarian’s office (see subsection 12(5) and
7 paragraph 12(11)(c)).

8 **10 Higher education providers and the heads of those providers**

- 9 (1) *Higher education provider* has the same meaning in this Act as in
10 the *Tertiary Education Quality and Standards Agency Act 2011*.
- 11 (2) However, neither of the following is a *higher education provider*
12 for the purposes of this Act:
13 (a) a law enforcement agency;
14 (b) a public sector agency.
- 15 (3) The *head* of a higher education provider is:
16 (a) the person holding, or performing the duties of, the principal
17 office in respect of the provider (unless paragraph (b)
18 applies); or
19 (b) if the rules prescribe that another person is the head of the
20 provider—that other person.

21 **11 Research bodies and the heads of those bodies**

- 22 (1) A *research body* is a body corporate that meets each of the
23 following requirements:
24 (a) the body undertakes research as its primary purpose;
25 (b) the body receives funding for the purposes of its research
26 activities from the Commonwealth, a law enforcement
27 agency or a public sector agency (whether directly or
28 indirectly);
29 (c) the body is:
30 (i) a corporation to which paragraph 51(xx) of the
31 Constitution applies; or

EXPOSURE DRAFT

- 1 (ii) a corporation that is established by or under a law of the
2 Commonwealth or a Territory.
- 3 (2) However, none of the following is a *research body* for the
4 purposes of this Act:
- 5 (a) a higher education provider;
6 (b) a law enforcement agency;
7 (c) a public sector agency.
- 8 (3) The *head* of a research body is:
- 9 (a) the person holding, or performing the duties of, the principal
10 office in respect of the body (unless paragraph (b) applies);
11 or
12 (b) if the rules prescribe that another person is the head of the
13 body—that other person.

14 **12 Meaning of *staff member* in relation to a regulated entity**

15 *Law enforcement agencies and public sector agencies*

- 16 (1) The following are *staff members* of a law enforcement agency or a
17 public sector agency:
- 18 (a) the head of the agency;
19 (b) if the agency is a Commonwealth entity—an official of the
20 agency;
21 (c) in any case—an individual who is employed by:
22 (i) the agency; or
23 (ii) a staff member of the agency on behalf of the
24 Commonwealth;
25 (d) if the agency is:
26 (i) a Commonwealth company; or
27 (ii) a subsidiary of a corporate Commonwealth entity or a
28 Commonwealth company;
29 an officer or director of the agency;
30 (e) if the agency is responsible for administering a
31 Commonwealth contract—an individual who is either of the
32 following:
33 (i) a contracted service provider for the contract;
-

EXPOSURE DRAFT

Part 2 Interpretation

Division 2 Definitions relevant to regulated entities

Section 12

- 1 (ii) both an officer or employee of a contracted service
2 provider for the contract and someone who provides
3 services for the purposes (whether direct or indirect) of
4 the contract;
- 5 (f) in any case—a secondee to the agency.
- 6 (2) However, if a law enforcement agency or public sector agency is
7 covered by an item of the following table then the *staff members*
8 of the agency are the persons mentioned in paragraphs (1)(a), (e)
9 and (f) and the persons mentioned in column 2 of that item.
- 10

Staff members for certain law enforcement agencies and public sector agencies

Item	Column 1 Agency	Column 2 Staff members
1	The Registry of the High Court	An individual who is appointed or engaged as an officer or employee of the High Court under section 26 of the <i>High Court of Australia Act 1979</i>
2	Either of the following: (a) the Australian Geospatial-Intelligence Organisation; (b) the Defence Intelligence Organisation	An individual who is employed in the agency

- 11
- 12 (3) If an individual:
- 13 (a) is covered by column 1 of an item of the following table; and
- 14 (b) is not a staff member of a law enforcement agency or of a
- 15 public sector agency under subsection (1) or (2);
- 16 then the individual is a *staff member* of the law enforcement
- 17 agency or public sector agency identified under column 2 of that
- 18 item.
- 19

EXPOSURE DRAFT

Interpretation **Part 2**
Definitions relevant to regulated entities **Division 2**

Section 12

Staff members—rules for certain statutory office holders and other individuals

Item	Column 1 Individual	Column 2 Agency
1	An individual who is a statutory office holder	Whichever of the following applies: (a) if the purposes of a Commonwealth entity for the purposes of the finance law include assisting the office holder, or a body (whether incorporated or not) of which the office holder is a member or forms a part—the Commonwealth entity (subject to paragraph (b)); (b) if the primary function of the office holder is to assist a law enforcement agency or a public sector agency, or another staff member of such an agency, in the performance of the agency's or the other staff member's functions—that agency; (c) the Department administered by the Minister responsible for administering the provision of the law by or under which the office is established (subject to paragraphs (a) and (b))
2	An individual who exercises powers, or performs functions, conferred on the individual by or under a provision of a law of the Commonwealth, other than by or under: (a) a general law allowing incorporation as a company or body corporate; or (b) the <i>Australian Capital Territory (Self-Government) Act 1988</i> ; or (c) the <i>Northern Territory</i>	Whichever of the following applies: (a) if the power is exercised, or the function is performed, for the purpose of assisting a law enforcement agency or a public sector agency, or another staff member of such an agency, in the performance of the agency's or other staff member's functions—that agency; (b) the Department administered by the Minister responsible for

EXPOSURE DRAFT

Part 2 Interpretation

Division 2 Definitions relevant to regulated entities

Section 12

Staff members—rules for certain statutory office holders and other individuals

Item	Column 1 Individual	Column 2 Agency
	(Self-Government) Act 1978; or (d) a provision of a law prescribed by the rules for the purposes of this paragraph	administering the provision of the law (subject to paragraph (a))
3	An individual who holds an appointment under section 67 of the Constitution	The Department administered by the Prime Minister

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2

- (4) An expression used in subsection (1), (2) or (3) that is defined for the purposes of the *Public Governance, Performance and Accountability Act 2013* has the same meaning in that subsection as it has in that Act.

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Offices of parliamentarians

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- (5) The following are **staff members** of the office of a parliamentarian:

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- (a) an individual who is employed by the parliamentarian under Part III or IV of the *Members of Parliament (Staff) Act 1984*;
- (b) an individual who is engaged by the parliamentarian as a consultant under Part II of that Act;
- (c) a secondee to the office of the parliamentarian.

13

Higher education providers

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- (6) The following are **staff members** of a higher education provider:

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- (a) the head of the provider;
- (b) an officer or employee of the provider;
- (c) a person who performs services for or on behalf of the provider;
- (d) a secondee to the provider;
- (e) if the provider is a partnership—a partner in the partnership;
- (f) if the provider is a sole trader—the provider;
- (g) in any case—a person in a class prescribed by the rules for the purposes of this paragraph.

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- 1 (7) The rules may provide that a person in a class prescribed by the
2 rules is not a **staff member** of a higher education provider. Those
3 rules have effect despite subsection (6).

4 *Research bodies*

- 5 (8) The following are **staff members** of a research body:
6 (a) the head of the body;
7 (b) an officer or employee of the body;
8 (c) a person who performs services for or on behalf of the body;
9 (d) a secondee to the body;
10 (e) if the body is a partnership—a partner in the partnership;
11 (f) if the body is a sole trader—the body;
12 (g) in any case—a person in a class prescribed by the rules for
13 the purposes of this paragraph.
- 14 (9) The rules may provide that a person in a class prescribed by the
15 rules is not a **staff member** of a research body. Those rules have
16 effect despite subsection (8).

17 *Providing for individual to be a staff member of a different*
18 *regulated entity*

- 19 (10) The rules may provide that an individual who would otherwise be a
20 staff member of a particular regulated entity under subsection (1),
21 (2), (3), (5), (6) or (8) is a staff member of a different regulated
22 entity. Those rules have effect despite those subsections.

23 *Certain individuals are not staff members*

- 24 (11) Despite anything else in this section, none of the following is a
25 **staff member** of a regulated entity:
26 (a) the Governor-General;
27 (b) a person appointed to administer the Government of the
28 Commonwealth under section 4 of the Constitution;
29 (c) a parliamentarian;
30 (d) a Justice of the High Court or a Judge of a court created by
31 the Parliament;
32 (e) a member of a Royal Commission;
-

EXPOSURE DRAFT

Part 2 Interpretation

Division 2 Definitions relevant to regulated entities

Section 13

- 1 (f) a person who holds an office (within the meaning of the *Fair*
2 *Work Act 2009*) in an organisation registered, or an
3 association recognised, under the *Fair Work (Registered*
4 *Organisations) Act 2009*;
- 5 (g) a staff member of the CIC, a special investigator, or a person
6 appointed under section 196 to assist a special investigator as
7 counsel;
- 8 (h) the Inspector-General.

9 Note: For persons assisting the Inspector-General, see also
10 subsection 253(9).

11 **13 Meaning of *contracted service provider* for a *Commonwealth*** 12 ***contract***

- 13 (1) A ***contracted service provider*** for a Commonwealth contract is:
14 (a) a person (other than the Commonwealth, a law enforcement
15 agency or a public sector agency) who:
16 (i) is a party to the Commonwealth contract; and
17 (ii) is responsible for the provision of services under the
18 Commonwealth contract; or
19 (b) a person who:
20 (i) is a party to a contract (the ***subcontract***) with a person
21 who is a contracted service provider for the
22 Commonwealth contract under paragraph (a) (or under a
23 previous application of this paragraph); and
24 (ii) is responsible under the subcontract for the provision of
25 services for the purposes (whether direct or indirect) of
26 the Commonwealth contract.

27 Note: For when an officer or employee of a contracted service provider
28 engages in corrupt conduct, see subsection 17(11).

- 29 (2) A ***Commonwealth contract*** is a contract:
30 (a) to which the Commonwealth, a law enforcement agency or a
31 public sector agency is a party; and
32 (b) under which services are to be, or were to be, provided:
33 (i) to the Commonwealth, a law enforcement agency or a
34 public sector agency; or

EXPOSURE DRAFT

- 1 (ii) for or on behalf of the Commonwealth, a law
2 enforcement agency or a public sector agency, and in
3 connection with the performance of its functions or the
4 exercise of its powers.

5 Note: *Contract* is defined in section 5 to include any arrangement,
6 agreement, deed or understanding.

- 7 (3) Despite subsection (1), the following are not *contracted service*
8 *providers* for a Commonwealth contract:
9 (a) the government of a State or Territory;
10 (b) the government of a foreign country, or of a part of a foreign
11 country;
12 (c) a person in a class prescribed by the rules for the purposes of
13 this paragraph.

14 **14 Meaning of *seconded* in relation to a regulated entity**

- 15 (1) An individual is a *seconded* to a regulated entity if the individual's
16 services are made available to:
17 (a) the entity; or
18 (b) the head of the entity in connection with the performance of
19 the entity's or the head's functions.
20 (2) Subsection (1) has effect subject to any rules made for the purposes
21 of this subsection.

22 **15 Meaning of *statutory office holder***

- 23 (1) A *statutory office holder* is an individual who holds an office or
24 appointment under a law of the Commonwealth, other than under:
25 (a) a general law allowing incorporation as a company or body
26 corporate; or
27 (b) the *Australian Capital Territory (Self-Government) Act 1988*;
28 or
29 (c) the *Northern Territory (Self-Government) Act 1978*; or
30 (d) a provision of a law prescribed by the rules for the purposes
31 of this paragraph.

EXPOSURE DRAFT

Part 2 Interpretation

Division 2 Definitions relevant to regulated entities

Section 15

- 1 (2) Paragraph (1)(a) does not apply in relation to the following offices
2 and appointments:
- 3 (a) the office of Registrar, or Deputy Registrar, of Aboriginal
4 and Torres Strait Islander Corporations under the
5 *Corporations (Aboriginal and Torres Strait Islander) Act*
6 *2006*;
- 7 (b) the office of a member of a committee convened under Part 2
8 of Schedule 2 to the *Corporations Act 2001*;
- 9 (c) any other office or appointment prescribed by the rules for
10 the purposes of this paragraph.
- 11 (3) Paragraph (1)(c) does not apply in relation to the Administrator, an
12 Acting Administrator, or a Deputy Administrator, of the Northern
13 Territory.

EXPOSURE DRAFT

1 **Division 3—Corruption issues and CIC corruption issues**

2 **16 Meaning of *corruption issue* and *CIC corruption issue***

3 *Corruption issues*

4 (1) A *corruption issue* is:

5 (a) an issue of whether a person who is a staff member of a law
6 enforcement agency:

7 (i) has, or may have, engaged in corrupt conduct; or

8 (ii) is, or may be, engaging in corrupt conduct; or

9 (iii) will, or may at any time in the future, engage in corrupt
10 conduct; or

11 (b) an issue of whether a person who was a staff member of a
12 law enforcement agency has, or may have, engaged in
13 corrupt conduct; or

14 (c) an issue of whether a person who is a staff member of a
15 public sector agency, of the office of a parliamentarian, of a
16 higher education provider or of a research body, or who is a
17 parliamentarian:

18 (i) has engaged in corrupt conduct; or

19 (ii) is engaging in corrupt conduct; or

20 (d) an issue of whether a person who was a staff member of a
21 public sector agency, of the office of a parliamentarian, of a
22 higher education provider or of a research body, or who was
23 a parliamentarian, has engaged in corrupt conduct.

24 Note 1: A corruption issue that relates to a law enforcement agency is a *law*
25 *enforcement corruption issue*. All other corruption issues are *public*
26 *sector corruption issues*. See the definitions of those expressions in
27 section 5.

28 Note 2: For when a corruption issue *relates* to a regulated entity or to a
29 parliamentarian, see section 19.

30 *CIC corruption issues*

31 (2) A *CIC corruption issue* is:

EXPOSURE DRAFT

Part 2 Interpretation

Division 3 Corruption issues and CIC corruption issues

Section 17

- 1 (a) an issue of whether a person who is a staff member of the
2 CIC:
3 (i) has, or may have, engaged in corrupt conduct; or
4 (ii) is, or may be, engaging in corrupt conduct; or
5 (iii) will, or may at any time in the future, engage in corrupt
6 conduct; or
7 (b) an issue of whether a person who was a staff member of the
8 CIC has, or may have, engaged in corrupt conduct.

9 *Identity of person need not be known, certain or disclosed*

- 10 (3) To avoid doubt, an allegation, or information, may raise a
11 **corruption issue** or a **CIC corruption issue** even if the identity of
12 the person mentioned in subsection (1) or (2) is unknown, is
13 uncertain or is not disclosed in the allegation or information.

14 **17 Meaning of *engages in corrupt conduct***

15 *Staff members of law enforcement agencies*

- 16 (1) For the purposes of this Act, a staff member of a law enforcement
17 agency **engages in corrupt conduct** if the staff member, while a
18 staff member of the agency, engages in any of the following
19 conduct:
20 (a) conduct that involves, or that is engaged in for the purpose
21 of, the staff member abusing the staff member's office as a
22 staff member of the agency;
23 (b) conduct that perverts, or that is engaged in for the purpose of
24 perverting, the course of justice;
25 (c) conduct that, having regard to the duties and powers of the
26 staff member as a staff member of the agency, involves, or is
27 engaged in for the purpose of, corruption of any other kind.

28 *Staff members of public sector agencies*

- 29 (2) For the purposes of this Act, a staff member of a public sector
30 agency **engages in corrupt conduct** if:
31 (a) the staff member, while a staff member of the agency,
32 engages in any of the following conduct:

EXPOSURE DRAFT

- 1 (i) conduct that involves, or that is engaged in for the
2 purpose of, the staff member abusing the staff member's
3 office as a staff member of the agency;
4 (ii) conduct that perverts, or that is engaged in for the
5 purpose of perverting, the course of justice; and
6 (b) the conduct constitutes a listed offence (see section 18).

- 7 (3) Subsection (2) does not apply in relation to conduct engaged in by
8 a staff member of a public sector agency if the conduct is engaged
9 in when performing a function, or exercising a power, of a judicial
10 nature.

11 *Staff members of offices of parliamentarians*

- 12 (4) For the purposes of this Act, a staff member of the office of a
13 parliamentarian ***engages in corrupt conduct*** if:
14 (a) the staff member, while a staff member of the office of the
15 parliamentarian, engages in any of the following conduct:
16 (i) conduct that involves, or that is engaged in for the
17 purpose of, the staff member abusing the staff member's
18 office as a staff member of the office of the
19 parliamentarian;
20 (ii) conduct that perverts, or that is engaged in for the
21 purpose of perverting, the course of justice; and
22 (b) the conduct constitutes a listed offence (see section 18).

23 *Parliamentarians*

- 24 (5) For the purposes of this Act, a parliamentarian ***engages in corrupt***
25 ***conduct*** if:
26 (a) the parliamentarian, while a parliamentarian, engages in any
27 of the following conduct:
28 (i) conduct that involves, or that is engaged in for the
29 purpose of, the parliamentarian abusing the
30 parliamentarian's position as a parliamentarian;
31 (ii) conduct that perverts, or that is engaged in for the
32 purpose of perverting, the course of justice; and
33 (b) the conduct constitutes a listed offence (see section 18).

EXPOSURE DRAFT

Part 2 Interpretation

Division 3 Corruption issues and CIC corruption issues

Section 17

1 *Staff members of higher education providers*

- 2 (6) For the purposes of this Act, a staff member of a higher education
3 provider ***engages in corrupt conduct*** if the staff member, in
4 connection with being a staff member of the higher education
5 provider, engages in conduct that constitutes a listed offence (see
6 section 18).

7 *Staff members of research bodies*

- 8 (7) For the purposes of this Act, a staff member of a research body
9 ***engages in corrupt conduct*** if the staff member, in connection
10 with being a staff member of the research body, engages in conduct
11 that constitutes a listed offence (see section 18).

12 *Staff members of the CIC*

- 13 (8) For the purposes of this Act, a staff member of the CIC ***engages in***
14 ***corrupt conduct*** if the staff member, while a staff member of the
15 CIC, engages in:
16 (a) conduct that involves, or that is engaged in for the purpose
17 of, the staff member abusing the staff member's office as a
18 staff member of the CIC; or
19 (b) conduct that perverts, or that is engaged in for the purpose of
20 perverting, the course of justice; or
21 (c) conduct that, having regard to the duties and powers of the
22 staff member as a staff member of the CIC, involves, or is
23 engaged in for the purpose of, corruption of any other kind.

24 *General provisions*

- 25 (9) To avoid doubt:
26 (a) the conduct referred to in subsection (1), (2), (4), (5), (6) or
27 (7) may be conduct that was engaged in before the
28 commencement of this section; and
29 (b) the conduct referred to in subsection (1), (2), (4), (5), (6), (7)
30 or (8) may be conduct that is engaged in in Australia or
31 outside Australia; and
32 (c) a person may ***engage in corrupt conduct*** under
33 subsection (1), (2), (4), (5), (6), (7) or (8) even if the conduct

EXPOSURE DRAFT

- 1 engaged in by the person also involves or implicates another
2 person, regardless of whether the other person is:
- 3 (i) a staff member of a law enforcement agency; or
 - 4 (ii) a staff member of a public sector agency; or
 - 5 (iii) a staff member of the office of a parliamentarian; or
 - 6 (iv) a parliamentarian; or
 - 7 (v) a staff member of a higher education provider; or
 - 8 (vi) a staff member of a research body; or
 - 9 (vii) a staff member of the CIC; and
- 10 (d) a person does not ***engage in corrupt conduct*** under
11 subsection (2), (4), (5), (6) or (7) unless the provision
12 creating the listed offence is in force at the time the conduct
13 referred to in the relevant subsection is engaged in.
- 14 (10) For the purposes of this section, conduct is taken to be engaged in
15 for a purpose if it is engaged in for purposes that include that
16 purpose.
- 17 (11) For the purposes of this section, if an individual is a staff member
18 of a law enforcement agency or of a public sector agency only
19 because the individual is:
- 20 (a) a contracted service provider for a Commonwealth contract;
21 or
 - 22 (b) both:
 - 23 (i) an officer or employee of a contracted service provider
24 for a Commonwealth contract; and
 - 25 (ii) someone who provides services for the purposes
26 (whether direct or indirect) of the contract;
- 27 the individual does not engage in conduct while a staff member of
28 the agency unless the conduct is in connection with entering into,
29 or giving effect to, the contract.

30 **18 Meaning of *listed offence***

31 For the purposes of this Act, each of the following is a ***listed***
32 ***offence***:

- 33 (a) an offence against section 30K (obstructing or hindering the
34 performance of services) of the *Crimes Act 1914*;

EXPOSURE DRAFT

Part 2 Interpretation

Division 3 Corruption issues and CIC corruption issues

Section 19

- 1 (b) an offence against any of the following provisions of the
2 *Criminal Code*:
- 3 (i) Division 70 (bribery of foreign public officials);
4 (ii) Chapter 7 (the proper administration of Government);
5 (iii) Part 10.2 (money laundering), Part 10.7 (computer
6 offences) or Part 10.9 (accounting records);
- 7 (c) an offence against section 37 (contravening restraining
8 orders) or 71 (dealings with forfeited property) of the
9 *Proceeds of Crime Act 2002*;
- 10 (d) an offence against any of the following Acts:
- 11 (i) the *Autonomous Sanctions Act 2011*;
12 (ii) the *Biosecurity Act 2015*;
13 (iii) the *Charter of the United Nations Act 1945*;
14 (iv) the *Defence Trade Controls Act 2012*;
15 (v) the *Foreign Influence Transparency Scheme Act 2018*;
16 (vi) the *Public Interest Disclosure Act 2013*;
- 17 (e) an offence against any of the following provisions of this
18 Act:
- 19 (i) Division 1 of Part 8 (requiring people to give
20 information and produce documents or things);
21 (ii) Division 2 of Part 8 (conducting hearings);
22 (iii) section 156 (person with knowledge of a computer or a
23 computer system to assist access etc.);
24 (iv) section 276 (victimisation);
25 (v) section 277 (concealing corrupt conduct).

26 **19 When a corruption issue *relates to* a regulated entity or a** 27 **parliamentarian**

28 *Regulated entities—general rule*

- 29 (1) A corruption issue *relates to* a regulated entity if the corruption
30 issue relates to corrupt conduct of a person as a staff member of the
31 entity.

EXPOSURE DRAFT

1

Regulated entities—corrupt conduct of secondees

2

(2) If, apart from this subsection, a corruption issue would relate to 2
3 regulated entities because a person is both:

3

4

(a) an employee of a regulated entity (the *home entity*); and

5

(b) a secondee to another regulated entity (the *host entity*);

6

then the corruption issue *relates to* the host entity and not to the
7 home entity.

7

8

Parliamentarians

9

(3) A corruption issue *relates to* a parliamentarian if the corruption
10 issue relates to corrupt conduct of the parliamentarian as a
11 parliamentarian.

10

11

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Part 2 Interpretation

Division 4 Other definitions

Section 20

1 **Division 4—Other definitions**

2 **20 Meaning of *Commonwealth integrity office holder* and**
3 ***Commonwealth integrity agency***

- 4 (1) Each of the following is a *Commonwealth integrity office holder*:
- 5 (a) the Commonwealth Ombudsman, the Defence Force
6 Ombudsman, the Postal Industry Ombudsman, the Overseas
7 Students Ombudsman, the Private Health Insurance
8 Ombudsman and the VET Student Loans Ombudsman;
- 9 (b) the Chief Executive Officer of the Independent Parliamentary
10 Expenses Authority;
- 11 (c) the Australian Public Service Commissioner;
- 12 (d) the Merit Protection Commissioner;
- 13 (e) the Auditor-General;
- 14 (f) the Electoral Commissioner;
- 15 (g) the AFP Commissioner;
- 16 (h) the Parliamentary Service Commissioner;
- 17 (i) the Parliamentary Service Merit Protection Commissioner;
- 18 (j) the Australian Information Commissioner;
- 19 (k) the CEO of ACIC (within the meaning of the *Australian*
20 *Crime Commission Act 2002*);
- 21 (l) the IGIS;
- 22 (m) the Inspector-General of Taxation;
- 23 (n) the Chief Commissioner of the Tertiary Education Quality
24 and Standards Agency;
- 25 (o) another statutory office holder, if the office holder:
- 26 (i) has functions that include investigating or inquiring into
27 action taken by staff members of regulated entities or by
28 parliamentarians; and
- 29 (ii) is prescribed by the rules for the purposes of this
30 subparagraph.
- 31 (2) The *Commonwealth integrity agency* of a Commonwealth
32 integrity office holder consists of the Commonwealth integrity
33 office holder and:
-

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Interpretation **Part 2**
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Section 21

- 1 (a) subject to paragraph (b)—the staff members of the regulated
2 entity of which the office holder is the head; or
3 (b) for a Commonwealth integrity office holder mentioned in
4 column 1 of the following table—the persons or bodies
5 mentioned in column 2 of the item.
6

Meaning of *Commonwealth integrity agency*

Item	Column 1 Commonwealth integrity office holder	Column 2 Commonwealth integrity agency
1	A Commonwealth integrity office holder covered by paragraph (1)(a)	The regulated entity of which the Commonwealth Ombudsman is the head
2	Merit Protection Commissioner	The regulated entity of which the Australian Public Service Commissioner is the head
3	Parliamentary Service Commissioner	Each person who is an entrusted person for the purposes of section 65AA of the <i>Parliamentary Service Act 1999</i>
4	Parliamentary Service Merit Protection Commissioner	Each person who is an entrusted person for the purposes of section 65AB of the <i>Parliamentary Service Act 1999</i>
5	A Commonwealth integrity office holder covered by paragraph (1)(o)	The persons or bodies prescribed by the rules for the Commonwealth integrity office holder

7

21 Meaning of *hearing material and witness*

- 8
9 (1) *Hearing material* is:
10 (a) particular evidence given by a person at a hearing under
11 Part 8; or
12 (b) a document or thing produced by a person to a CIC office
13 holder at a hearing under Part 8; or

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Division 4 Other definitions

Section 21

- 1 (c) the identity, or particular information that may reveal the
2 identity, of a person who has given evidence at a hearing
3 under Part 8; or
- 4 (d) the identity, or particular information that may reveal the
5 identity, of a person about whom allegations have been raised
6 at a hearing under Part 8; or
- 7 (e) the fact that a particular person has given or may be about to
8 give evidence at a hearing under Part 8; or
- 9 (f) the identity, or particular information that may reveal the
10 identity, of a person of interest to:
- 11 (i) the investigation of a public sector corruption issue; or
12 (ii) a corruption inquiry, to the extent that the inquiry relates
13 to a public sector agency, a higher education provider or
14 a research body;
- 15 to the extent that the person's identity, or the information, is
16 obtained at or in connection with a hearing under Part 8; or
- 17 (g) the fact that a private hearing has been or may be held for the
18 purposes of:
- 19 (i) investigating a public sector corruption issue; or
20 (ii) a corruption inquiry, to the extent that the inquiry relates
21 to a public sector agency, a higher education provider or
22 a research body;
- 23 to the extent that that fact is obtained at or in connection with
24 a hearing under Part 8.
- 25 (2) To avoid doubt, information, a document or a thing is not covered
26 by paragraph (1)(a) or (b) to the extent that it is obtained otherwise
27 than at a hearing.
- 28 Example: Before a document is produced at a hearing, a law enforcement
29 agency obtains a copy of the document when executing a search
30 warrant. The copy obtained under the warrant is not hearing material.
- 31 (3) The *witness* is:
- 32 (a) for the hearing or hearing material—the person referred to in
33 paragraph (1)(a), (b), (c), (d), (e) or (f); or
- 34 (b) for derivative material—the person who is the witness for the
35 hearing material from which the derivative material was
36 obtained.

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1 **22 When a charge or confiscation proceeding is *resolved***

2 (1) A charge for an offence is *resolved* in relation to a person at the
3 latest of the following times:

4 (a) when:

5 (i) the charge is withdrawn; or

6 (ii) the charge is dismissed; or

7 (iii) the person is not committed on the charge following a
8 committal hearing; or

9 (iv) the person is acquitted of the offence; or

10 (v) the person is sentenced for the offence; or

11 (vi) the person is dealt with by being the subject of an order
12 made as a consequence of a finding of guilt; or

13 (vii) the charge is otherwise finally dealt with;

14 (b) if an appeal relating to the charge is not lodged within the
15 period for lodging such an appeal—when that period ends;

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

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

21 (2) A confiscation proceeding is *resolved* in relation to a person at the
22 latest of the following times:

23 (a) when the proceeding is discontinued;

24 (b) if an appeal relating to the proceeding is not lodged within
25 the period for lodging such an appeal—when that period
26 ends;

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

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

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Division 4 Other definitions

Section 23

1 **23 State offences that have a *federal aspect***

2 *Object*

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

15 *State offences that have a federal aspect*

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

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

12 *Specificity of acts or omissions*

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

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

- 19 (4) A State offence is taken to be covered by paragraph (2)(c) if the
20 conduct (within the meaning of the *Criminal Code*) constituting the
21 State offence:
22 (a) affects the interests of:
23 (i) the Commonwealth; or
24 (ii) an authority of the Commonwealth; or
25 (iii) a constitutional corporation; or
26 (b) was engaged in by a constitutional corporation; or
27 (c) was engaged in in a Commonwealth place; or
28 (d) involved the use of a postal service or other like service; or
29 (e) involved an electronic communication; or
30 (f) involved trade or commerce:
31 (i) between Australia and places outside Australia; or
32 (ii) among the States; or
33 (iii) within a Territory, between a State and a Territory or
34 between 2 Territories; or

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Division 4 Other definitions

Section 23

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

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

15 *Definitions*

16 (6) In this Act:

17 ***ancillary offence***, in relation to an offence (the ***primary offence***),

18 means:

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

24 ***Commonwealth place*** has the same meaning as in the

25 ***Commonwealth Places (Application of Laws) Act 1970***.

26 ***constitutional corporation*** means a corporation to which

27 paragraph 51(xx) of the Constitution applies.

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

- 29 (a) whether in the form of text; or
- 30 (b) whether in the form of data; or
- 31 (c) whether in the form of speech, music or other sounds; or

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Section 23

- 1 (d) whether in the form of visual images (animated or
2 otherwise); or
3 (e) whether in any other form; or
4 (f) whether in any combination of forms;
5 by means of guided and/or unguided electromagnetic energy.
6 *State offence* means an offence against a law of a State.

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Part 3 CIC office holders and the CIC: establishment and functions

Division 1 Integrity Commissioner

Section 24

1 **Part 3—CIC office holders and the CIC:**
2 **establishment and functions**

3 **Division 1—Integrity Commissioner**

4 **24 Integrity Commissioner**

5 There is to be an Integrity Commissioner.

6 Note: For provisions in relation to the Integrity Commissioner's
7 appointment, see Division 1 of Part 11.

8 **25 Functions of the Integrity Commissioner**

9 The Integrity Commissioner has the following functions:

- 10 (a) to promote a culture of integrity among those who are subject
11 to this Act;
- 12 (b) to prevent corrupt conduct in regulated entities;
- 13 (c) to detect corrupt conduct in regulated entities and by
14 parliamentarians;
- 15 (d) to investigate and report on corruption issues;
- 16 (e) to deal with evidence obtained in investigating corruption
17 issues by giving it to appropriate persons to take action;
- 18 (f) to refer corruption issues, in appropriate circumstances, to
19 regulated entities for investigation;
- 20 (g) to refer issues to integrity agencies for investigation;
- 21 (h) to manage, oversee or review, in appropriate circumstances,
22 the investigation of corruption issues by regulated entities;
- 23 (i) to collect, correlate, analyse and disseminate information and
24 intelligence in relation to patterns or trends, and the nature
25 and scope, of corruption among those who are subject to this
26 Act;
- 27 (j) on the Integrity Commissioner's own initiative, or on request
28 by the Minister, to make recommendations to the Minister in
29 relation to any matter that concerns the need for or the
30 desirability of legislative reform or changes to administrative

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- 1 processes, in relation to regulated entities generally, on issues
2 relating to corruption or integrity;
- 3 (k) when directed by the Minister, to conduct corruption
4 inquiries into either or both of the following:
- 5 (i) issues about corruption (including systemic corruption)
6 in one or more law enforcement agencies, public sector
7 agencies, higher education providers or research bodies,
8 other than an issue about corruption by a single
9 individual;
- 10 (ii) issues about the integrity of staff members of one or
11 more law enforcement agencies, public sector agencies,
12 higher education providers or research bodies, other
13 than an issue about the integrity of a single individual;
- 14 (l) any other function conferred on the Integrity Commissioner
15 by other provisions of this Act or by another Act.

16 **26 Integrity Commissioner’s priorities in relation to law** 17 **enforcement corruption issues**

18 In carrying out the Integrity Commissioner’s functions in relation
19 to law enforcement corruption issues, the Integrity Commissioner
20 must give priority to corrupt conduct that constitutes serious
21 corruption or systemic corruption.

22 **27 Integrity Commissioner may enter into agreements**

- 23 (1) The Integrity Commissioner may enter into a written agreement
24 with the head of a regulated entity (other than the office of a
25 parliamentarian) in relation to all or any of the following matters:
- 26 (a) if the entity is a law enforcement agency or a public sector
27 agency—the level of detail required to notify the Integrity
28 Commissioner under section 37 of a corruption issue that
29 relates to the entity;
- 30 (b) if the entity is a law enforcement agency—the kinds of issues
31 that are significant corruption issues in relation to the entity;
- 32 (c) in any case—the way in which information or documents in
33 relation to a corruption issue may be given to the Integrity
34 Commissioner (whether for the purpose of referring or

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Part 3 CIC office holders and the CIC: establishment and functions

Division 1 Integrity Commissioner

Section 27

- 1 notifying a corruption issue to the Integrity Commissioner, or
2 allowing the Integrity Commissioner to manage, oversee or
3 review an investigation, or otherwise);
- 4 (d) if the entity may conduct an investigation of a corruption
5 issue that is referred, overseen or managed by the Integrity
6 Commissioner under subsection 49(1) or (3)—the level of
7 detail required in a final report given to the Integrity
8 Commissioner on the entity’s investigation of a corruption
9 issue;
- 10 (e) in any case—any other matter relating to corruption issues in
11 relation to the entity.
- 12 (2) The Integrity Commissioner may enter into a written agreement
13 with a Commonwealth integrity office holder in relation to the
14 referral or notification of allegations, information or corruption
15 issues one to the other, including (without limitation) in relation to:
- 16 (a) the level of detail required to notify the Integrity
17 Commissioner under section 46 of a corruption issue; and
- 18 (b) the level of detail required to refer an allegation or
19 information to a Commonwealth integrity office holder under
20 section 54; and
- 21 (c) the way in which information or documents may be given
22 (whether for the purpose of a notification mentioned in
23 paragraph (a), a referral mentioned in paragraph (b), or
24 otherwise).
- 25 (3) Without limiting subsection (2), the matters that an agreement
26 entered into by the Integrity Commissioner with the IGIS under
27 that subsection may deal with include all or any of the following:
- 28 (a) the making of decisions under section 42, including:
- 29 (i) matters to which the IGIS must have regard in deciding
30 whether to notify a corruption issue under that section;
31 and
- 32 (ii) kinds of corruption issues that must, must not, or need
33 not be notified to the Integrity Commissioner by the
34 IGIS under that section; and
- 35 (iii) circumstances in which a corruption issue must, must
36 not, or need not be notified to the Integrity
37 Commissioner by the IGIS under that section;
-

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- 1 (b) the level of detail required to notify a corruption issue
2 relating to an intelligence agency to the Integrity
3 Commissioner under section 42;
4 (c) the way in which information or documents in relation to a
5 corruption issue relating to an intelligence agency may be
6 given to the Integrity Commissioner by the IGIS (whether for
7 the purpose of notifying a corruption issue relating to an
8 intelligence agency to the Integrity Commissioner or
9 otherwise);
10 (d) the conduct of investigations by the Integrity Commissioner
11 in relation to corruption issues that relate to intelligence
12 agencies;
13 (e) any other matter relating to corruption issues that relate to an
14 intelligence agency.
- 15 (4) A CIC determination prevails over an agreement under this section
16 to the extent of any inconsistency.
- 17 (5) The Integrity Commissioner may revoke an agreement under this
18 section by written notice given to the head of the regulated entity
19 or the Commonwealth integrity office holder (as the case requires).
20 The revocation takes effect on a day specified in the notice, which
21 must be at least 14 days after the day it is given.
- 22 (6) Without limiting any of subsections (1) to (3), the agreement may
23 set out how it may be varied and other ways it may be revoked.

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Part 3 CIC office holders and the CIC: establishment and functions

Division 2 Other CIC office holders

Section 28

1 **Division 2—Other CIC office holders**

2 **28 Law Enforcement Integrity Commissioner**

3 (1) There is to be a Law Enforcement Integrity Commissioner.

4 Note: For provisions in relation to the Law Enforcement Integrity
5 Commissioner's appointment, see Division 1 of Part 11.

6 (2) The functions of the Law Enforcement Integrity Commissioner are:

7 (a) to assist the Integrity Commissioner in the performance of
8 the Integrity Commissioner's functions in relation to law
9 enforcement corruption issues and law enforcement agencies;
10 and

11 (b) any other function conferred on the Law Enforcement
12 Integrity Commissioner by other provisions of this Act or by
13 another Act.

14 Note: See section 25 for the functions of the Integrity Commissioner.

15 **29 Public Sector Integrity Commissioner**

16 (1) There is to be a Public Sector Integrity Commissioner.

17 Note: For provisions in relation to the Public Sector Integrity
18 Commissioner's appointment, see Division 1 of Part 11.

19 (2) The functions of the Public Sector Integrity Commissioner are:

20 (a) to assist the Integrity Commissioner in the performance of
21 the Integrity Commissioner's functions in relation to the
22 following:

23 (i) public sector corruption issues;

24 (ii) public sector agencies;

25 (iii) offices of parliamentarians;

26 (iv) parliamentarians;

27 (v) higher education providers;

28 (vi) research bodies; and

29 (b) any other function conferred on the Public Sector Integrity
30 Commissioner by other provisions of this Act or by another
31 Act.

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CIC office holders and the CIC: establishment and functions **Part 3**
Other CIC office holders **Division 2**

Section 30

1 Note: See section 25 for the functions of the Integrity Commissioner.

2 **30 Assistant Integrity Commissioners**

3 (1) There may be one or more Assistant Integrity Commissioners.

4 Note: For provisions in relation to the appointment of Assistant Integrity
5 Commissioners, see Division 1 of Part 11.

6 (2) The functions of an Assistant Integrity Commissioner are:

7 (a) to assist the Integrity Commissioner in the performance of
8 the Integrity Commissioner's functions; and

9 (b) any other function conferred on an Assistant Integrity
10 Commissioner by other provisions of this Act or by another
11 Act.

12 Note 1: See section 25 for the functions of the Integrity Commissioner.

13 Note 2: The Integrity Commissioner may delegate most of the Integrity
14 Commissioner's functions and powers to an Assistant Integrity
15 Commissioner: see section 285.

EXPOSURE DRAFT

Part 3 CIC office holders and the CIC: establishment and functions

Division 3 Commonwealth Integrity Commission

Section 31

1 **Division 3—Commonwealth Integrity Commission**

2 **31 Commonwealth Integrity Commission**

3 (1) The Commonwealth Integrity Commission (the *CIC*) is established
4 by this section.

5 (2) The CIC consists of:

- 6 (a) the Integrity Commissioner; and
7 (b) the Law Enforcement Integrity Commissioner; and
8 (c) the Public Sector Integrity Commissioner; and
9 (d) each Assistant Integrity Commissioner; and
10 (e) the staff referred to in section 221.

11 (3) For the purposes of the finance law (within the meaning of the
12 *Public Governance, Performance and Accountability Act 2013*):

- 13 (a) the CIC is a listed entity; and
14 (b) the Integrity Commissioner is the accountable authority of
15 the CIC; and
16 (c) the staff members of the CIC (as defined in
17 subsection 225(1)) are officials of the CIC; and
18 (d) the purposes of the CIC include:
19 (i) the function of the CIC referred to in section 32; and
20 (ii) the functions of the Integrity Commissioner referred to
21 in section 25; and
22 (iii) the functions of the Law Enforcement Integrity
23 Commissioner referred to in subsection 28(2); and
24 (iv) the functions of the Public Sector Integrity
25 Commissioner referred to in subsection 29(2); and
26 (v) the functions of Assistant Integrity Commissioners
27 referred to in subsection 30(2).

28 **32 Function of the Commonwealth Integrity Commission**

29 The function of the CIC is to assist the Integrity Commissioner in
30 performing the Integrity Commissioner's functions.

31 Note: See section 25 for the functions of the Integrity Commissioner.

EXPOSURE DRAFT

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

2 **Division 1—Referral and notification of corruption issues**
3 **to Integrity Commissioner**

4 **Subdivision A—Referral of corruption issues by Ministers and**
5 **other parliamentarians**

6 **33 Referral of corruption issues by Attorney-General**

7 (1) The Attorney-General may refer to the Integrity Commissioner an
8 allegation, or information, that raises a corruption issue relating to
9 a regulated entity (other than the office of a parliamentarian).

10 Note: As a parliamentarian, the Attorney-General may refer a corruption
11 issue that relates to the Attorney-General, or to the Attorney-General's
12 office, under section 35.

13 (2) However, the Attorney-General may refer an allegation or
14 information under subsection (1) that raises a public sector
15 corruption issue only if the Attorney-General reasonably suspects
16 that the offence to which the corruption issue relates has been, or is
17 being, committed.

18 **34 Referral of corruption issues by responsible Ministers**

19 (1) The responsible Minister for a regulated entity that is:
20 (a) a law enforcement agency; or
21 (b) a public sector agency; or
22 (c) a higher education provider; or
23 (d) a research body;
24 may refer to the Integrity Commissioner an allegation, or
25 information, that raises a corruption issue that relates to the entity.

26 (2) However, unless the corruption issue is a law enforcement
27 corruption issue, a responsible Minister may refer an allegation or
28 information under subsection (1) only if the responsible Minister

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Part 4 Dealing with corruption issues

Division 1 Referral and notification of corruption issues to Integrity Commissioner

Section 35

1 reasonably suspects that the offence to which the corruption issue
2 relates has been, or is being, committed.

3 **35 Referral by parliamentarian of corruption issues relating to** 4 **parliamentarian or parliamentarian's office**

5 (1) Any parliamentarian may refer to the Integrity Commissioner an
6 allegation, or information, that raises a corruption issue that relates
7 to:

- 8 (a) the parliamentarian; or
9 (b) the parliamentarian's office.

10 (2) However, a parliamentarian may refer an allegation or information
11 under paragraph (1)(b) only if the parliamentarian reasonably
12 suspects that the offence to which the corruption issue relates has
13 been, or is being, committed.

14 **36 Requirements following referral by Minister or other** 15 **parliamentarian**

16 *Giving Integrity Commissioner details of other allegations, or*
17 *information, relevant to referred issue*

18 (1) If:
19 (a) a parliamentarian refers to the Integrity Commissioner under
20 section 33, 34 or 35 an allegation, or information, that raises
21 a corruption issue; and
22 (b) the parliamentarian subsequently becomes aware of another
23 allegation, or other information, that is relevant to the issue;
24 the parliamentarian must (subject to subsections (2) and (3)) give
25 the Integrity Commissioner details of the other allegation, or give
26 the Integrity Commissioner the other information, as soon as
27 practicable after becoming aware of the other allegation or
28 information.

29 (2) The parliamentarian does not need to take action under
30 subsection (1) if:

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- 1 (a) the parliamentarian has reasonable grounds to believe that the
2 Integrity Commissioner is already aware of the other
3 allegation or the other information; or
4 (b) the Integrity Commissioner has decided to take no further
5 action in relation to the issue under subsection 48(2) or on a
6 reconsideration of the issue under section 64.

7 *Relationship with other laws*

- 8 (3) Subsection (1) has effect subject to subsection 271(1) (about the
9 Integrity Commissioner's access to section 270 certified
10 information) but despite any secrecy provision (other than a law
11 enforcement secrecy provision, a taxation secrecy provision or a
12 secrecy provision under the *My Health Records Act 2012*).

13 **Subdivision B—Requirement for heads of certain regulated**
14 **entities to notify corruption issues relating to their**
15 **entities**

16 **37 Requirement for heads of certain regulated entities to notify**
17 **corruption issues relating to their entities**

- 18 (1) As soon as practicable after the head of a regulated entity (other
19 than the office of a parliamentarian or an intelligence agency)
20 becomes aware of an allegation, or information, that raises a
21 corruption issue that relates to the entity, the entity head must, by
22 writing:
23 (a) notify the Integrity Commissioner of the corruption issue
24 (including a description of the corruption issue and the
25 allegation or information giving rise to the corruption issue);
26 and
27 (b) if the entity is a law enforcement agency—identify whether
28 the issue is a significant corruption issue.

29 This subsection has effect subject to subsections (2), (3) and (4)
30 and any CIC determinations made for the purposes of this
31 subsection.

32 Note 1: The referral by a parliamentarian of an allegation, or information, that
33 raises a corruption issue relating to the parliamentarian's office is
34 dealt with under section 35.

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Part 4 Dealing with corruption issues

Division 1 Referral and notification of corruption issues to Integrity Commissioner

Section 37

1 Note 2: The notification by the head of an intelligence agency of an allegation,
2 or information, that raises a corruption issue relating to their agency is
3 dealt with under section 40.

4 Note 3: For transitional arrangements relating to this section, see the *Integrity
5 and Anti-Corruption Legislation Amendment (CIC Establishment and
6 Other Measures) Act 2020*.

7 (2) If the issue is a public sector corruption issue, the entity head must
8 notify the issue under subsection (1) only if the entity head
9 reasonably suspects, having had regard to the matters specified in a
10 CIC determination for the purposes of this subsection (if any), that
11 the offence to which the corruption issue relates has been, or is
12 being, committed.

13 (3) The head of a regulated entity does not need to take action under
14 subsection (1) if the entity head:
15 (a) has already notified the Integrity Commissioner of the issue
16 under subsection (1); or
17 (b) has reasonable grounds to believe that the Integrity
18 Commissioner is already aware of the allegation or the
19 information.

20 Note: For paragraph (a), subsection 38(7) requires the entity head to pass on
21 new information that relates to a corruption issue that has already been
22 notified to the Integrity Commissioner.

23 (4) Action taken under subsection (1) must be taken in accordance
24 with any agreement entered into under section 27 between the
25 entity head and the Integrity Commissioner.

26 (5) With the agreement of the Integrity Commissioner, the head of a
27 regulated entity may:
28 (a) notify the Integrity Commissioner under subsection (1) of a
29 corruption issue; and
30 (b) if the entity is a law enforcement agency—identify whether
31 the issue is a significant corruption issue;
32 by entering the required details on a database to which the Integrity
33 Commissioner has access.

EXPOSURE DRAFT

1 **38 Requirements following notification—significant corruption**
2 **issues and public sector corruption issues**

3 *Action to be taken on notification*

- 4 (1) This section applies if:
- 5 (a) the head of a regulated entity notifies the Integrity
 - 6 Commissioner under section 37 of a corruption issue; and
 - 7 (b) either:
 - 8 (i) the issue is a law enforcement corruption issue that is
 - 9 identified as a significant corruption issue; or
 - 10 (ii) the issue is a public sector corruption issue.
- 11 (2) The head of the regulated entity must (subject to subsection (9) of
- 12 this section):
- 13 (a) give the Integrity Commissioner all the information and
 - 14 documents that:
 - 15 (i) relate to the issue; and
 - 16 (ii) are in the possession, or under the control, of the entity
 - 17 head; and
 - 18 (b) stop the entity from taking any other action relating to the
 - 19 issue; and
 - 20 (c) take all reasonable steps to prevent the loss, destruction or
 - 21 fabrication of evidence in relation to the issue.
- 22 Note: For paragraph (a), subsection (7) requires the entity head to pass on
- 23 new information that relates to a corruption issue that has already been
- 24 notified to the Integrity Commissioner.
- 25 (3) The entity head may give the original or a copy of a document for
- 26 the purposes of paragraph (2)(a), but must give the original if the
- 27 Integrity Commissioner requests it.
- 28 (4) The regulated entity may continue taking action stopped under
- 29 paragraph (2)(b), or begin taking action in relation to the issue,
- 30 only if the Integrity Commissioner:
- 31 (a) permits the taking of the action; or
 - 32 (b) decides:

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- 1 (i) under subsection 49(1) to refer the issue to the entity for
2 investigation, or to manage or oversee an investigation
3 that is being conducted by the entity; or
4 (ii) to investigate the issue jointly with the entity under
5 subsection 49(4); or
6 (iii) to take no further action in relation to the issue under
7 subsection 48(2) or on a reconsideration of the issue
8 under section 64.

9 Note: The Integrity Commissioner may make a decision described in
10 subparagraph (b)(i) only if the entity is a law enforcement agency or a
11 public sector agency with appropriate capabilities to investigate the
12 issue: see subsection 49(2).

- 13 (5) If the head of the regulated entity requests the Integrity
14 Commissioner to permit the taking of particular action for the
15 purposes of paragraph (4)(a), the Integrity Commissioner must:
16 (a) as soon as practicable after the request is made, decide
17 whether to permit the taking of the action; and
18 (b) if the Integrity Commissioner refuses to permit the taking of
19 the action—give the entity head written reasons for the
20 refusal.
- 21 (6) However, the Integrity Commissioner need not give the entity head
22 reasons for the refusal if doing so is likely to prejudice:
23 (a) the investigation of the issue or another corruption
24 investigation; or
25 (b) any action taken as a result of an investigation referred to in
26 paragraph (a).

27 *Giving Integrity Commissioner details of other allegations, or*
28 *information, relevant to notified issue*

- 29 (7) If the head of the regulated entity subsequently becomes aware of
30 an allegation, or information, that is relevant to the issue, the entity
31 head must (subject to subsections (8) and (9)) give the Integrity
32 Commissioner details of the allegation, or give the Integrity
33 Commissioner the information, as soon as practicable after
34 becoming aware of the allegation or information.

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- 1 (8) The entity head does not need to take action under subsection (7) if
2 the entity head:
- 3 (a) has reasonable grounds to believe that the Integrity
4 Commissioner is already aware of the allegation or the
5 information; or
- 6 (b) becomes aware of the allegation or information in the course
7 of an investigation of the issue by the entity and:
- 8 (i) the entity is conducting the investigation as a result of
9 the Integrity Commissioner referring that issue to the
10 entity for investigation; or
- 11 (ii) the investigation is being conducted jointly with the
12 Integrity Commissioner; or
- 13 (iii) the Integrity Commissioner is managing or overseeing
14 the investigation; or
- 15 (iv) the entity is conducting the investigation following a
16 decision by the Integrity Commissioner to take no
17 further action in relation to the issue under
18 subsection 48(2) or on a reconsideration of the issue
19 under section 64.

20 *Relationship with other laws*

- 21 (9) Subsections (2) and (7) have effect subject to subsection 271(1)
22 (about the Integrity Commissioner's access to section 270 certified
23 information) but despite any secrecy provision (other than a law
24 enforcement secrecy provision, a taxation secrecy provision or a
25 secrecy provision under the *My Health Records Act 2012*).

26 **39 Requirements following notification—law enforcement**
27 **corruption issues that are not significant**

- 28 (1) If the head of a law enforcement agency notifies the Integrity
29 Commissioner under section 37 of a law enforcement corruption
30 issue that is not identified as a significant corruption issue, the head
31 of the agency must:
- 32 (a) if the agency is already investigating the corruption issue—
33 ensure that the investigation is continued and completed; and

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1 (b) if the agency is not already investigating the corruption
2 issue—ensure that the agency investigates the corruption
3 issue.

4 This subsection has effect subject to any direction under
5 subsection (2) and to subsection (4).

6 *Exception—direction by Integrity Commissioner not to take action*

7 (2) If the Integrity Commissioner decides to deal with the corruption
8 issue in one of the ways referred to in subsection 49(1) or 52(7),
9 the Integrity Commissioner may direct the head of the law
10 enforcement agency that the agency is not to take action in relation
11 to the corruption issue.

12 (3) A direction under subsection (2) is not a legislative instrument.

13 *Other exceptions*

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

16 (a) the matter involves or implicates a secondee to the agency
17 who is an employee of either of the following (the *home*
18 *entity*):

19 (i) a regulated entity;

20 (ii) a State or Territory government entity;

21 and the matter is already being investigated by the home
22 entity or an integrity agency; or

23 (b) the making of the allegation that raises the corruption issue,
24 or the giving of the information that raises the corruption
25 issue, is frivolous or vexatious; or

26 (c) the corrupt conduct to which the corruption issue relates has
27 been, is or will be, the subject of proceedings before a court;
28 or

29 (d) subject to subsection (5), a law of the Commonwealth that
30 applies to the agency allows the agency to decide not to deal
31 with the allegation or information that raises the corruption
32 issue.

33 However, the head of the agency must advise the Integrity
34 Commissioner that the agency will not be investigating the

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1 corruption issue and the reason why the agency will not be
2 investigating the corruption issue.

3 (5) Despite paragraph (4)(d), the agency must continue and complete,
4 or begin and complete, an investigation of the corruption issue if
5 the Integrity Commissioner considers, despite the relevant law of
6 the Commonwealth, that it would be more appropriate for the issue
7 to be investigated.

8 (6) With the agreement of the Integrity Commissioner, the head of the
9 agency may advise the Integrity Commissioner under
10 subsection (4) by entering the required details on a database to
11 which the Integrity Commissioner has access.

12 **Subdivision C—Notification of corruption issues relating to** 13 **intelligence agencies**

14 **40 Requirement for heads of intelligence agencies to notify the IGIS** 15 **of corruption issues relating to their agencies**

16 (1) As soon as practicable after the head of an intelligence agency
17 becomes aware of an allegation, or information, that raises a
18 corruption issue that relates to the agency, the head of the agency
19 must (subject to subsections (2), (3) and (4) and any CIC
20 determinations made for the purposes of this section) notify the
21 IGIS in writing of the issue (including a description of the issue
22 and the allegation or information giving rise to the issue).

23 (2) The head of the agency must notify the IGIS of a corruption issue
24 under subsection (1) only if the head of the agency reasonably
25 suspects, having had regard to the matters specified in a CIC
26 determination for the purposes of this subsection (if any), that the
27 offence to which the corruption issue relates has been, or is being,
28 committed.

29 (3) The head of the agency does not need to take action under
30 subsection (1) if the head of the agency:
31 (a) has already notified the IGIS of the issue under
32 subsection (1); or

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1 (b) has reasonable grounds to believe that the IGIS is already
2 aware of the allegation or the information.

3 Note: For paragraph (a), subsection 41(6) requires the head of the agency to
4 pass on new information that relates to a corruption issue that has
5 already been notified to the IGIS.

6 (4) The action taken under subsection (1) must be taken in accordance
7 with any agreement entered into under section 27 between the head
8 of the agency and the Integrity Commissioner.

9 (5) With the agreement of the IGIS, the head of the agency may notify
10 the IGIS of an issue by entering the required details on a database
11 to which the IGIS has access.

12 **41 Requirements following notification to the IGIS of corruption** 13 **issue relating to intelligence agency**

14 (1) A head of an intelligence agency who notifies the IGIS under
15 section 40 of a corruption issue must:

16 (a) give the IGIS all the information and documents that:

17 (i) relate to the issue; and

18 (ii) are in the possession, or under the control, of the head
19 of the agency; and

20 (b) stop the agency from taking any other action relating to the
21 issue; and

22 (c) take all reasonable steps to prevent the loss, destruction or
23 fabrication of evidence in relation to the issue.

24 Note: For paragraph (a), subsection (6) requires the head of the agency to
25 pass on new information that relates to a corruption issue that has
26 already been notified to the IGIS.

27 (2) The head of the agency may give the original or a copy of a
28 document for the purposes of paragraph (1)(a), but must give the
29 original if the IGIS requests it.

30 (3) Until the IGIS makes a decision under subsection 42(1) in relation
31 to the issue, the agency may continue taking action stopped under
32 paragraph (1)(b) of this section, or begin taking action in relation to
33 the issue, only if the IGIS permits the taking of the action.

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- 1 (4) If the head of the agency requests the IGIS to permit the taking of
2 particular action for the purposes of subsection (3), the IGIS must:
3 (a) as soon as practicable after the request is made, decide
4 whether to permit the taking of the action; and
5 (b) if the IGIS refuses to permit the taking of the action—give
6 the head of the agency written reasons for the refusal.
- 7 (5) However, the IGIS need not give the head of the agency reasons
8 for the refusal if doing so is likely to prejudice:
9 (a) the investigation of the issue or another corruption
10 investigation; or
11 (b) any action taken as a result of an investigation referred to in
12 paragraph (a).

13 *Giving IGIS details of other allegations, or information, relevant to*
14 *notified issue*

- 15 (6) If:
16 (a) the head of the agency subsequently becomes aware of an
17 allegation, or information, that is relevant to the issue; and
18 (b) the IGIS has not made a decision under subsection 42(1) in
19 relation to the issue;
20 the head of the agency must (subject to subsection (7) of this
21 section) give the IGIS details of the allegation, or give the IGIS the
22 information, as soon as practicable after becoming aware of the
23 allegation or information.
- 24 (7) The head of the agency does not need to take action under
25 subsection (6) if the head of the agency has reasonable grounds to
26 believe that the IGIS is already aware of the allegation or the
27 information.

28 *Relationship with other laws*

- 29 (8) Subsections (1) and (6) have effect despite any secrecy provision
30 (other than a law enforcement secrecy provision, a taxation secrecy
31 provision or a secrecy provision under the *My Health Records Act*
32 *2012*).

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42 IGIS to make decision on how to deal with corruption issue relating to intelligence agency

(1) As soon as practicable after the IGIS becomes aware of an allegation, or information, that raises a corruption issue relating to an intelligence agency, the IGIS must (subject to subsections (2), (3) and (4) and any CIC determinations made for the purposes of this section) decide:

(a) to notify the Integrity Commissioner of the corruption issue (including a description of the corruption issue and the allegation or information giving rise to the corruption issue);

or

(b) to inquire into the issue under the *Inspector-General of Intelligence and Security Act 1986*; or

(c) to refer the corruption issue to the intelligence agency for investigation; or

(d) to take no further action in relation to the corruption issue.

Note: The IGIS might have become aware of the allegation or information because of a notification under subsection 40(1) or through some other means.

(2) The IGIS may notify the Integrity Commissioner of the corruption issue only if the IGIS reasonably suspects, having had regard to the matters specified in a CIC determination for the purposes of this subsection (if any), that the offence to which the corruption issue relates has been, or is being, committed.

(3) In making a decision under subsection (1), the IGIS must have regard to the following matters:

(a) the public interest that would be served by notifying the Integrity Commissioner of the issue;

(b) any prejudicial consequences on the following that might result from notifying the Integrity Commissioner of the issue:

(i) the functions or operations of the intelligence agency;

(ii) the functions or operations of the IGIS;

(iii) the security, defence or international relations of the Commonwealth.

Note: A CIC determination may require the IGIS to have regard to additional matters.

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1 (4) Action taken under subsection (1) must be taken in accordance
2 with any agreement entered into under section 27 between the IGIS
3 and the Integrity Commissioner.

4 (5) With the agreement of the Integrity Commissioner, the IGIS may
5 notify the Integrity Commissioner under subsection (1) of a
6 corruption issue by entering the required details on a database to
7 which the Integrity Commissioner has access.

8 *Reconsideration of decisions*

9 (6) If the IGIS deals with a corruption issue relating to an intelligence
10 agency in one of the ways referred to in paragraph (1)(b), (c) or
11 (d), the IGIS may, at any time, reconsider how the corruption issue
12 should be dealt with.

13 (7) On that reconsideration, the IGIS may:
14 (a) if the issue is not being dealt with in one of the ways referred
15 to in paragraph (1)(a), (b) or (c)—decide to deal with the
16 issue in one of the ways referred to in those paragraphs; or
17 (b) if the issue is being dealt with in one of the ways referred to
18 in paragraph (1)(b) or (c)—decide:
19 (i) to deal with the issue in one of the ways, or another of
20 the ways, referred to in paragraph (1)(a), (b) or (c); or
21 (ii) to take no further action in relation to the issue.

22 (8) Subsections (2), (3) and (4) apply in relation to the making of a
23 decision under subsection (7) in the same way as they applied in
24 relation to the making of the decision the subject of the
25 reconsideration.

26 **43 Requirements following notification by IGIS of corruption issue**
27 **relating to intelligence agency**

28 *Requirements for IGIS*

29 (1) If the IGIS decides under subsection 42(1) or (7) to notify the
30 Integrity Commissioner of a corruption issue, the IGIS must
31 (subject to subsection (10) of this section):

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- 1 (a) give the Integrity Commissioner all the information and
2 documents that:
3 (i) relate to the issue; and
4 (ii) are in the possession, or under the control, of the IGIS;
5 and
6 (b) stop the taking of any action under the *Inspector-General of*
7 *Intelligence and Security Act 1986* relating to the issue; and
8 (c) notify the head of the intelligence agency of the decision,
9 unless doing so would be likely to prejudice:
10 (i) the investigation of the issue or another corruption
11 investigation; or
12 (ii) any action taken as a result of an investigation referred
13 to in subparagraph (i).

14 Note: For paragraph (a), subsection (9) requires the IGIS to pass on new
15 information that relates to a corruption issue that has already been
16 notified to the Integrity Commissioner.

- 17 (2) The IGIS may give the original or a copy of a document for the
18 purposes of paragraph (1)(a), but must give the original if the
19 Integrity Commissioner requests it.
- 20 (3) The IGIS may continue taking action stopped under
21 paragraph (1)(b), or begin taking action in relation to the issue,
22 only if the Integrity Commissioner:
23 (a) permits the taking of the action; or
24 (b) decides:
25 (i) to investigate the issue jointly with the IGIS under
26 subsection 49(4); or
27 (ii) to take no further action in relation to the issue under
28 subsection 48(2) or on a reconsideration of the issue
29 under section 64.

30 *Requirements for head of intelligence agency*

- 31 (4) If, under paragraph (1)(c), the IGIS notifies the head of an
32 intelligence agency of a decision under subsection 42(1) or (7) to
33 notify the Integrity Commissioner of a corruption issue relating to
34 the intelligence agency, the head of the intelligence agency must
35 (subject to subsection (11) of this section):

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- 1 (a) give the Integrity Commissioner all the information and
2 documents that:
3 (i) relate to the issue; and
4 (ii) are in the possession, or under the control, of the head
5 of the agency; and
6 (b) stop the agency from taking any other action relating to the
7 issue; and
8 (c) take all reasonable steps to prevent the loss, destruction or
9 fabrication of evidence in relation to the issue.

10 Note: For paragraph (a), subsection (9) requires the head of the agency to
11 pass on new information that relates to a corruption issue that has
12 already been notified to the Integrity Commissioner.

13 (5) The head of the intelligence agency may give the original or a copy
14 of a document for the purposes of paragraph (4)(a), but must give
15 the original if the Integrity Commissioner requests it.

16 (6) The intelligence agency may continue taking action stopped under
17 paragraph (4)(b), or begin taking action in relation to the issue,
18 only if the Integrity Commissioner:

- 19 (a) permits the taking of the action; or
20 (b) decides:
21 (i) under subsection 49(1) to refer the issue to the agency
22 for investigation, or to manage or oversee an
23 investigation that is being conducted by the agency; or
24 (ii) to investigate the issue jointly with the agency under
25 subsection 49(4); or
26 (iii) to take no further action in relation to the issue under
27 subsection 48(2) or on a reconsideration of the issue
28 under section 64.

29 *Requesting permission to take particular action*

30 (7) If the IGIS or the head of the intelligence agency requests the
31 Integrity Commissioner to permit the taking of particular action for
32 the purposes of paragraph (3)(a) or (6)(a), the Integrity
33 Commissioner must:

- 34 (a) as soon as practicable after the request is made, decide
35 whether to permit the taking of the action; and
-

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- 1 (b) if the Integrity Commissioner refuses to permit the taking of
2 the action—give the IGIS or the head of the agency (as the
3 case requires) written reasons for the refusal.
- 4 (8) However, the Integrity Commissioner need not give the IGIS or the
5 head of the agency reasons for the refusal if doing so is likely to
6 prejudice:
7 (a) the investigation of the issue or another corruption
8 investigation; or
9 (b) any action taken as a result of an investigation referred to in
10 paragraph (a).
- 11 *Giving Integrity Commissioner details of other allegations, or*
12 *information, relevant to notified issue*
- 13 (9) If the IGIS or the head of the intelligence agency subsequently
14 becomes aware of an allegation, or information, that is relevant to
15 the issue, the IGIS or the head of the agency (as the case requires)
16 must (subject to subsections (10) and (11)) give the Integrity
17 Commissioner details of the allegation, or give the Integrity
18 Commissioner the information, as soon as practicable after
19 becoming aware of the allegation or information.
- 20 (10) The IGIS or head of the intelligence agency does not need to take
21 action under subsection (9) if:
22 (a) the IGIS or head of the agency (as the case requires) has
23 reasonable grounds to believe that the Integrity
24 Commissioner is already aware of the allegation or the
25 information; or
26 (b) in the case of the IGIS—the IGIS becomes aware of the
27 allegation or information in the course of an investigation of
28 the issue by the IGIS and:
29 (i) the investigation is being conducted jointly with the
30 Integrity Commissioner; or
31 (ii) the IGIS is conducting the investigation following a
32 decision by the Integrity Commissioner to take no
33 further action in relation to the issue under
34 subsection 48(2) or on a reconsideration of the issue
35 under section 64; or

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- 1 (c) in the case of the head of the agency—the head of the agency
2 becomes aware of the allegation or information in the course
3 of an investigation of the issue by the agency and:
4 (i) the agency is conducting the investigation as a result of
5 the Integrity Commissioner referring that issue to the
6 agency for investigation; or
7 (ii) the investigation is being conducted jointly with the
8 Integrity Commissioner; or
9 (iii) the Integrity Commissioner is managing or overseeing
10 the investigation; or
11 (iv) the agency is conducting the investigation following a
12 decision by the Integrity Commissioner to take no
13 further action in relation to the issue under
14 subsection 48(2) or on a reconsideration of the issue
15 under section 64.

16 *Relationship with other laws*

- 17 (11) Subsections (1), (4) and (9) have effect subject to
18 subsection 271(1) (about the Integrity Commissioner’s access to
19 section 270 certified information) but despite any secrecy provision
20 (other than a law enforcement secrecy provision, a taxation secrecy
21 provision or a secrecy provision under the *My Health Records Act*
22 *2012*).

23 **Subdivision D—Referral of law enforcement corruption issues**
24 **by any person**

25 **44 Referral of law enforcement corruption issues by any person**

- 26 (1) Any person may refer to the Integrity Commissioner under this
27 section an allegation, or information, that raises a law enforcement
28 corruption issue.
- 29 (2) Without limiting subsection (1):
30 (a) the person may refer the allegation or information on behalf
31 of:
32 (i) another person; or

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Section 45

- 1 (ii) a regulated entity (other than a law enforcement agency)
2 or a State or Territory government entity; or
3 (iii) a body or association of persons; and
4 (b) the person may refer the allegation or information
5 anonymously; and
6 (c) the person may refer the allegation or information either
7 orally or in writing.
- 8 (3) If the person refers the allegation or information orally, the
9 Integrity Commissioner may require the person to put the
10 allegation or the information in writing.
- 11 (4) If the person is asked to put the allegation or information in writing
12 under subsection (3), the Integrity Commissioner may refuse to
13 investigate the corruption issue that the allegation or information
14 raises, or to investigate the corruption issue further, until the
15 allegation or information is put in writing.

45 Referral of law enforcement corruption issues under section 44 by person in custody

Application of section

- 16
17
18
19 (1) This section applies if a person who is detained in custody (the
20 ***prisoner***) wishes to refer an allegation or information to the
21 Integrity Commissioner under section 44.
- 22 (2) A reference in this section to a ***custodian*** is a reference to:
23 (a) the person in whose custody the prisoner is detained; or
24 (b) any other person performing duties in connection with the
25 prisoner's detention.

Facilities to be provided for communicating with Integrity Commissioner

- 26
27
28 (3) The prisoner is entitled to be provided with facilities for:
29 (a) preparing a written record of the allegation or information;
30 and
31 (b) enclosing that written record in a sealed envelope;

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- 1 if the prisoner requests a custodian to have those facilities
2 provided.
- 3 (4) The prisoner is entitled to have sent to the Integrity Commissioner,
4 without undue delay, a sealed envelope that is:
5 (a) delivered by the prisoner to a custodian; and
6 (b) addressed to the Integrity Commissioner;
7 if the prisoner requests a custodian to have the envelope sent to the
8 Integrity Commissioner.
- 9 (5) The prisoner is entitled to have delivered to the prisoner, without
10 undue delay, any sealed envelope that:
11 (a) is addressed to the prisoner; and
12 (b) is sent by the Integrity Commissioner; and
13 (c) comes into the possession, or under the control, of a
14 custodian.

15 *Dealing with communications between prisoner and Integrity*
16 *Commissioner*

- 17 (6) If:
18 (a) the prisoner delivers to a custodian a sealed envelope
19 addressed to the Integrity Commissioner for sending to the
20 Integrity Commissioner; or
21 (b) a sealed envelope addressed to the prisoner and sent by the
22 Integrity Commissioner comes into the possession, or under
23 the control, of a custodian;
24 neither that custodian, nor any other custodian, is entitled to open
25 the envelope or to inspect any document enclosed in the envelope.

26 *Arrangements with State and Territory prison authorities*

- 27 (7) For the purposes of this section, the Integrity Commissioner may
28 make arrangements with the appropriate authority of a State or a
29 Territory for the identification and delivery of sealed envelopes
30 sent by the Integrity Commissioner to persons detained in custody
31 in that State or Territory.

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Division 1 Referral and notification of corruption issues to Integrity Commissioner

Section 46

1 **Subdivision E—Notification of corruption issues by**
2 **Commonwealth integrity office holders**

3 **46 Notification of corruption issues by Commonwealth integrity**
4 **office holders**

5 (1) If a Commonwealth integrity office holder becomes aware of an
6 allegation, or information, that raises a corruption issue, the office
7 holder may notify the Integrity Commissioner in writing of the
8 issue (including a description of the issue and the allegation or
9 information giving rise to the issue).

10 Note 1: If the issue relates to a regulated entity of which the office holder is
11 the head, the office holder may be required to notify the issue under
12 section 37.

13 Note 2: Subsection 47(2) requires the office holder to pass on new information
14 that relates to a corruption issue that has already been notified to the
15 Integrity Commissioner.

16 (2) However, a Commonwealth integrity office holder may notify the
17 Integrity Commissioner of a public sector corruption issue under
18 subsection (1) only if the office holder reasonably suspects, having
19 had regard to the matters specified in a CIC determination for the
20 purposes of this subsection (if any), that the offence to which the
21 corruption issue relates has been, or is being, committed.

22 (3) If:
23 (a) a Commonwealth integrity office holder notifies a corruption
24 issue to the Integrity Commissioner under subsection (1); and
25 (b) the office holder became aware of the corruption issue
26 because another person notified the office holder of an
27 allegation or information raising the corruption issue; and
28 (c) the office holder has been given contact details for the other
29 person (or a representative nominated by the other person);
30 the office holder must give the contact details to the Integrity
31 Commissioner.

32 (4) This section does not apply in relation to a corruption issue if the
33 Commonwealth integrity office holder is the IGIS and the issue
34 relates to an intelligence agency.

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1 Note: Section 42 deals with the IGIS notifying the Integrity Commissioner
2 of corruption issues relating to an intelligence agency.

3 **47 Requirements following notification of corruption issue by** 4 **Commonwealth integrity office holder**

- 5 (1) A Commonwealth integrity office holder who notifies the Integrity
6 Commissioner of a corruption issue under section 46 must (subject
7 to subsection (4) of this section) give the Integrity Commissioner
8 all the information and documents that:
9 (a) relate to the issue; and
10 (b) are in the possession, or under the control, of the office
11 holder.
- 12 (2) If the Commonwealth integrity office holder subsequently becomes
13 aware of an allegation, or information, that is relevant to the issue,
14 the office holder must (subject to subsections (3) and (4)) give the
15 Integrity Commissioner details of the allegation, or give the
16 Integrity Commissioner the information, as soon as practicable
17 after becoming aware of the allegation or information.
- 18 (3) The Commonwealth integrity office holder does not need to take
19 action under subsection (2), however, if:
20 (a) the office holder has reasonable grounds to believe that the
21 Integrity Commissioner is already aware of the allegation or
22 the information; or
23 (b) the Integrity Commissioner has decided to take no further
24 action in relation to the issue under subsection 48(2) or on a
25 reconsideration of the issue under section 64.
- 26 (4) Subsections (1) and (2) have effect subject to subsection 271(1)
27 (about the Integrity Commissioner's access to section 270 certified
28 information) but despite any secrecy provision (other than a law
29 enforcement secrecy provision, a taxation secrecy provision or a
30 secrecy provision under the *My Health Records Act 2012*).

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Part 4 Dealing with corruption issues

Division 2 How Integrity Commissioner deals with corruption issues

Section 48

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

3 **Subdivision A—Dealing with corruption issues**

4 **48 Decision on whether or how to deal with corruption issue**

5 *Integrity Commissioner must make decision*

6 (1) The Integrity Commissioner must make a decision under
7 subsection (2) as soon as practicable after a corruption issue is
8 referred or notified to the Integrity Commissioner under
9 Division 1.

10 (2) The Integrity Commissioner must decide either:

11 (a) to deal with the issue in accordance with subsection 49(1) or
12 (3) or 52(7); or

13 (b) to take no further action in relation to the issue.

14 Note 1: The Integrity Commissioner must have regard to matters under
15 section 50 in making a decision under this subsection.

16 Note 2: If the Integrity Commissioner decides to take no further action in
17 relation to the issue, the Integrity Commissioner may refer any
18 allegation or information relating to the issue to a Commonwealth
19 integrity office holder under section 54.

20 *Public sector corruption issues—no further action unless*
21 *reasonable suspicion about commission of offence*

22 (3) The Integrity Commissioner must decide under subsection (2) to
23 take no further action in relation to the issue if:

24 (a) the issue is a public sector corruption issue; and

25 (b) the Integrity Commissioner does not reasonably suspect that
26 the offence to which the issue relates has been, or is being,
27 committed.

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Limits on deciding to take no further action in other cases

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- (4) Subject to subsection (3), the Integrity Commissioner may decide under subsection (2) to take no further action in relation to the issue only if the Integrity Commissioner is satisfied that:

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- (a) the issue is already being, or will be, investigated by a regulated entity or a State or Territory government entity; or
- (b) the referral or notification to the Integrity Commissioner is frivolous or vexatious; or
- (c) the corrupt conduct to which the issue relates has been, is or will be the subject of proceedings before a court; or
- (d) an investigation of the issue is not warranted having regard to all the circumstances.

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Decision already made in relation to a corruption issue

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- (5) The Integrity Commissioner need not make a further decision under subsection (2) in relation to a corruption issue if the Integrity Commissioner has already made a decision under that subsection in relation to the issue.

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Requesting information to assist in making decision

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- (6) For the purposes of making a decision under subsection (2), the Integrity Commissioner may request the head of a regulated entity to do either or both of the following:
- (a) give the Integrity Commissioner any information specified in the request that is in the possession or control of the head of the entity;
 - (b) exercise the powers available to the head of the entity under any law to obtain information of a kind specified in the request and give the information to the Integrity Commissioner.

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- (7) The head of the regulated entity must comply with the request, subject to subsection (8).

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- (8) Subsection (7) has effect subject to subsection 271(1) (about the Integrity Commissioner's access to section 270 certified information) but despite any secrecy provision (other than a law

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Part 4 Dealing with corruption issues

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Section 49

1 enforcement secrecy provision, a taxation secrecy provision or a
2 secrecy provision under the *My Health Records Act 2012*).

3 (9) Subsection (6) does not limit the information to which the Integrity
4 Commissioner may have regard in making a decision under
5 subsection (2).

6 *Consulting with IGIS about corruption issues relating to*
7 *intelligence agencies*

8 (10) Before making a decision under subsection (2) about a corruption
9 issue that relates to an intelligence agency, the Integrity
10 Commissioner must consult the IGIS and the head of the
11 intelligence agency, unless doing so is likely to prejudice:

12 (a) the investigation of the 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 **49 How Integrity Commissioner may deal with corruption issues**

17 *Corruption issues relating to regulated entities*

18 (1) The Integrity Commissioner may deal with a corruption issue that
19 relates to a regulated entity in any of the following ways:

20 (a) by investigating the issue;

21 (b) if the regulated entity is not the AFP—by referring the
22 corruption issue to the AFP for investigation and:

23 (i) managing the investigation; or

24 (ii) overseeing the investigation; or

25 (iii) neither managing nor overseeing the investigation;

26 (c) subject to subsection (2)—by referring the issue to the
27 regulated entity for investigation and:

28 (i) managing the investigation; or

29 (ii) overseeing the investigation; or

30 (iii) neither managing nor overseeing the investigation;

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- 1 (d) subject to subsection (2)—by managing an investigation of
2 the corruption issue that is being conducted by the regulated
3 entity;
4 (e) subject to subsection (2)—by overseeing an investigation of
5 the corruption issue that is being conducted by the regulated
6 entity.

7 Note 1: Subsection 52(7) gives the Integrity Commissioner further options for
8 dealing with the corruption issue to the extent to which it relates to the
9 conduct of a secondee to the regulated entity.

10 Note 2: The Integrity Commissioner must have regard to matters under
11 section 50 in making a decision on how to deal with the issue.

- 12 (2) The Integrity Commissioner may deal with the issue under
13 paragraph (1)(c), (d) or (e) only if the regulated entity is:
14 (a) a law enforcement agency; or
15 (b) an intelligence agency; or
16 (c) a public sector agency that the Integrity Commissioner is
17 satisfied has appropriate capabilities to investigate the issue.

18 *Corruption issues relating to parliamentarians*

- 19 (3) The Integrity Commissioner may deal with a corruption issue that
20 relates to a parliamentarian in either of the following ways:
21 (a) by investigating the issue;
22 (b) by referring the corruption issue to the AFP for investigation
23 and:
24 (i) managing the investigation; or
25 (ii) overseeing the investigation; or
26 (iii) neither managing nor overseeing the investigation.

27 Note: The Integrity Commissioner must have regard to matters under
28 section 50 in making a decision on how to deal with the issue.

29 *Joint investigations*

- 30 (4) The Integrity Commissioner may investigate a corruption issue
31 under paragraph (1)(a) or (3)(a) either alone or jointly with a
32 regulated entity (whether or not the issue relates to the regulated
33 entity) or a State or Territory government entity.

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Division 2 How Integrity Commissioner deals with corruption issues

Section 50

50 Criteria for deciding whether or how to deal with a corruption issue

- (1) The Integrity Commissioner must have regard to the matters set out in subsection (2) in deciding:
 - (a) under section 48 whether to take no further action in relation to an issue that relates to a regulated entity or a parliamentarian; or
 - (b) under section 49 how to deal with an issue that relates to a regulated entity or a parliamentarian.
- (2) The matters to which the Integrity Commissioner must have regard are the following:
 - (a) the need to ensure that the issue is fully investigated;
 - (b) the likely significance of the issue;
 - (c) the resources that are available to each of the following to investigate the issue:
 - (i) the Integrity Commissioner;
 - (ii) the AFP;
 - (iii) if the issue relates to a regulated entity—the entity;
 - (d) if a joint investigation of the issue is being considered under subsection 49(4)—the extent to which the entity with which the investigation would be conducted is able to cooperate in the investigation;
 - (e) if the issue was referred or notified to, or considered by, an integrity agency before the commencement of this section—any decision of the integrity agency in relation to the issue;
 - (f) if the issue relates to a regulated entity—the rights, obligations and capabilities of the entity to investigate the issue;
 - (g) if the issue relates to a regulated entity—the need to ensure a balance between:
 - (i) the Integrity Commissioner’s role in dealing with corruption issues in regulated entities; and
 - (ii) ensuring that the heads of regulated entities take responsibility for managing their entities;
 - (h) in any case—the need to ensure a balance between:

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- 1 (i) the Integrity Commissioner's role in dealing with law
2 enforcement corruption issues (particularly in dealing
3 with significant corruption issues); and
4 (ii) the Integrity Commissioner's role in dealing with other
5 corruption issues.

6 **51 Dealing with multiple corruption issues**

- 7 (1) The Integrity Commissioner may, in the Integrity Commissioner's
8 discretion, deal with a number of corruption issues together,
9 whether or not any of the following apply:
10 (a) the corruption issues are raised by the same allegation or
11 information;
12 (b) the corruption issues are:
13 (i) all public sector corruption issues; or
14 (ii) all law enforcement corruption issues; or
15 (iii) both public sector corruption issues and law
16 enforcement corruption issues.
- 17 (2) Without limiting subsection (1), if an allegation, or information,
18 raises a number of corruption issues, the Integrity Commissioner:
19 (a) may deal with some or all of those corruption issues together;
20 and
21 (b) may deal with some or all of those corruption issues
22 separately.
- 23 (3) Without limiting subsection (1), the Integrity Commissioner may
24 prepare a single report in relation to a number of corruption issues
25 (subject to subsection 178(2)).
- 26 (4) To avoid doubt, this section does not allow the Integrity
27 Commissioner to exercise a power in relation to a public sector
28 corruption issue that the Integrity Commissioner could not exercise
29 if the corruption issue were being dealt with separately.

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Part 4 Dealing with corruption issues

Division 2 How Integrity Commissioner deals with corruption issues

Section 52

1 **52 How Integrity Commissioner may deal with corruption issues**
2 **that relate to conduct of certain secondees**

3 *Relevant secondees*

- 4 (1) This section applies if:
- 5 (a) a corruption issue relates to conduct of a person while a
6 secondee to a regulated entity; and
- 7 (b) the person is an employee of either of the following (the
8 **home entity**):
- 9 (i) another regulated entity;
- 10 (ii) a State or Territory government entity.

11 *Informing relevant entity heads about corruption issue*

- 12 (2) The Integrity Commissioner must:
- 13 (a) inform each of the following entity heads of the corruption
14 issue:
- 15 (i) the head of the home entity;
- 16 (ii) if the home entity is an intelligence agency—the IGIS;
- 17 (iii) if the home entity is a State or Territory government
18 entity and the Integrity Commissioner is satisfied that
19 the corruption issue is relevant to the functions of a
20 State or Territory integrity agency—the head of the
21 State or Territory integrity agency; and
- 22 (b) give an entity head who is informed of the corruption issue
23 under paragraph (a) such further information in relation to the
24 corruption issue as the entity head requests.

25 This subsection has effect subject to subsections (3) and (6) and
26 section 274 (which deals with section 270 certified information).

- 27 (3) The Integrity Commissioner need not inform an entity head of a
28 corruption issue under subsection (2) if doing so is likely to
29 prejudice:
- 30 (a) the investigation of the corruption issue or another corruption
31 investigation; or
- 32 (b) any action taken as a result of an investigation referred to in
33 paragraph (a).

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- 1 (4) If the Integrity Commissioner does not inform an entity head of a
2 corruption issue because of subsection (3), the Integrity
3 Commissioner must:
4 (a) inform the Minister that the entity head has not been
5 informed of the corruption issue; and
6 (b) give the Minister the Integrity Commissioner's reasons for
7 not informing the entity head of the corruption issue.
- 8 (5) However, the Integrity Commissioner must not take action
9 described in subsection (4) if the entity head is the Minister, or any
10 other parliamentarian, as the head of the office of a
11 parliamentarian.
- 12 (6) The Integrity Commissioner does not need to take action under
13 paragraph (2)(a) if the Integrity Commissioner has reasonable
14 grounds to believe that the entity head is already aware of the
15 corruption issue.
- 16 *Arranging for home entity or State or Territory integrity agency to*
17 *investigate corruption issue*
- 18 (7) The Integrity Commissioner may deal with the corruption issue:
19 (a) if the home entity is a law enforcement agency, an
20 intelligence agency, or a public sector agency that the
21 Integrity Commissioner is satisfied has appropriate
22 capabilities to investigate the issue—by arranging, in writing,
23 with the head of the home entity for the home entity to
24 investigate the corruption issue; or
25 (b) if the home entity is a State or Territory government entity—
26 by arranging, in writing, with the head of the relevant State or
27 Territory integrity agency for that integrity agency to
28 investigate the corruption issue.
- 29 (8) The Integrity Commissioner must consult the IGIS before entering
30 into an arrangement with the head of an intelligence agency under
31 paragraph (7)(a).
- 32 (9) To avoid doubt, subsection (7) does not limit the operation of
33 section 49 in relation to the corruption issue.

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Part 4 Dealing with corruption issues

Division 2 How Integrity Commissioner deals with corruption issues

Section 52

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Criteria for deciding how to deal with corruption issue

- (10) The Integrity Commissioner must have regard to the matters set out in subsection (11) in deciding:
- (a) how to deal with the corruption issue; or
 - (b) whether to take no further action in relation to the corruption issue.
- (11) The matters that the Integrity Commissioner must have regard to are the following:
- (a) the rights and obligations of the following to investigate the corruption issue:
 - (i) the home entity;
 - (ii) if the home entity is a State or Territory government entity—any relevant State or Territory integrity agency;
 - (b) if a joint investigation of the corruption issue is being considered—the extent to which:
 - (i) the home entity; and
 - (ii) if the home entity is a State or Territory government entity—any relevant State or Territory integrity agency;are able to cooperate in the investigation;
 - (c) the resources available to the following to investigate the corruption issue:
 - (i) the Integrity Commissioner;
 - (ii) the AFP;
 - (iii) the home entity;
 - (iv) if the home entity is a State or Territory government entity—any relevant State or Territory integrity agency;
 - (d) the need to ensure a balance between:
 - (i) the Integrity Commissioner’s role in dealing with corruption issues that relate to regulated entities; and
 - (ii) ensuring that the head of the home entity takes responsibility for managing the home entity; and
 - (iii) if the home entity is a State or Territory government entity—the role of any relevant State or Territory integrity agency in dealing with the corruption issue.

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1 *Operation of section 50*

- 2 (12) To avoid doubt, subsections (10) and (11) do not limit the
3 operation of section 50 in relation to the corruption issue.

4 **53 Additional arrangements for investigating corruption issues**
5 **relating to conduct of secondees**

- 6 (1) If a regulated entity, or a State or Territory government entity, (the
7 *competent entity*) has power to investigate a corruption issue that
8 relates to the conduct of a secondee to a regulated entity, the
9 Integrity Commissioner may arrange with the head of the
10 competent entity for the competent entity to investigate the
11 corruption issue.
- 12 (2) If the Integrity Commissioner enters into such an arrangement, the
13 competent entity may investigate the corruption issue to the full
14 extent of its powers under any laws of the Commonwealth or of a
15 State or 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 competent entity
20 for the 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 rules 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.

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Part 4 Dealing with corruption issues

Division 2 How Integrity Commissioner deals with corruption issues

Section 54

1 **54 Referring allegations or information to other Commonwealth**
2 **integrity agencies**

3 (1) The Integrity Commissioner may (subject to subsection (3)) refer
4 to a Commonwealth integrity office holder an allegation or
5 information relating to conduct of a person who is or was a staff
6 member of a regulated entity, or who is or was a parliamentarian,
7 if:

8 (a) for an allegation or information that raises a corruption
9 issue—either:

10 (i) the Integrity Commissioner decides to take no further
11 action in relation to the issue under subsection 48(2) or
12 on a reconsideration of the issue under section 64; or

13 (ii) section 61 applies in relation to the issue and the
14 Integrity Commissioner does not decide to deal with the
15 issue in one of the ways referred to in subsection 49(1)
16 or (3) or 52(7); and

17 (b) the Integrity Commissioner is satisfied, taking into account
18 the functions of the Commonwealth integrity office holder or
19 of the office holder’s integrity agency, that the matter:

20 (i) is relevant to the office holder or the integrity agency;
21 and

22 (ii) could be more conveniently or effectively dealt with by
23 the office holder or the integrity agency; and

24 (c) the Integrity Commissioner has consulted with the office
25 holder.

26 (2) The Integrity Commissioner must give the Commonwealth
27 integrity office holder all the information and documents that:

28 (a) relate to the matter; and

29 (b) are in the possession, or under the control, of the Integrity
30 Commissioner.

31 This subsection has effect subject to subsections (3) and 273(1)
32 (about access to section 270 certified information) but despite any
33 secrecy provision (other than a law enforcement secrecy provision,
34 a taxation secrecy provision or a secrecy provision under the *My*
35 *Health Records Act 2012*).

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- 1 (3) The Integrity Commissioner must not give a Commonwealth
2 integrity office holder information under this section unless the
3 Integrity Commissioner is satisfied that a law of the
4 Commonwealth makes provision corresponding to the provision
5 made by sections 264 and 265 with respect to the confidentiality of
6 information acquired by the office holder.

7 **Subdivision B—Advising particular people of decision about**
8 **how corruption issue to be dealt with**

9 **55 Parliamentarians**

- 10 (1) The Integrity Commissioner must advise a parliamentarian of:
11 (a) the Integrity Commissioner’s decision under section 48 in
12 relation to a corruption issue referred by the parliamentarian
13 under section 33 or 34; and
14 (b) any decision by the Integrity Commissioner under section 64
15 on a reconsideration of how the issue should be dealt with;
16 and
17 (c) any decision by the Integrity Commissioner under section 54
18 to refer an allegation or information relating to the issue to a
19 Commonwealth integrity office holder.
- 20 (2) The Integrity Commissioner must advise the parliamentarian of the
21 decision:
22 (a) in writing; and
23 (b) as soon as reasonably practicable after the decision is made.

24 **56 Person referring corruption issue under section 44**

- 25 The Integrity Commissioner may advise a person (or a
26 representative nominated by the person) of:
27 (a) the Integrity Commissioner’s decision under section 48 in
28 relation to a corruption issue referred by the person under
29 section 44; and
30 (b) any decision by the Integrity Commissioner under section 64
31 on a reconsideration of how the issue should be dealt with;
32 and

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Division 2 How Integrity Commissioner deals with corruption issues

Section 57

- 1 (c) any decision by the Integrity Commissioner under section 54
2 to refer an allegation or information relating to the issue to a
3 Commonwealth integrity office holder.

4 **57 Commonwealth integrity office holders**

5 *Corruption issues notified by Commonwealth integrity office* 6 *holder*

- 7 (1) The Integrity Commissioner must advise a Commonwealth
8 integrity office holder of:
9 (a) the Integrity Commissioner's decision under section 48 in
10 relation to a corruption issue notified by the office holder
11 under section 46; and
12 (b) any decision by the Integrity Commissioner under section 64
13 on a reconsideration of how the issue should be dealt with;
14 and
15 (c) any decision by the Integrity Commissioner under section 54
16 to refer an allegation or information relating to the issue to a
17 Commonwealth integrity office holder.
- 18 (2) If:
19 (a) the corruption issue is a law enforcement corruption issue;
20 and
21 (b) the Commonwealth integrity office holder became aware of
22 the corruption issue because another person notified the
23 office holder of an allegation or information raising the
24 corruption issue;
25 the Integrity Commissioner may also advise the other person (or a
26 representative nominated by the other person) of the decisions
27 referred to in paragraphs (1)(a), (b) and (c).

28 *Corruption issues relating to intelligence agencies*

- 29 (3) If the Integrity Commissioner is notified under Division 1 of a
30 corruption issue relating to an intelligence agency, the Integrity
31 Commissioner must advise the IGIS of:
32 (a) the Integrity Commissioner's decision under section 48 in
33 relation to the issue; and

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- 1 (b) any decision by the Integrity Commissioner under section 64
2 on a reconsideration of how the issue should be dealt with;
3 and
4 (c) any decision by the Integrity Commissioner under section 54
5 to refer an allegation or information relating to the issue to a
6 Commonwealth integrity office holder.

7 *Form and timing of advice*

- 8 (4) If the Integrity Commissioner is required under subsection (1) or
9 (3) to advise a Commonwealth integrity office holder of a decision,
10 the Integrity Commissioner must do so:
11 (a) in writing; and
12 (b) as soon as reasonably practicable after the decision is made.

13 *Exception*

- 14 (5) However, the Integrity Commissioner need not under
15 subsection (1) or (3) advise a Commonwealth integrity office
16 holder if doing so would be likely to prejudice:
17 (a) the investigation of the issue or another corruption
18 investigation; or
19 (b) any action taken as a result of an investigation referred to in
20 paragraph (a).

21 **58 Head of regulated entity**

22 *Commissioner to advise head of regulated entity*

- 23 (1) If a corruption issue relating to a regulated entity is referred or
24 notified to the Integrity Commissioner under Division 1, the
25 Integrity Commissioner must advise the head of the entity of:
26 (a) the Integrity Commissioner's decision under section 48 in
27 relation to the issue; and
28 (b) any decision by the Integrity Commissioner under section 64
29 on a reconsideration of how the issue should be dealt with;
30 and

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Division 2 How Integrity Commissioner deals with corruption issues

Section 58

- 1 (c) any decision by the Integrity Commissioner under section 54
2 to refer an allegation or information relating to the corruption
3 issue to a Commonwealth integrity office holder.

4 *Form and timing of advice*

- 5 (2) The Integrity Commissioner must advise the entity head of the
6 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 entity
11 head if doing so would be likely to prejudice:
12 (a) the investigation of the 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 entity head of the
17 decision because of subsection (3), the Integrity Commissioner
18 must:
19 (a) inform the Minister that the entity head has not been advised
20 of the decision; and
21 (b) give the Minister the Integrity Commissioner's reasons for
22 not advising the entity head of the decision; and
23 (c) inform the Minister that the consultations that would
24 otherwise take place under section 73 will not take place.
- 25 (5) However, the Integrity Commissioner must not take action
26 described in subsection (4) if the entity head is the Minister, or any
27 other parliamentarian, as the head of the office of a
28 parliamentarian.

29 *Continued application of Act*

- 30 (6) This Act continues to apply to the entity head, and the entity, in
31 relation to the corruption issue even after the Integrity

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- 1 Commissioner makes a decision under section 48 or 64 in relation
2 to the issue, unless the Integrity Commissioner advises otherwise:
3 (a) in the advice given under subsection (1); or
4 (b) in a later written advice given to the entity head.

5 **59 Heads of home entities and certain integrity agencies**

6 *Section applies to secondment situations*

- 7 (1) This section applies if:
8 (a) a corruption issue is referred or notified to the Integrity
9 Commissioner under Division 1; and
10 (b) the issue relates to conduct of a person while a secondee to a
11 regulated entity; and
12 (c) the person is an employee of either of the following (the
13 *home entity*):
14 (i) another regulated entity;
15 (ii) a State or Territory government entity.

16 *Advising head of home entity*

- 17 (2) The Integrity Commissioner must advise the head of the home
18 entity of:
19 (a) the Integrity Commissioner's decision under section 48 in
20 relation to the issue; and
21 (b) any decision by the Integrity Commissioner under section 64
22 on a reconsideration of how the issue should be dealt with;
23 and
24 (c) any decision by the Integrity Commissioner under section 54
25 to refer an allegation or information relating to the issue to a
26 Commonwealth integrity office holder.

27 *Advising IGIS if home entity is an intelligence agency*

- 28 (3) If the home entity is an intelligence agency, the Integrity
29 Commissioner must advise the IGIS of:
30 (a) the Integrity Commissioner's decision under section 48 in
31 relation to the issue; and

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- 1 (b) any decision by the Integrity Commissioner under section 64
2 on a reconsideration of how the issue should be dealt with;
3 and
4 (c) any decision by the Integrity Commissioner under section 54
5 to refer an allegation or information relating to the issue to a
6 Commonwealth integrity office holder.

7 *Advising head of State or Territory integrity agency if home entity*
8 *is a State or Territory government entity*

- 9 (4) If the home entity is a State or Territory government entity, and the
10 Integrity Commissioner is satisfied that the issue is relevant to the
11 functions of a State or Territory integrity agency, the Integrity
12 Commissioner must also advise the head of the State or Territory
13 integrity agency of:
14 (a) the Integrity Commissioner's decision under section 48 in
15 relation to the issue; and
16 (b) any decision by the Integrity Commissioner under section 64
17 on a reconsideration of how the issue should be dealt with;
18 and
19 (c) any decision by the Integrity Commissioner under section 54
20 to refer an allegation or information relating to the issue to a
21 Commonwealth integrity office holder.

22 *Form and timing of advice*

- 23 (5) If the Integrity Commissioner is required to advise an entity head
24 under subsection (2), (3) or (4), the Integrity Commissioner must
25 do so:
26 (a) in writing; and
27 (b) as soon as reasonably practicable after the decision is made.

28 *Exception*

- 29 (6) However, the Integrity Commissioner need not under
30 subsection (2), (3) or (4) advise an entity head if doing so would be
31 likely to prejudice:
32 (a) the investigation of the issue or another corruption
33 investigation; or

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- 1 (b) any action taken as a result of an investigation referred to in
2 paragraph (a).
- 3 (7) If the Integrity Commissioner does not advise an entity head of a
4 decision because of subsection (6), the Integrity Commissioner
5 must:
- 6 (a) inform the Minister that the entity head has not been advised
7 of the decision; and
- 8 (b) give the Minister the Integrity Commissioner's reasons for
9 not advising the entity head of the decision; and
- 10 (c) inform the Minister that the consultations that would
11 otherwise take place under section 73 will not take place.
- 12 (8) However, the Integrity Commissioner must not take action
13 described in subsection (7) if the entity head is the Minister, or any
14 other parliamentarian, as the head of the office of a
15 parliamentarian.

60 Person to whom corruption issue relates

- 16
- 17 (1) If a corruption issue relates to the conduct of a person while a staff
18 member of a regulated entity or while a parliamentarian, the
19 Integrity Commissioner may advise the person of:
- 20 (a) the Integrity Commissioner's decision under section 48 in
21 relation to the issue; and
- 22 (b) any decision by the Integrity Commissioner under section 64
23 on a reconsideration of how the issue should be dealt with;
24 and
- 25 (c) any decision by the Integrity Commissioner under section 54
26 to refer an allegation or information relating to the corruption
27 issue to a Commonwealth integrity office holder.
- 28 (2) If:
- 29 (a) the issue relates to the conduct of a person while a
30 parliamentarian or while a staff member of the office of a
31 parliamentarian; and
- 32 (b) the Integrity Commissioner believes that the person is aware
33 of the referral or notification of the corruption issue to the
34 Integrity Commissioner under Division 1;

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1 the Integrity Commissioner must advise the person of a decision
2 under section 48 or 64 to take no further action in relation to the
3 issue.

4 **Subdivision C—Integrity Commissioner dealing with** 5 **corruption issues on own initiative**

6 **61 Integrity Commissioner may deal with corruption issues on own** 7 **initiative**

8 *Integrity Commissioner may decide to deal with a law enforcement*
9 *corruption issue*

10 (1) If the Integrity Commissioner becomes aware of an allegation, or
11 information, that raises a law enforcement corruption issue, the
12 Integrity Commissioner may, on the Integrity Commissioner's own
13 initiative, deal with the corruption issue in one of the ways referred
14 to in subsection 49(1) or 52(7).

15 Note: The Integrity Commissioner may direct the head of the law
16 enforcement agency to which the corruption issue relates not to
17 continue taking action in relation to the corruption issue (see
18 subsection (8) of this section).

19 (2) Without limiting subsection (1), if the Integrity Commissioner:
20 (a) is investigating a particular corruption issue or conducting a
21 corruption inquiry; and
22 (b) in the course of doing so, becomes aware of an allegation, or
23 information, that raises a law enforcement corruption issue
24 (the *new corruption issue*);
25 the Integrity Commissioner may deal with the new corruption issue
26 in one of the ways referred to in subsection 49(1) or 52(7).

27 *Integrity Commissioner may decide to deal with a public sector*
28 *corruption issue*

29 (3) If the Integrity Commissioner:
30 (a) is investigating a particular corruption issue or conducting a
31 corruption inquiry; and

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- 1 (b) in the course of doing so, becomes aware of an allegation, or
2 information, that raises a public sector corruption issue (the
3 ***new corruption issue***); and
4 (c) reasonably suspects that the offence to which the new
5 corruption issue relates has been, or is being, committed;
6 the Integrity Commissioner may deal with the new corruption issue
7 in one of the ways referred to in subsection 49(1) or (3) or 52(7).

8 Note: The Integrity Commissioner may direct the head of the regulated
9 entity to which the new corruption issue relates to stop taking action in
10 relation to the corruption issue (see subsection (8) of this section).

11 *Exception*

- 12 (4) Subsections (1) and (3) do not apply if the Integrity Commissioner
13 becomes aware of the allegation or information because of action
14 taken under Division 1.

15 *Requesting information to assist in making the decision*

- 16 (5) For the purposes of making a decision under subsection (1) or (3)
17 about whether to deal with a corruption issue, the Integrity
18 Commissioner may request a person to do either or both of the
19 following:
20 (a) give the Integrity Commissioner the information specified in
21 the request;
22 (b) if the person is the head of a regulated entity or a State or
23 Territory government entity—exercise the powers available
24 to the person under any law to obtain information of a kind
25 specified in the request and give the information to the
26 Integrity Commissioner.
27 (6) If the request is made of the head of a regulated entity, the head of
28 the entity must comply with the request.
29 (7) Subsection (5) does not limit the information to which the Integrity
30 Commissioner may have regard in making a decision under
31 subsection (1) or (3).

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Part 4 Dealing with corruption issues

Division 2 How Integrity Commissioner deals with corruption issues

Section 61

- 1 *Consulting IGIS on corruption issues relating to intelligence*
2 *agencies*
- 3 (8) Before making a decision under subsection (3) about a corruption
4 issue that relates to an intelligence agency, the Integrity
5 Commissioner must consult the IGIS, unless doing so is likely to
6 prejudice:
7 (a) the investigation of the issue or another corruption
8 investigation; or
9 (b) any action taken as a result of an investigation referred to in
10 paragraph (a).
- 11 *Directing agency to stop taking action*
- 12 (9) If the Integrity Commissioner decides under subsection (1) or (3)
13 to deal with a corruption issue in one of the ways referred to in
14 subsection 49(1) or 52(7), the Integrity Commissioner may direct
15 the head of a regulated entity to which the corruption issue relates
16 that the entity is not to take action in relation to the corruption
17 issue, unless the action is permitted by the Integrity Commissioner.
- 18 (10) If the head of a regulated entity requests the Integrity
19 Commissioner to permit the taking of particular action for the
20 purposes of subsection (9), the Integrity Commissioner must:
21 (a) as soon as practicable after the request is made, decide
22 whether to permit the taking of the action; and
23 (b) if the Integrity Commissioner refuses to permit the taking of
24 the action—give the entity head written reasons for the
25 refusal.
- 26 (11) However, the Integrity Commissioner need not give the entity head
27 reasons for the refusal if doing so is likely to prejudice:
28 (a) the investigation of the corruption issue or another corruption
29 investigation; or
30 (b) any action taken as a result of an investigation referred to in
31 paragraph (a).
- 32 (12) A direction under subsection (9) is not a legislative instrument.

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1 **62 Advising certain entity heads of decision to deal with corruption**
2 **issue on own initiative**

3 *Advice to certain entity heads*

- 4 (1) The Integrity Commissioner must advise the entity heads
5 mentioned in subsections (2) and (3) if the Integrity Commissioner
6 makes any of the following decisions:
- 7 (a) a decision in accordance with section 61, on the Integrity
8 Commissioner's own initiative, to deal in one of the ways
9 referred to in subsection 49(1) or 52(7) with a corruption
10 issue that relates to a regulated entity;
 - 11 (b) any decision by the Integrity Commissioner under section 64
12 on a reconsideration of how the issue should be dealt with;
 - 13 (c) any decision by the Integrity Commissioner under section 54
14 to refer an allegation or information relating to the corruption
15 issue to a Commonwealth integrity office holder.
- 16 (2) The entity heads who must be advised are as follows:
- 17 (a) the head of the regulated entity to which the issue relates;
 - 18 (b) if that entity is an intelligence agency—the IGIS.
- 19 (3) If the issue relates to conduct of a person while a secondee to a
20 regulated entity and the person is employed by either of the
21 following (the *home entity*):
- 22 (a) another regulated entity;
 - 23 (b) a State or Territory government entity;
- 24 the following entity heads must also be advised:
- 25 (c) the head of the home entity;
 - 26 (d) if the home entity is an intelligence agency—the IGIS;
 - 27 (e) if the home entity is a State or Territory government entity
28 and the Integrity Commissioner is satisfied that the issue is
29 relevant to the functions of a State or Territory integrity
30 agency—the head of the State or Territory integrity agency.

31 *Form and timing of advice*

- 32 (4) The Integrity Commissioner must advise an entity head mentioned
33 in subsection (2) or (3) of the decision:
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Part 4 Dealing with corruption issues

Division 2 How Integrity Commissioner deals with corruption issues

Section 63

- 1 (a) in writing; and
2 (b) as soon as reasonably practicable after the decision is made.

3 *Exception*

- 4 (5) However, the Integrity Commissioner need not advise the entity
5 head if doing so is likely to prejudice:
6 (a) the investigation of the corruption issue or another corruption
7 investigation; or
8 (b) any action taken as a result of an investigation referred to in
9 paragraph (a).
- 10 (6) If the Integrity Commissioner does not advise the entity head of the
11 decision because of subsection (5), the Integrity Commissioner
12 must:
13 (a) inform the Minister that the entity head has not been advised
14 of the decision; and
15 (b) give the Minister the Integrity Commissioner's reasons for
16 not advising the entity head of the decision; and
17 (c) inform the Minister that the consultations that would
18 otherwise take place under section 73 will not take place.
- 19 (7) However, the Integrity Commissioner must not take action
20 described in subsection (6) if the entity head is the Minister, or any
21 other parliamentarian, as the head of the office of a
22 parliamentarian.

23 **63 Advising person of decision to deal with corruption issue on own**
24 **initiative**

25 If:

- 26 (a) the Integrity Commissioner decides in accordance with
27 section 61, on the Integrity Commissioner's own initiative, to
28 deal with a corruption issue in one of the ways referred to in
29 subsection 49(1) or (3) or 52(7); and
30 (b) the corruption issue relates to the conduct of a person while:
31 (i) a staff member of a regulated entity; or
32 (ii) a parliamentarian;

33 the Integrity Commissioner may advise the person of:

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- 1 (c) the Integrity Commissioner’s decision to deal with the
2 corruption issue in that way; and
3 (d) any decision by the Integrity Commissioner under section 64
4 on a reconsideration of how the issue should be dealt with;
5 and
6 (e) any decision by the Integrity Commissioner under section 54
7 to refer an allegation or information relating to the corruption
8 issue to a Commonwealth integrity office holder.

9 **Subdivision D—Reconsidering how to deal with a corruption**
10 **issue**

11 **64 Reconsidering how to deal with a corruption issue**

- 12 (1) The Integrity Commissioner may, at any time, reconsider how a
13 particular corruption issue should be dealt with.
14 (2) On that reconsideration, the Integrity Commissioner may:
15 (a) if the issue is not being dealt with in one of the ways referred
16 to in subsection 49(1) or (3) or 52(7)—decide to deal with the
17 issue in one of the ways referred to in those subsections; or
18 (b) if the issue is being dealt with in one of the ways referred to
19 in subsection 49(1) or (3) or 52(7)—decide:
20 (i) to deal with the issue in another of the ways referred to
21 in those subsections; or
22 (ii) to take no further action in relation to the issue.
23 Note: If the Integrity Commissioner decides to take no further action in
24 relation to the issue, the Integrity Commissioner may refer any
25 allegation or information relating to the issue to a Commonwealth
26 integrity office holder under section 54.
27 (3) Section 50 and subsections 52(10) and (11) (criteria for deciding
28 whether or how to deal with a corruption issue) apply in relation to
29 the making of a decision under subsection (2) of this section in the
30 same way as they applied in relation to the making of the decision
31 the subject of the reconsideration.

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Part 4 Dealing with corruption issues

Division 2 How Integrity Commissioner deals with corruption issues

Section 64

1 *Public sector corruption issues—no further action unless*
2 *reasonable suspicion about commission of offence*

- 3 (4) The Integrity Commissioner must decide on the reconsideration to
4 take no further action in relation to the issue if:
5 (a) the issue is a public sector corruption issue; and
6 (b) the Integrity Commissioner does not reasonably suspect that
7 the offence to which the issue relates has been, or is being,
8 committed.

9 *Limits on deciding to take no further action in other cases*

- 10 (5) Subject to subsection (4), the Integrity Commissioner may decide
11 on the reconsideration to take no further action in relation to the
12 issue only if the Integrity Commissioner is satisfied that:
13 (a) the issue is already being, or will be, investigated by another
14 regulated entity or by a State or Territory government entity;
15 or
16 (b) the referral or notification of the corruption issue is frivolous
17 or vexatious; or
18 (c) the corrupt conduct to which the issue relates has been, is or
19 will be, the subject of proceedings before a court; or
20 (d) further investigation of the issue is not warranted having
21 regard to all the circumstances.

22 *Consulting with IGIS about corruption issues relating to*
23 *intelligence agencies*

- 24 (6) Before making a decision on the reconsideration about a corruption
25 issue that relates to an intelligence agency, the Integrity
26 Commissioner must consult the IGIS.

27 *Directing regulated entities not to take action*

- 28 (7) If, on the reconsideration, the Integrity Commissioner decides to
29 deal with a corruption issue in one of the ways referred to in
30 subsection 49(1) or (3) or 52(7), the Integrity Commissioner may
31 direct the head of a regulated entity to which the issue relates that
32 the entity is not to take action in relation to the issue, unless the
33 action is permitted by the Integrity Commissioner.

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Dealing with corruption issues **Part 4**
How Integrity Commissioner deals with corruption issues **Division 2**

Section 64

- 1 (8) If the head of a regulated entity requests the Integrity
2 Commissioner to permit the taking of particular action for the
3 purposes of subsection (7), the Integrity Commissioner must:
4 (a) as soon as practicable after the request is made, decide
5 whether to permit the taking of the action; and
6 (b) if the Integrity Commissioner refuses to permit the taking of
7 the action—give the entity head written reasons for the
8 refusal.
- 9 (9) However, the Integrity Commissioner need not give the entity head
10 reasons for the refusal if doing so is likely to prejudice:
11 (a) the investigation of the issue or another corruption
12 investigation; or
13 (b) any action taken as a result of an investigation referred to in
14 paragraph (a).
- 15 (10) A direction under subsection (7) is not a legislative instrument.

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Part 4 Dealing with corruption issues

Division 3 Information sharing when decision made on how to deal with corruption issue

Section 65

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

3 **65 Integrity Commissioner to give information to head of agency**
4 **conducting investigation**

- 5 (1) The Integrity Commissioner must give the head of a regulated
6 entity or of a State or Territory government entity information or a
7 document if:
- 8 (a) the entity is investigating a corruption issue because of a
9 decision by the Integrity Commissioner:
- 10 (i) that the issue should not be investigated by the Integrity
11 Commissioner but dealt with in another of the ways
12 referred to in subsection 49(1) or (3) or 52(7); or
13 (ii) under subsection 48(2) to take no further action in
14 relation to the corruption issue; and
- 15 (b) the information or document:
- 16 (i) relates to the corruption issue to the extent to which the
17 entity is investigating the issue; and
18 (ii) is in the possession, or under the control, of the Integrity
19 Commissioner; and
- 20 (c) the head of the entity does not already have the information
21 or document.
- 22 (2) Subsection (1) has effect subject to section 274 (which deals with
23 section 270 certified information).
- 24 (3) The Integrity Commissioner may give the original or a copy of a
25 document.
- 26 (4) A reference in this section to a regulated entity investigating a
27 corruption issue includes, in relation to the IGIS, a reference to
28 inquiring into the issue under the *Inspector-General of Intelligence*
29 and *Security Act 1986*.

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66 Integrity Commissioner may direct regulated entity head to give information or documents that relate to corruption issue

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- (1) This section applies if:
 - (a) the Integrity Commissioner decides to deal with a corruption issue in one of the ways referred to in subsection 49(1) or (3) or 52(7); and
 - (b) a regulated entity (the *first entity*) had started investigating the corruption issue at any time before the Integrity Commissioner's decision was made.
- (2) The Integrity Commissioner may direct the head of the first entity to give the Integrity Commissioner, the head of another regulated entity or the head of a State or Territory government entity information or a document that:
 - (a) relates to the corruption issue; and
 - (b) is in the possession, or under the control, of the head of the first entity.
- (3) The direction must be in writing.
- (4) Subject to subsections 271(1) and 273(2) (which are about access to section 270 certified information), the head of the first entity must comply with the direction.
- (5) A direction given under this section is not a legislative instrument.

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Part 4 Dealing with corruption issues

Division 4 Vexatious complainants etc.

Section 67

1 **Division 4—Vexatious complainants etc.**

2 **67 Vexatious complainants—declaration**

3 (1) The Integrity Commissioner may, by written instrument (a
4 ***vexatious complainant declaration***), declare a person to be a
5 vexatious complainant.

6 Note 1: Section 68 sets out the grounds on which a declaration may be made.

7 Note 2: For variation and revocation of the instrument, see subsection 33(3) of
8 the *Acts Interpretation Act 1901*.

9 (2) The Integrity Commissioner may make a declaration:

10 (a) on the application of the head of, or the responsible Minister
11 for, a regulated entity; or

12 (b) on the application of a Commonwealth integrity office
13 holder; or

14 (c) on the Integrity Commissioner's own initiative.

15 (3) If an application is made under paragraph (2)(a) or (b), the
16 applicant has the onus of establishing that the Integrity
17 Commissioner should make the declaration.

18 (4) The Integrity Commissioner must, as soon as practicable, give
19 written notice to the person in relation to whom the vexatious
20 complainant declaration is made.

21 **68 Vexatious complainants—grounds for declaration**

22 (1) The Integrity Commissioner may make a vexatious complainant
23 declaration in relation to a person only if the Integrity
24 Commissioner is satisfied of either of the following:

25 (a) that:

26 (i) the person has repeatedly engaged in complaint actions;
27 and

28 (ii) the repeated engagement involves an abuse of the
29 process for the complaint action;

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Dealing with corruption issues **Part 4**
Vexatious complainants etc. **Division 4**

Section 68

- 1 (b) that a particular complaint action in which the person
2 engages involves, or would involve, an abuse of the process
3 for that complaint action.
- 4 (2) A person engages in ***complaint action*** if the person does any of the
5 following:
- 6 (a) refers an allegation, or information, that raises a law
7 enforcement corruption issue to the Integrity Commissioner
8 under section 44 (referral of law enforcement corruption
9 issues by any person);
- 10 (b) refers or notifies an allegation, or information, that raises a
11 corruption issue to an authorised receiver otherwise than in
12 accordance with Division 1.
- 13 (3) The Integrity Commissioner must not make a declaration in
14 relation to a person without giving the person an opportunity to
15 make written or oral submissions.
- 16 (4) In this section:
- 17 ***abuse of the process for a complaint action*** includes, but is not
18 limited to, the following:
- 19 (a) harassing or intimidating a staff member of a regulated entity
20 or of the CIC, a parliamentarian, or any other individual;
- 21 (b) unreasonably interfering with the operations of a regulated
22 entity or the CIC;
- 23 (c) referring or notifying an allegation, or information, that raises
24 a corruption issue to an authorised receiver, where:
- 25 (i) the referral or notification is frivolous; or
26 (ii) the issue is a public sector corruption issue and there is
27 no basis on which a reasonable person could suspect
28 that the offence to which the issue relates has been or is
29 being committed; or
30 (iii) the person knows that the allegation or information is
31 false or misleading; or
32 (iv) the referral or notification is vexatious and made
33 maliciously.
- 34 ***authorised receiver*** means:
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Part 4 Dealing with corruption issues

Division 4 Vexatious complainants etc.

Section 69

- 1 (a) the Integrity Commissioner or another staff member of the
2 CIC; or
3 (b) the head of, or responsible Minister for, a regulated entity; or
4 (c) a Commonwealth integrity office holder; or
5 (d) a person to whom an authorised receiver covered by
6 paragraph (b) or (c) has delegated any of the authorised
7 receiver's functions or powers in relation to this Act.

8 **69 Vexatious complainants—effect of declaration**

- 9 (1) A vexatious complainant declaration has effect:
10 (a) in accordance with the terms and conditions stated in the
11 declaration; and
12 (b) despite anything else in Division 1 or 2.
- 13 (2) Without limiting subsection (1), a vexatious complainant
14 declaration in relation to a person (the *vexatious complainant*)
15 may do any or all of the following:
16 (a) provide that if the vexatious complainant, without the written
17 permission of the Integrity Commissioner, refers or notifies
18 an allegation or information that raises a corruption issue to
19 the following (the *recipient*):
20 (i) the head of, or the responsible Minister for, a regulated
21 entity;
22 (ii) a Commonwealth integrity office holder;
23 the recipient may refuse to consider the allegation or
24 information;
25 (b) provide that the Integrity Commissioner may refuse to make
26 a decision under subsection 48(2) in relation to a law
27 enforcement corruption issue if the issue was raised by an
28 allegation, or information, referred to the Integrity
29 Commissioner by the vexatious complainant under section 44
30 without the written permission of the Integrity
31 Commissioner;
32 (c) provide that the Integrity Commissioner may refuse to make
33 a decision under subsection 48(2) in relation to a corruption
34 issue referred or notified to the Integrity Commissioner under
35 Division 1 (other than under section 44) if:

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Dealing with corruption issues **Part 4**
Vexatious complainants etc. **Division 4**

Section 70

- 1 (i) the vexatious complainant referred or notified an
2 allegation or information raising the corruption issue to
3 a staff member of a regulated entity, or to a
4 Commonwealth integrity office holder, without the
5 written permission of the Integrity Commissioner; and
6 (ii) the person who referred or notified the corruption issue
7 under Division 1 became aware of the corruption issue
8 only because of the referral or notification made by the
9 vexatious complainant.
- 10 (3) If a refusal is made as mentioned in subsection (2), the person
11 making the refusal must, as soon as practicable, notify the
12 vexatious complainant of the refusal.

70 Offence—referring or notifying public sector corruption issue with intention to cause detriment and no basis for suspecting commission of offence

- 16 (1) A person commits an offence if:
17 (a) the person refers or notifies a public sector corruption issue
18 to a Commonwealth investigative body; and
19 (b) as a result of the referral or notification, the Integrity
20 Commissioner has cause to consider the issue; and
21 (c) the Integrity Commissioner does not reasonably suspect that
22 the offence to which the issue relates has been, or is being,
23 committed; and
24 (d) there is no basis on which a reasonable person could suspect
25 that the offence to which the issue relates has been, or is
26 being, committed; and
27 (e) the referral or notification is made with the intention of
28 causing a detriment to another person.

29 Penalty: Imprisonment for 12 months.

- 30 (2) Each of the following is a *Commonwealth investigative body* for
31 the purposes of this section:
32 (a) the CIC;
33 (b) the AFP;
34 (c) ACIC;

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Part 4 Dealing with corruption issues

Division 4 Vexatious complainants etc.

Section 70

- 1 (d) ASIC;
- 2 (e) the ATO;
- 3 (f) the IGIS;
- 4 (g) the Independent Parliamentary Expenses Authority.

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Investigations by the Integrity Commissioner **Part 5**
Conduct of investigation **Division 1**

Section 71

1 **Part 5—Investigations by the Integrity**
2 **Commissioner**

3 **Division 1—Conduct of investigation**

4 **71 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 **72 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 8 provides for particular powers that are available to the Integrity
13 Commissioner for the purposes of the investigation. Additional
14 powers may be available to the Integrity Commissioner under other
15 laws.

16 **73 Coordinating Integrity Commissioner’s investigation and**
17 **operations**

- 18 (1) If the Integrity Commissioner informs the head of a regulated
19 entity under section 58 that the Integrity Commissioner has
20 decided to investigate a corruption issue that relates to the entity,
21 the Integrity Commissioner must:
22 (a) consult, from time to time, with the head of the entity; and
23 (b) take reasonable steps to ensure that the investigation does not
24 prejudice the entity’s operations.
- 25 (2) If the Integrity Commissioner informs the IGIS under
26 subsection 57(3) or 59(3) that the Integrity Commissioner has
27 decided to investigate a corruption issue that relates to an
28 intelligence agency, the Integrity Commissioner must:
29 (a) consult, from time to time, with the IGIS; and

EXPOSURE DRAFT

Part 5 Investigations by the Integrity Commissioner

Division 1 Conduct of investigation

Section 74

1 (b) take reasonable steps to ensure that the investigation does not
2 prejudice the operations of the IGIS.

3 (3) If the Integrity Commissioner informs the head of a regulated
4 entity or of a State or Territory government entity under
5 subsection 59(2) or (4) that the Integrity Commissioner has
6 decided to investigate a corruption issue, the Integrity
7 Commissioner:

8 (a) may consult, from time to time, with the entity head; and

9 (b) must take reasonable steps to ensure that the investigation
10 does not prejudice the entity's operations.

11 Note: The entity may be a relevant State or Territory integrity agency (see
12 subsection 59(4)).

13 **74 Information sharing for joint investigation**

14 (1) If:

15 (a) the Integrity Commissioner is investigating a corruption issue
16 jointly with:

17 (i) a regulated entity; or

18 (ii) a State or Territory government entity (including a State
19 or Territory integrity agency); and

20 (b) information or documents in relation to the investigation are
21 in the possession, or under the control, of the Integrity
22 Commissioner; and

23 (c) the head of the entity does not already have the information
24 or documents;

25 the Integrity Commissioner may give the entity head the
26 information or documents.

27 (2) Subsection (1) has effect subject to section 274 (which deals with
28 section 270 certified information).

29 (3) The Integrity Commissioner may give the entity head the original
30 or a copy of a document under subsection (1).

EXPOSURE DRAFT

1 **Division 2—Keeping people informed of investigations**

2 **75 Integrity Commissioner to keep person who referred or notified**
3 **corruption issue informed of progress**

- 4 (1) If the Integrity Commissioner is investigating a corruption issue,
5 the Integrity Commissioner must take such steps as the Integrity
6 Commissioner considers reasonable to keep the following persons
7 informed of the progress of the investigation:
- 8 (a) if the corruption issue was referred by a parliamentarian
9 under section 33, 34 or 35—the parliamentarian;
 - 10 (b) if the corruption issue was notified by a Commonwealth
11 integrity office holder under section 46—the office holder;
 - 12 (c) if the corruption issue relates to a regulated entity—the head
13 of the entity;
 - 14 (d) if the corruption issue relates to an intelligence agency—the
15 IGIS.
- 16 (2) The Integrity Commissioner must also take such steps as the
17 Integrity Commissioner considers reasonable to keep an entity
18 head mentioned in subsection (3) informed of the progress of the
19 investigation if:
- 20 (a) the corruption issue relates to conduct of a person while a
21 secondee to a regulated entity and the person is employed by
22 either of the following (the *home entity*):
 - 23 (i) another regulated entity;
 - 24 (ii) a State or Territory government entity; and
 - 25 (b) the Integrity Commissioner informed the entity head of the
26 corruption issue under subsection 52(2).
- 27 (3) For the purposes of subsection (2), the entity heads are as follows:
- 28 (a) the head of the home entity;
 - 29 (b) if the home entity is an intelligence agency—the IGIS;
 - 30 (c) if the home entity is a State or Territory government entity
31 and the Integrity Commissioner is satisfied that the
32 corruption issue is relevant to the functions of a State or

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Part 5 Investigations by the Integrity Commissioner

Division 2 Keeping people informed of investigations

Section 75

- 1 Territory integrity agency—the head of the State or Territory
2 integrity agency.
- 3 (4) If:
- 4 (a) the corruption issue was referred by a person (the *interested*
5 *person*) under section 44 (referral of law enforcement
6 corruption issues by any person); or
- 7 (b) both:
- 8 (i) the corruption issue is a law enforcement corruption
9 issue notified by a Commonwealth integrity office
10 holder under section 46; and
- 11 (ii) the office holder became aware of the corruption issue
12 because another person (the *interested person*) notified
13 the office holder of an allegation or information raising
14 the corruption issue;
- 15 the Integrity Commissioner may keep the interested person (or a
16 representative nominated by the interested person) informed of the
17 progress of the investigation of that corruption issue.
- 18 (5) However, the Integrity Commissioner must not take action under
19 subsection (1), (2) or (4) if doing so would be likely to prejudice:
- 20 (a) the investigation concerned or another corruption
21 investigation; or
- 22 (b) any action taken as a result of an investigation referred to in
23 paragraph (a).

EXPOSURE DRAFT

Investigations by certain regulated entities **Part 6**
Nominated contact for investigations by certain regulated entities **Division 1**

Section 76

1 **Part 6—Investigations by certain regulated entities**

2 **Division 1—Nominated contact for investigations by**
3 **certain regulated entities**

4 **76 Nominating contact for investigation**

- 5 (1) If the Integrity Commissioner decides to deal with a corruption
6 issue by:
- 7 (a) referring the corruption issue to a regulated entity for
8 investigation; or
 - 9 (b) managing or overseeing an investigation of the corruption
10 issue by a regulated entity;
- 11 the head of the entity may nominate a staff member of the entity as
12 the contact for the investigation.
- 13 Note: If the head of the entity does not nominate someone under this
14 subsection, the entity head is the nominated contact for the
15 investigation (see the definition of *nominated contact* in section 5).
- 16 (2) The nomination must be made by notice in writing to the Integrity
17 Commissioner.

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Part 6 Investigations by certain regulated entities

Division 2 Managing or overseeing investigations by certain regulated entities

Section 77

1 **Division 2—Managing or overseeing investigations by**
2 **certain regulated entities**

3 **77 Managing an investigation**

4 (1) The Integrity Commissioner *manages* an investigation of a
5 corruption issue by a regulated entity by giving the entity’s
6 nominated contact for the investigation detailed guidance about the
7 planning, and carrying out, of the investigation.

8 Note: The Integrity Commissioner can request the entity to provide
9 information about the investigation under sections 79 and 80.

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

12 (3) The head of the entity must ensure that:

13 (a) the entity adheres to the Integrity Commissioner’s detailed
14 guidance in planning and carrying out the investigation; and

15 (b) the staff members of the entity cooperate with the Integrity
16 Commissioner in relation to the planning and carrying out of
17 the investigation.

18 **78 Overseeing an investigation**

19 (1) The Integrity Commissioner *oversees* an investigation of a
20 corruption issue by a regulated entity by giving the entity’s
21 nominated contact for the investigation general guidance about the
22 planning, and carrying out, of the investigation.

23 (2) In overseeing the investigation, the Integrity Commissioner must
24 not give directions directly to any other staff members of the entity.

25 (3) The head of the entity must ensure that the entity follows the
26 Integrity Commissioner’s general guidance in relation to the
27 planning and carrying out of the investigation.

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1 **Division 3—Reporting by certain regulated entities on**
2 **their investigations and advising of outcomes**

3 **Subdivision A—Reporting during investigations**

4 **79 Integrity Commissioner may request individual progress report**

5 (1) If a regulated entity is investigating a corruption issue, the Integrity
6 Commissioner may request:

7 (a) if the Integrity Commissioner referred the corruption issue to
8 the entity for investigation or is managing or overseeing the
9 investigation—the nominated contact for the investigation; or

10 (b) in any other case—the head of the entity;

11 to give the Integrity Commissioner a progress report on the
12 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 entity, must comply with
22 the request.

23 **80 Integrity Commissioner may request periodic progress reports**

24 (1) If a regulated entity is investigating a corruption issue, the Integrity
25 Commissioner may request:

26 (a) if the Integrity Commissioner referred the corruption issue to
27 the entity 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 entity;

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Part 6 Investigations by certain regulated entities

Division 3 Reporting by certain regulated entities on their investigations and advising of outcomes

Section 81

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

11 **81 Head of investigating entity to keep certain persons informed of** 12 **progress of investigation**

- 13 (1) This section applies if a regulated entity (the *investigating entity*)
14 is investigating a corruption issue because of a decision by the
15 Integrity Commissioner that the issue should not be investigated by
16 the Integrity Commissioner but dealt with in another of the ways
17 referred to in subsection 49(1) or (3) or 52(7).
- 18 (2) The head of the investigating entity must take such steps as that
19 head considers reasonable to keep the following persons informed
20 of the progress of the investigation:
- 21 (a) if the corruption issue was referred by a parliamentarian
22 under section 33, 34 or 35—the parliamentarian;
- 23 (b) if the corruption issue was notified by a Commonwealth
24 integrity office holder under section 46—the office holder;
- 25 (c) if the corruption issue relates to a regulated entity—the head
26 of the regulated entity;
- 27 (d) if the corruption issue relates to an intelligence agency—the
28 IGIS.
- 29 (3) The head of the investigating entity must also take such steps as
30 that head considers reasonable to keep an entity head mentioned in
31 subsection (4) informed of the progress of the investigation if:

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- 1 (a) the corruption issue relates to conduct of a person while a
2 seconded to a regulated entity and the person is employed by
3 either of the following (the *home entity*):
4 (i) another regulated entity;
5 (ii) a State or Territory government entity; and
6 (b) the Integrity Commissioner informed the head of the home
7 entity of the corruption issue under subsection 52(2).
- 8 (4) For the purposes of subsection (3), the entity heads are as follows:
9 (a) the head of the home entity;
10 (b) if the home entity is an intelligence agency—the IGIS;
11 (c) if the home entity is a State or Territory government entity
12 and the Integrity Commissioner is satisfied that the
13 corruption issue is relevant to the functions of a State or
14 Territory integrity agency—the head of the State or Territory
15 integrity agency.
- 16 (5) If:
17 (a) the corruption issue was referred by a person (the *interested*
18 *person*) under section 44 (referral of law enforcement
19 corruption issues by any person); or
20 (b) both:
21 (i) the corruption issue is a law enforcement corruption
22 issue notified by a Commonwealth integrity office
23 holder under section 46; and
24 (ii) the office holder became aware of the corruption issue
25 because another person (the *interested person*) notified
26 the office holder of an allegation or information raising
27 the corruption issue;
28 the head of the investigating entity may keep the interested person
29 (or a representative nominated by the interested person) informed
30 of the progress of the investigation of that corruption issue.
- 31 (6) However, the head of the investigating entity must not take action
32 under subsection (2), (3) or (5) if doing so would be likely to
33 prejudice:
34 (a) the investigation concerned or another corruption
35 investigation; or

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Part 6 Investigations by certain regulated entities

Division 3 Reporting by certain regulated entities on their investigations and advising of outcomes

Section 82

- 1 (b) any action taken as a result of an investigation referred to in
2 paragraph (a).

3 **Subdivision B—Final report at end of certain investigations**

4 **82 Final report on investigation by regulated entity**

5 *Requirement for report*

- 6 (1) If:
- 7 (a) a regulated entity (the *investigating entity*) investigates a
8 corruption issue because of:
- 9 (i) a decision by the Integrity Commissioner that the issue
10 should not be investigated by the Integrity
11 Commissioner but dealt with in another of the ways
12 referred to in subsection 49(1) or (3) or 52(7); or
13 (ii) a recommendation by the Integrity Commissioner under
14 section 83 that the investigating entity investigate the
15 issue further; and
- 16 (b) the issue relates to a law enforcement agency, public sector
17 agency, higher education provider or research body;
18 the head of the investigating entity must, after completing the
19 investigation or further investigation, cause a report on the
20 investigation to be prepared.
- 21 (2) The report must not deal with any corruption issues that relate to
22 parliamentarians or offices of parliamentarians.

23 *Content of report*

- 24 (3) A report prepared under subsection (1):
- 25 (a) must set out:
- 26 (i) the investigating entity's findings on the corruption
27 issue; and
28 (ii) the evidence and other material on which those findings
29 are based; and

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- 1 (iii) what action (if any) the head of the investigating entity
2 has taken, or proposes to take, to address those findings;
3 and
4 (iv) if action is to be taken—the reasons for the proposed
5 action; and
6 (b) if the investigating entity is the AFP and the corruption issue
7 relates to another regulated entity—may also set out
8 recommendations to the head of the other entity.

9 This subsection has effect subject to subsections (4) to (9).

10 *Excluding information from certain reports*

- 11 (4) Subsection (5) provides for the exclusion of information from a
12 report prepared under subsection (1) on an investigation of a
13 corruption issue if the corruption issue relates to the conduct of a
14 person while a secondee to the investigating entity or, if the
15 investigating entity is the AFP, another regulated entity.
- 16 (5) The head of the investigating entity:
17 (a) must cause section 270 certified information to be excluded
18 from the report; and
19 (b) may cause other information to be excluded from the report if
20 the head of the investigating entity is satisfied that:
21 (i) the information is sensitive information; and
22 (ii) it is desirable in the circumstances to exclude the
23 information from the report.
- 24 (6) In deciding under paragraph (5)(b) whether to cause information to
25 be excluded from a report, the head of the investigating entity must
26 seek to achieve an appropriate balance between:
27 (a) the public interest that would be served by including the
28 information in the report; and
29 (b) the prejudicial consequences that might result from including
30 the information in the report.
- 31 (7) If the head of the investigating entity causes information to be
32 excluded from the report under subsection (5), the head of the
33 investigating entity must cause a supplementary report to be
34 prepared that sets out:

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Part 6 Investigations by certain regulated entities

Division 3 Reporting by certain regulated entities on their investigations and advising of outcomes

Section 82

- 1 (a) the information; and
2 (b) the reasons for excluding the information.

3 *Opinions and findings about whether persons engaged in corrupt*
4 *conduct etc.*

- 5 (8) A report prepared under subsection (1) or a supplementary report
6 prepared under subsection (7) may include an opinion or finding
7 about whether a person engaged in corrupt conduct while a staff
8 member of a law enforcement agency.

- 9 (9) Except as provided by subsection (8), a report prepared under
10 subsection (1) and a supplementary report prepared under
11 subsection (7) must not include an opinion or finding:

- 12 (a) about whether a particular person engaged in corrupt
13 conduct; or
14 (b) about corruption by, or the integrity of, a particular person.

15 *Giving reports to the Integrity Commissioner*

- 16 (10) As soon as reasonably practicable after an investigation or further
17 investigation to which subsection (1) applies is completed, the head
18 of the investigating entity must give to the Integrity Commissioner
19 the report prepared under subsection (1), and any supplementary
20 report prepared under subsection (7), in relation to the investigation
21 or further investigation.

22 *Giving copies of reports to certain other entity heads*

- 23 (11) As soon as practicable after the head of the investigating entity
24 gives the Integrity Commissioner a report prepared under
25 subsection (1) in relation to the investigation or further
26 investigation, the head of the investigating entity must give a copy
27 of the report to:

- 28 (a) if the investigating entity is the AFP and the corruption issue
29 relates to another regulated entity—the head of the other
30 regulated entity; and
31 (b) if the corruption issue relates to an intelligence agency—the
32 IGIS; and

EXPOSURE DRAFT

- 1 (c) the entity heads mentioned in subsection (12), if the
2 corruption issue relates to conduct of a person while a
3 secondee to a law enforcement agency, public sector agency,
4 higher education provider or research body and the person is
5 employed by either of the following (the *home entity*):
6 (i) another regulated entity;
7 (ii) a State or Territory government entity.
- 8 (12) For the purposes of paragraph (11)(c), the entity heads are as
9 follows:
10 (a) the head of the home entity;
11 (b) if the home entity is an intelligence agency—the IGIS;
12 (c) if the home entity is a State or Territory government entity
13 and the head of the investigating entity is satisfied that the
14 issue is relevant to the functions of a State or Territory
15 integrity agency—the head of the State or Territory integrity
16 agency.
- 17 (13) A copy of a report prepared under subsection (1) may be given
18 under subsection (11) together with a copy of the whole or a part of
19 any supplementary report prepared under subsection (7) in relation
20 to the investigation or further investigation.

21 *Copies of reports not to be publicly released*

- 22 (14) Neither the head of the investigating entity, nor an entity head to
23 whom a copy of a report is given under subsection (11), may
24 disclose, or authorise the disclosure of, any part of a copy of a
25 report prepared under this section to the public or a section of the
26 public.

27 **83 Integrity Commissioner may comment on final report**

28 *Integrity Commissioner may make comments or recommendations*

- 29 (1) The Integrity Commissioner may make comments or
30 recommendations on any matter relating to or arising out of:
31 (a) a report given to the Integrity Commissioner by the head of a
32 regulated entity under section 82; or

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Part 6 Investigations by certain regulated entities

Division 3 Reporting by certain regulated entities on their investigations and advising of outcomes

Section 83

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(b) the investigation to which the report relates.

This subsection has effect subject to subsections (5) to (7).

Note: Under section 64, the Integrity Commissioner could, after receiving the report, reconsider how the corruption issue should be dealt with.

- (2) The Integrity Commissioner must put any such comments or recommendations in writing and give them to the head of the regulated entity and, if the regulated entity is an intelligence agency, to the IGIS.
- (3) If the regulated entity that gives the report to the Integrity Commissioner is the AFP, the Integrity Commissioner must also give the comments or recommendations to the following:
- (a) if the corruption issue relates to another regulated entity—the head of that entity;
 - (b) if the corruption issue relates to an intelligence agency—the IGIS.
- (4) Without limiting subsection (1), the Integrity Commissioner may recommend that:
- (a) the head of a law enforcement agency, public sector agency, higher education provider or research body take appropriate action with a view to having a person charged with a criminal offence; or
 - (b) the head of a law enforcement agency, public sector agency, higher education provider or research body take appropriate action:
 - (i) to initiate disciplinary proceedings against a person; or
 - (ii) to determine whether a person’s employment or appointment should be terminated; or
 - (c) the regulated entity that gave the report to the Integrity Commissioner investigate the corruption issue further.

Note: Under section 64, the Integrity Commissioner could, instead of recommending that the entity investigate the corruption issue further, decide that the corruption issue should be dealt with in another way.

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1 *Comments or recommendations relating to parliamentarians or*
2 *their offices*

3 (5) The Integrity Commissioner must not make a comment or
4 recommendation under subsection (1) that relates to a
5 parliamentarian or the office of a parliamentarian.

6 *Opinions and findings about whether persons engaged in corrupt*
7 *conduct etc.*

8 (6) The Integrity Commissioner may include in a comment or
9 recommendation under subsection (1) an opinion about whether a
10 person engaged in corrupt conduct while a staff member of a law
11 enforcement agency.

12 (7) Except as provided by subsection (6), the Integrity Commissioner
13 must not include in a comment or recommendation under
14 subsection (1) an opinion or finding:

15 (a) about whether a particular person engaged in corrupt
16 conduct; or

17 (b) about corruption by, or the integrity of, a particular person.

18 **84 Request for details of action to be taken—recommendations**
19 **directed to heads of certain regulated entities**

20 *Request for details of action to be taken*

21 (1) If a recommendation under subsection 83(1) is directed to the head
22 of a law enforcement agency, public sector agency, higher
23 education provider or research body, the Integrity Commissioner
24 may request that entity head to give the Integrity Commissioner,
25 within a specified time, details of any action that the entity head
26 proposes to take with respect to the recommendation.

27 (2) The entity head must comply with the request.

28 (3) If the entity is a law enforcement agency and the Integrity
29 Commissioner is not satisfied with the response of the entity head
30 to the request, the Integrity Commissioner may refer to the
31 responsible Minister for the entity:

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Part 6 Investigations by certain regulated entities

Division 3 Reporting by certain regulated entities on their investigations and advising of outcomes

Section 84

- 1 (a) the Integrity Commissioner's recommendation and the
2 reasons for that recommendation; and
- 3 (b) the response of the entity head to the recommendation; and
- 4 (c) the Integrity Commissioner's reasons for not being satisfied
5 with that response.
- 6 (4) If the Integrity Commissioner refers material to a Minister under
7 subsection (3), the Integrity Commissioner may also send a copy of
8 that material to the Presiding Officer of each House of the
9 Parliament for presentation to that House.
- 10 *Section 270 certified information and sensitive information*
- 11 (5) The Integrity Commissioner must exclude section 270 certified
12 information from the copy of the material sent under
13 subsection (4).
- 14 (6) The Integrity Commissioner may exclude information from the
15 copy of the material sent under subsection (4) if the Integrity
16 Commissioner is satisfied that:
- 17 (a) the information is sensitive information; and
- 18 (b) it is desirable in the circumstances to exclude the information
19 from the material sent.
- 20 (7) In deciding whether to exclude information from the copy of the
21 material sent under subsection (4), the Integrity Commissioner
22 must seek to achieve an appropriate balance between:
- 23 (a) the public interest that would be served by including the
24 information in the material sent; and
- 25 (b) the prejudicial consequences that might result from including
26 the information in the material sent.
- 27 (8) After the material is presented to each House of the Parliament, the
28 Integrity Commissioner may discuss any matter to which the
29 material relates with the entity head for the purpose of resolving
30 the matter.

EXPOSURE DRAFT

1 **Subdivision C—Advising persons of outcomes of investigations**

2 **85 Investigations relating to parliamentarians or their offices—** 3 **advising Integrity Commissioner and parliamentarian of** 4 **investigation’s outcome**

- 5 (1) This section applies if the AFP investigates a corruption issue
6 relating to a parliamentarian or the office of a parliamentarian
7 because of a decision by the Integrity Commissioner that the issue
8 should not be investigated by the Integrity Commissioner but dealt
9 with under paragraph 49(1)(b) or (3)(b).
- 10 (2) The AFP Commissioner must, after completing the investigation,
11 advise the following of the outcome of the investigation:
12 (a) the Integrity Commissioner;
13 (b) the parliamentarian.
- 14 (3) However, the AFP Commissioner must not advise a
15 parliamentarian as required by paragraph (2)(b) if the AFP
16 Commissioner is satisfied that doing so is likely to prejudice:
17 (a) any action taken as a result of the investigation; or
18 (b) another corruption investigation; or
19 (c) any action taken as a result of another corruption
20 investigation.

21 **86 Investigations relating to all regulated entities—advising person** 22 **whose conduct is investigated of investigation’s outcome**

- 23 (1) If:
24 (a) a regulated entity (the *investigating entity*) investigates a
25 corruption issue because of a decision by the Integrity
26 Commissioner that the issue should not be investigated by the
27 Integrity Commissioner but dealt with in another of the ways
28 referred to in subsection 49(1) or (3) or 52(7); and
29 (b) the issue relates to conduct of a person while a staff member
30 of that or any other regulated entity;
31 the head of the investigating entity may advise the person of the
32 outcome of the investigation.

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Part 6 Investigations by certain regulated entities

Division 3 Reporting by certain regulated entities on their investigations and advising of outcomes

Section 87

- 1 (2) However, the head of the investigating entity must not advise a
2 person as required by subsection (1) if the head of the investigating
3 entity is satisfied that doing so is likely to prejudice:
4 (a) any action taken as a result of the investigation; or
5 (b) another corruption investigation; or
6 (c) any action taken as a result of another corruption
7 investigation.
- 8 (3) Without limiting subsection (1), the head of the investigating entity
9 may advise the person by giving the person a copy of the whole or
10 a part of any report prepared under section 82 in relation to the
11 investigation.

87 All investigations—advising person who referred or notified corruption issue of investigation's outcome

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- 14 (1) If:
15 (a) a regulated entity investigates a corruption issue because of a
16 decision by the Integrity Commissioner that the issue should
17 not be investigated by the Integrity Commissioner but dealt
18 with in another of the ways referred to in subsection 49(1) or
19 (3) or 52(7); and
20 (b) the issue was referred or notified to the Integrity
21 Commissioner under Division 1 of Part 4;
22 the head of the regulated entity may advise:
23 (c) the person who made the referral or notification to the
24 Integrity Commissioner; or
25 (d) for a referral to the Integrity Commissioner under
26 section 44—a representative nominated by the person who
27 made that referral;
28 of the outcome of the investigation.
- 29 (2) If:
30 (a) the corruption issue is a law enforcement corruption issue
31 notified by a Commonwealth integrity office holder under
32 section 46; and

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Investigations by certain regulated entities **Part 6**
Reporting by certain regulated entities on their investigations and advising of outcomes
Division 3

Section 87

- 1 (b) the office holder became aware of the corruption issue
- 2 because another person notified the office holder of an
- 3 allegation or information raising the corruption issue;
- 4 the entity head may also advise the other person (or a
- 5 representative nominated by the other person) of the outcome of
- 6 the investigation.

- 7 (3) Without limiting subsections (1) and (2), the entity head may
- 8 advise a person under either of those subsections by giving the
- 9 person a copy of the whole or a part of any report prepared under
- 10 section 82 in relation to the investigation.

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Part 7 Corruption inquiries

Section 88

1 **Part 7—Corruption inquiries**

2

3 **88 Minister may direct Integrity Commissioner to conduct**

4 **corruption inquiry**

5 (1) The Minister may, by writing, direct the Integrity Commissioner to

6 conduct an inquiry into either or both of the following:

7 (a) an issue or issues about corruption (including systemic

8 corruption) in one or more law enforcement agencies, public

9 sector agencies, higher education providers or research

10 bodies, other than an issue about corruption by a single

11 individual;

12 (b) an issue or issues about the integrity of staff members of one

13 or more law enforcement agencies, public sector agencies,

14 higher education providers or research bodies, other than an

15 issue about the integrity of a single individual.

16 Note: Part 8 provides for particular powers that are available to the Integrity

17 Commissioner for the purposes of the inquiry.

18 (2) If the Minister gives a direction under subsection (1), the Integrity

19 Commissioner must conduct an inquiry in accordance with the

20 direction.

21 (3) The Minister must consult the Integrity Commissioner before

22 giving a direction under subsection (1).

23 (4) A direction given under subsection (1) is not a legislative

24 instrument.

25 **89 Publicising corruption inquiry**

26 (1) The Integrity Commissioner may invite submissions on the issues

27 that are to be the subject of the corruption inquiry.

28 Note: Subsection 135(1) provides certain protections for people who make

29 submissions.

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

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Corruption inquiries **Part 7**

Section 89

1 Note: Any hearings held for the purpose of conducting a corruption inquiry
2 must be held in private to the extent that the hearing is dealing with
3 corruption in, or the integrity of staff members of, public sector
4 agencies, higher education providers or research bodies: see
5 subsection 99(9).

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Part 8 Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries

Division 1 Requiring people to give information and produce documents or things

Section 90

1 **Part 8—Integrity Commissioner's powers in**
2 **investigating corruption issues and**
3 **conducting corruption inquiries**

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

6 **Subdivision A—Notices to give information or to produce**
7 **documents or things**

8 **90 Notice to give information or to produce document or thing**

9 *Giving notice*

10 (1) For the purpose of investigating a corruption issue or conducting a
11 corruption inquiry, the Integrity Commissioner may, by notice in
12 writing, require a person to do either or both of the following:

13 (a) give the information specified in the notice;

14 (b) produce the documents or things specified in the notice;

15 if the Integrity Commissioner has reasonable grounds to suspect
16 that the information, documents or things will be relevant to the
17 investigation or inquiry.

18 Note: In certain cases, disclosing the existence of a notice, or any
19 information about it, is an offence: see section 94.

20 (2) The Integrity Commissioner may require that information specified
21 under paragraph (1)(a) is to be given in writing.

22 (3) The notice must:

23 (a) be served on the person; and

24 (b) be signed by the Integrity Commissioner; and

25 (c) specify the period within which, and the manner in which,
26 the person must comply with the notice.

27 (4) The period specified under paragraph (3)(c) must be at least 14
28 days after the day the notice is served on the person, unless the

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Integrity Commissioner's powers in investigating corruption issues and conducting
corruption inquiries **Part 8**
Requiring people to give information and produce documents or things **Division 1**

Section 91

- 1 Integrity Commissioner considers that allowing a 14-day period
2 would significantly prejudice a corruption investigation or a
3 corruption inquiry, in which case a shorter period may be specified.
- 4 (5) If a shorter period is specified, the Integrity Commissioner must
5 record, in writing:
- 6 (a) the name of the corruption investigation or corruption inquiry
7 that would be prejudiced; and
8 (b) why a 14-day period would significantly prejudice the
9 investigation or inquiry.
- 10 (6) The Integrity Commissioner may serve a notice on a person
11 without holding a hearing.

91 Compliance with notice

Compliance with notice

- 13
- 14 (1) A person served with a notice under section 90 must comply with
15 the notice:
- 16 (a) within the period specified in the notice; or
17 (b) within such further time as the Integrity Commissioner
18 allows under subsection (3).

19 Note 1: Failure to comply with a notice is an offence: see section 95.

20 Note 2: See also subsection 271(2) in relation to section 270 certified
21 information.

Extension of time

- 22
- 23 (2) A person served with a notice under section 90 may apply to the
24 Integrity Commissioner, in writing, for further time to comply with
25 the notice:
- 26 (a) before the period expires; or
27 (b) as soon as possible after the period expires.
- 28 (3) The Integrity Commissioner may allow a person served with a
29 notice further time to comply with the notice whether or not an
30 application has been made.

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Part 8 Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries

Division 1 Requiring people to give information and produce documents or things

Section 92

1 *Acknowledgement*

- 2 (4) If a person served with a notice has given the information and/or
3 produced the documents or things specified in the notice, the
4 Integrity Commissioner must give the person a written
5 acknowledgement of that fact.

6 **92 Integrity Commissioner may retain documents and things**

- 7 (1) If a document or thing is produced in accordance with a notice
8 under section 90, the Integrity Commissioner:
9 (a) may take possession of, and may make copies of, the
10 document or thing, or take extracts from the document; and
11 (b) may retain possession of the document or thing for such
12 period as is necessary for the purposes of the investigation or
13 inquiry to which the document or thing relates.
- 14 (2) While the Integrity Commissioner retains the document or thing,
15 the Integrity Commissioner must allow a person who would
16 otherwise be entitled to inspect the document or view the thing to
17 do so at the times that the person would ordinarily be able to do so.

18 **Subdivision B—Prohibitions against disclosing information** 19 **about notices**

20 **93 Disclosure of notice may be prohibited**

21 *Application*

- 22 (1) This section applies in respect of a notice served on a person under
23 section 90.

24 *Notation prohibiting disclosure of information about notice*

- 25 (2) The Integrity Commissioner may include a notation in the notice to
26 the effect that disclosure of information about:
27 (a) the notice; or
28 (b) any official matter connected with the notice;

EXPOSURE DRAFT

Integrity Commissioner's powers in investigating corruption issues and conducting
corruption inquiries **Part 8**
Requiring people to give information and produce documents or things **Division 1**

Section 93

- 1 is prohibited except in the circumstances (if any) specified in the
2 notation.
- 3 (3) The Integrity Commissioner must include a notation in the notice if
4 the Integrity Commissioner is satisfied that failure to do so would
5 reasonably be expected to prejudice:
6 (a) a person's safety or reputation; or
7 (b) a person's fair trial, if the person has been charged with an
8 offence or such a charge is imminent; or
9 (c) the investigation or inquiry to which the notice relates or
10 another corruption investigation or corruption inquiry; or
11 (d) any action taken as a result of an investigation or inquiry
12 referred to in paragraph (c).
- 13 (4) The Integrity Commissioner may include a notation in the notice if
14 the Integrity Commissioner is satisfied that:
15 (a) failure to do so might prejudice:
16 (i) a person's safety or reputation; or
17 (ii) a person's fair trial, if the person has been charged with
18 an offence or such a charge is imminent; or
19 (iii) the investigation or inquiry to which the notice relates
20 or another corruption investigation or corruption
21 inquiry; or
22 (iv) any action taken as a result of an investigation or
23 inquiry referred to in subparagraph (iii); or
24 (b) failure to do so might otherwise be contrary to the public
25 interest.
- 26 (5) The Integrity Commissioner must not include a notation in the
27 notice in any other case.
- 28 *Written statement to accompany notation*
- 29 (6) If a notation is included in the notice, it must be accompanied by a
30 written statement setting out the rights and obligations conferred or
31 imposed by section 94 on the person on whom the notice is served.

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Part 8 Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries

Division 1 Requiring people to give information and produce documents or things

Section 94

1

Cancellation of notation

2

(7) A notation included in the notice is cancelled by this subsection if:

3

(a) the Integrity Commissioner concludes the investigation or inquiry to which the notice relates; and

4

5

(b) any criminal proceedings, civil penalty proceedings or confiscation proceedings, resulting from the investigation or inquiry, are commenced.

6

7

8

(8) If a notation is cancelled by subsection (7), the Integrity Commissioner must advise the person who was served with the notated notice, in writing, of the cancellation.

9

10

11

Relationship of notation with the Privacy Act 1988

12

(9) If:

13

(a) a notation has been included in the notice in relation to the disclosure of information about the notice or any official matter connected with the notice; and

14

15

16

(b) the notation has not been cancelled; and

17

18

(c) apart from this subsection, a credit reporting body (within the meaning of the *Privacy Act 1988*) would be required, under subsection 20E(5) of that Act, to make a note about the disclosure of the information;

19

20

21

such a note must not be made until the notation is cancelled.

22

94 Offences of disclosure

23

(1) A person commits an offence if:

24

(a) the person is served with a notice under section 90; and

25

(b) the notice includes a notation under section 93; and

26

(c) the person discloses the existence of, or any information about:

27

28

(i) the notice; or

29

(ii) any official matter connected with the notice; and

30

(d) when the disclosure is made:

31

(i) the notation has not been cancelled by subsection 93(7);

32

and

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Integrity Commissioner's powers in investigating corruption issues and conducting
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Requiring people to give information and produce documents or things **Division 1**

Section 94

1 (ii) the period of 5 years after the notice is served under
2 section 90 has not ended.

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

4 (2) In proceedings for an offence against subsection (1), it is a defence
5 if the person makes the disclosure:

6 (a) in the circumstances, if any, permitted by the terms of the
7 notation; or

8 (b) to a legal practitioner for the purpose of obtaining legal
9 advice or representation in relation to the notice; or

10 (c) to a legal aid officer for the purpose of seeking assistance
11 under section 280 in relation to the notice; or

12 (d) if the person is a body corporate—to an officer or agent of
13 the body corporate for the purpose of ensuring compliance
14 with the notice; or

15 (e) if the person is a legal practitioner—for the purpose of
16 obtaining the agreement of another person under
17 subsection 96(3) to the legal practitioner answering a
18 question or producing a document or thing.

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

21 (3) A person commits an offence if:

22 (a) a disclosure is made to the person about:

23 (i) a notice under section 90 that includes a notation under
24 section 93; or

25 (ii) any official matter connected with a notice under
26 section 90 that includes a notation under section 93; and

27 (b) the disclosure is permitted under subsection (2) or (4)
28 because the person is a person of a particular kind; and

29 (c) while the person is a person of that kind, the person discloses
30 the existence of, or any information about:

31 (i) the notice; or

32 (ii) any official matter connected with the notice; and

33 (d) when the disclosure by the person is made:

34 (i) the notation has not been cancelled by subsection 93(7);
35 and

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Part 8 Integrity Commissioner’s powers in investigating corruption issues and conducting corruption inquiries

Division 1 Requiring people to give information and produce documents or things

Section 94

1 (ii) the period of 5 years after the notice is served under
2 section 90 has not ended.

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

4 (4) In proceedings for an offence against subsection (3), it is a defence
5 if the person discloses the information:

6 (a) if the person is an officer or agent of a body corporate
7 referred to in paragraph (2)(d):

8 (i) to another officer or agent of the body corporate for the
9 purpose of ensuring compliance with the notice; or

10 (ii) to a legal practitioner for the purpose of obtaining legal
11 advice or representation in relation to the notice; or

12 (iii) to a legal aid officer for the purpose of seeking
13 assistance under section 280 in relation to the notice; or

14 (b) if the person is a legal practitioner—for the purpose of giving
15 legal advice, making representations, or seeking assistance
16 under section 280, in relation to the notice; or

17 (c) if the person is a legal aid officer—for the purpose of
18 obtaining legal advice or representation in relation to the
19 notice.

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

22 (5) A person commits an offence if:

23 (a) a disclosure is made to the person about:

24 (i) a notice under section 90 that includes a notation under
25 section 93; or

26 (ii) any official matter connected with a notice under
27 section 90 that includes a notation under section 93; and

28 (b) the disclosure is permitted under subsection (2) or (4)
29 because the person is a person of a particular kind; and

30 (c) when the person is no longer a person of that kind, the
31 person:

32 (i) makes a record of the notice; or

33 (ii) discloses the existence of the notice; or

34 (iii) discloses any information about the notice or the
35 existence of it; and

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Integrity Commissioner's powers in investigating corruption issues and conducting
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Requiring people to give information and produce documents or things **Division 1**

Section 95

- 1 (d) when the record, or disclosure, is made by the person:
2 (i) the notation has not been cancelled by subsection 93(7);
3 and
4 (ii) the period of 5 years after the notice is served under
5 section 90 has not ended.

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

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

10 Subdivision C—Offence and related provisions

11 95 Failure to comply with notice

- 12 (1) A person commits an offence if:
13 (a) the person is served with a notice under section 90; and
14 (b) the person fails to comply with the notice:
15 (i) within the period specified in the notice; or
16 (ii) if the Integrity Commissioner has allowed the person
17 further time under subsection 91(3)—within such
18 further time.

19 Note 1: If a notice requires a document or thing to be produced, a legal
20 practitioner may refuse to produce the document or thing in certain
21 circumstances: see section 96.

22 Note 2: This section is not subject to the privilege against self-incrimination
23 but there are limits on the uses to which the evidence the person gives
24 may be put: see section 97.

25 Penalty: Imprisonment for 2 years.

- 26 (2) In proceedings for an offence against subsection (1), it is a defence
27 if it is not reasonably practicable for the person to comply with the
28 notice:
29 (a) within the period specified in the notice; or
30 (b) within such further time as is allowed by the Integrity
31 Commissioner under subsection 91(3).

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Part 8 Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries

Division 1 Requiring people to give information and produce documents or things

Section 96

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

3 **96 Legal practitioner not required to disclose privileged** 4 **communications**

- 5 (1) A legal practitioner may refuse:
6 (a) to give information; or
7 (b) to produce a document or thing;
8 when served with a notice to do so under section 90 if the
9 information would disclose, or the document or thing contains, a
10 privileged communication made by or to the legal practitioner in
11 the capacity of a legal practitioner.
- 12 (2) Subsection (1) has effect subject to paragraphs 97(6)(c) and (d).
- 13 (3) Subsection (1) does not apply if the person to whom the
14 communication was made (or by whom the communication was
15 made) agrees to the legal practitioner:
16 (a) giving the information; or
17 (b) producing the document or thing.
- 18 (4) If the legal practitioner refuses:
19 (a) to give the information; or
20 (b) to produce the document or thing;
21 the legal practitioner must, if required by the Integrity
22 Commissioner, give the Integrity Commissioner the name and
23 address of the person to whom the communication was made (or
24 by whom the communication was made).
- 25 (5) If a legal practitioner gets agreement, as mentioned in
26 subsection (3):
27 (a) the fact that the legal practitioner:
28 (i) gives information; or
29 (ii) produces a document or thing;
30 does not otherwise affect a claim of legal professional
31 privilege that anyone may make in relation to that
32 information, document or thing; and

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Section 97

1 (b) the information, document or thing does not cease to be the
2 subject of legal professional privilege merely because it is
3 given, produced or referred to.

4 **97 Self-incrimination etc.**

5 *Self-incrimination*

- 6 (1) A person is not excused from:
7 (a) giving information; or
8 (b) producing a document or thing;
9 when served with a notice to do so under section 90 on the ground
10 that doing so would tend to incriminate the person or expose the
11 person to a penalty.
- 12 (2) Subsections (3) and (4) do not apply to the production of a
13 document that is, or forms part of, a record of an existing or past
14 business.
- 15 (3) The information given, or the document or thing produced, is not
16 admissible in evidence against the person in:
17 (a) a criminal proceeding; or
18 (b) a proceeding for the imposition or recovery of a penalty; or
19 (c) a confiscation proceeding.
- 20 (4) Subsection (3) does not affect whether the information, document
21 or thing is admissible in evidence against the person in:
22 (a) a confiscation proceeding, if the information was given, or
23 the document or thing was produced, at a time when the
24 proceeding had not commenced and was not imminent; or
25 (b) a proceeding for an offence against section 94 or 95; or
26 (c) a proceeding for an offence against section 137.1 or 137.2 of
27 the *Criminal Code* (about false or misleading information or
28 documents) that relates to this Act; or
29 (d) a proceeding for an offence against section 149.1 of the
30 *Criminal Code* (about obstruction of Commonwealth public
31 officials) that relates to this Act; or

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Section 97

1 (e) a disciplinary proceeding against the person if the person is a
2 staff member of a regulated entity.

3 Note: For paragraph (a), the court may order otherwise (see
4 subsection 120(4)).

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

8 *Public interest grounds*

9 (6) A person is not excused from:

10 (a) giving information; or

11 (b) producing a document or thing;

12 when served with a notice to do so under section 90 on the ground
13 that doing so:

14 (c) would disclose legal advice given to a law enforcement
15 agency, public sector agency, higher education provider or
16 research body; or

17 (d) would disclose a communication between:

18 (i) a staff member of a law enforcement agency, public
19 sector agency, higher education provider or research
20 body; and

21 (ii) another person or body;

22 being a communication protected against disclosure by legal
23 professional privilege; or

24 (e) would breach a secrecy provision other than:

25 (i) a taxation secrecy provision; or

26 (ii) a law enforcement secrecy provision; or

27 (iii) a secrecy provision under the *My Health Records Act*
28 *2012*; or

29 (f) would be otherwise contrary to the public interest.

30 Note: See also subsection 271(2) in relation to section 270 certified
31 information.

32 (7) Paragraph (6)(c) does not apply in relation to legal advice given to
33 either of the following public sector agencies:

34 (a) the Australian Broadcasting Corporation;

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Integrity Commissioner's powers in investigating corruption issues and conducting
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Section 98

- 1 (b) the Special Broadcasting Service Corporation;
2 if the legal advice is given for the purposes of a staff member's
3 work for the agency as a journalist.
- 4 (8) Paragraph (6)(d) does not apply in relation to a communication by
5 or to a staff member of either of the following public sector
6 agencies:
7 (a) the Australian Broadcasting Corporation;
8 (b) the Special Broadcasting Service Corporation;
9 if the communication occurs in the normal course of the staff
10 member's work for the agency as a journalist.
- 11 (9) The fact that a person is not excused under subsection (6) 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 (10) 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 law enforcement secrecy provision, a taxation secrecy provision or
20 a secrecy provision under the *My Health Records Act 2012*)
21 because the person gives information, or produces a document or
22 thing, when required to do so under section 90.

98 Protection of person required to give information and produce documents

- 23
24
- 25 (1) A person who gives information, or produces a document or thing,
26 in response to a notice served on the person under section 90 has
27 the same protection as a witness in proceedings in the High Court.
- 28 (2) Subsection (3) applies if it appears to the Integrity Commissioner
29 that, because a person:
30 (a) is to give information, or produce a document or thing; or
31 (b) has given information, or produced a document or thing;
32 in response to a notice served on the person under section 90,
33 either:

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Section 98

- 1 (c) the safety of the person or any other person may be
2 prejudiced; or
3 (d) the person or any other person may be subjected to
4 intimidation or harassment.
- 5 (3) The Integrity Commissioner may make such arrangements as are
6 necessary:
7 (a) to protect the safety of any person mentioned in
8 paragraph (2)(c); or
9 (b) to protect any person mentioned in paragraph (2)(d) from
10 intimidation or harassment.
- 11 (4) For the purposes of subsection (3), the arrangements that the
12 Integrity Commissioner may make include arrangements with:
13 (a) the Minister; or
14 (b) members of the AFP; or
15 (c) members of the police force of a State or Territory.
- 16 (5) This section does not affect the *Witness Protection Act 1994*.

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Integrity Commissioner's powers in investigating corruption issues and conducting
corruption inquiries **Part 8**
Conducting hearings **Division 2**

Section 99

1 **Division 2—Conducting hearings**

2 **Subdivision A—General provisions**

3 **99 Integrity Commissioner may hold hearings**

4 *Commissioner may hold hearings for investigations or corruption*
5 *inquiries*

- 6 (1) The Integrity Commissioner may hold a hearing for the purpose of:
7 (a) investigating a corruption issue; or
8 (b) conducting a corruption inquiry.
- 9 (2) A hearing may be:
10 (a) a pre-charge hearing or a post-charge hearing; or
11 (b) a pre-confiscation application hearing or a post-confiscation
12 application hearing.
- 13 (3) Without limiting its effect apart from this subsection, this Act also
14 has the effect it would have if:
15 (a) paragraph (2)(a) were, by express provision, confined to
16 pre-charge hearings; or
17 (b) paragraph (2)(b) were, by express provision, confined to
18 pre-confiscation application hearings.
- 19 (4) Subject to subsections (5) to (10), a hearing may be conducted in
20 such manner as the Integrity Commissioner thinks fit.

21 *Hearing for purposes of corruption investigation*

- 22 (5) A hearing for the purpose of investigating a corruption issue must
23 be held in private to the extent that the hearing is dealing with a
24 public sector corruption issue.

25 Note: See also paragraph 106(1)(d) which requires evidence at a hearing
26 held in public to be given in private if giving the evidence would
27 disclose information that relates to a public sector corruption issue.

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Part 8 Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries

Division 2 Conducting hearings

Section 99

1 (6) Subject to subsection (5), the Integrity Commissioner may decide
2 to hold the whole (or a part) of a hearing for the purpose of
3 investigating a corruption issue either in public or in private.

4 (7) In deciding under subsection (6) whether a hearing (or a part of a
5 hearing) is to be held in public or in private, the Integrity
6 Commissioner must have regard to the following:

7 (a) whether evidence that may be given, or a matter that may
8 arise, during the hearing (or that part of the hearing) is of a
9 confidential nature or relates to the commission, or to the
10 alleged or suspected commission, of an offence;

11 (b) any unfair prejudice to a person's reputation that would be
12 likely to be caused if the hearing (or that part of the hearing)
13 took place in public;

14 (c) whether it is in the public interest that the hearing (or that
15 part of the hearing) take place in public;

16 (d) any other relevant matter.

17 Note: If the hearing is to be held in public, a person giving evidence may
18 request that the person's evidence be taken in private: see section 106.

19 *Hearing for purposes of a corruption inquiry*

20 (8) A hearing for the purpose of conducting a corruption inquiry must
21 be held in public, subject to subsections (9) and (10).

22 (9) A hearing for the purpose of conducting a corruption inquiry must
23 be held in private to the extent that it is dealing with corruption in,
24 or the integrity of staff members of:

25 (a) public sector agencies; or

26 (b) higher education providers; or

27 (c) research bodies.

28 (10) A part of a hearing for the purpose of conducting a corruption
29 inquiry may also be held in private if the Integrity Commissioner
30 so directs.

31 Note 1: Certain evidence must be given in private, and a person giving
32 evidence may request that the person's evidence be taken in private:
33 see section 106.

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Section 100

1 Note 2: In particular, paragraph 106(1)(d) requires evidence to be given in
2 private if giving the evidence would disclose information that relates
3 to a public sector corruption issue.

4 *Record of hearing*

5 (11) The Integrity Commissioner must cause a record of a hearing to be
6 made.

7 (12) If the Integrity Commissioner is conducting a corruption inquiry,
8 the record of the hearing must include:

9 (a) any document produced to the Integrity Commissioner at the
10 hearing; or

11 (b) a description of any thing (other than a document) produced
12 to the Integrity Commissioner at the hearing;

13 unless the Integrity Commissioner directs otherwise.

14 *Direction is not a legislative instrument*

15 (13) A direction given under this section is not a legislative instrument.

16 **100 Integrity Commissioner may summon person**

17 (1) The Integrity Commissioner may summon a person to attend a
18 hearing at a time and place specified in the summons to do either
19 or both of the following:

20 (a) give evidence;

21 (b) produce any documents or other things referred to in the
22 summons;

23 if the Integrity Commissioner has reasonable grounds to suspect
24 that the evidence, documents or things:

25 (c) in all cases—will be relevant to the investigation of a
26 corruption issue or the conduct of a corruption inquiry; and

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

30 (i) the person has been charged or the confiscation
31 proceeding has commenced; or

32 (ii) that charge or proceeding is imminent.

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Part 8 Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries

Division 2 Conducting hearings

Section 100

- 1 Note 1: Disclosing the existence of a summons, or any information about it,
2 may be an offence: see section 109.
- 3 Note 2: Failure to comply with a summons is an offence: see section 110.
- 4 Note 3: See also subsection 271(3) in relation to section 270 certified
5 information.
- 6 Note 4: A person may apply for legal and financial assistance in respect of the
7 person's attendance: see section 133.
- 8 (2) A summons must:
- 9 (a) be in writing and signed by the Integrity Commissioner; and
10 (b) be served on the person required to attend a hearing.
- 11 The Integrity Commissioner must record in writing the reasons for
12 the summons. The record must be made at or before the time the
13 summons is issued.
- 14 (3) The matters in relation to which the Integrity Commissioner may
15 require the person to give evidence, or produce documents or
16 things, at the hearing may include:
- 17 (a) the subject matter of any charge, or imminent charge, against
18 the person; and
19 (b) the subject matter of any confiscation proceeding, or
20 imminent confiscation proceeding, against the person.
- 21 (4) If the hearing is held for the purpose of investigating a corruption
22 issue, a summons requiring a person to give evidence must set out,
23 so far as is reasonably practicable, the general nature of the matters
24 in relation to which the Integrity Commissioner intends to question
25 the person.
- 26 (5) Subsection (4) does not prevent the Integrity Commissioner from
27 questioning the person in relation to:
- 28 (a) any aspect of the corruption issue to which the hearing
29 relates; or
30 (b) another corruption issue.
- 31 (6) Subsection (4) does not apply if the Integrity Commissioner is
32 satisfied that complying with that subsection is likely to prejudice:
- 33 (a) the investigation to which the hearing relates or another
34 corruption investigation; or

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Section 101

- 1 (b) any action taken as a result of an investigation referred to in
2 paragraph (a).
- 3 (7) The Integrity Commissioner may, at the hearing, require the
4 witness to produce a document or other thing.
- 5 (8) A witness appearing at a hearing is entitled to be paid by the
6 Commonwealth any allowances for travelling and other expenses
7 that are prescribed by the rules.
- 8 (9) Without limiting its effect apart from this subsection, this Act also
9 has the effect it would have if:
- 10 (a) paragraph (1)(d) or subsection (3) had not been enacted; or
11 (b) paragraph (1)(d) or subsection (3) were, by express
12 provision, confined to dealing with a charge against the
13 person or such a charge that is imminent; or
14 (c) paragraph (1)(d) or subsection (3) were, by express
15 provision, confined to dealing with a confiscation proceeding
16 against the person that has commenced or is imminent.

101 Integrity Commissioner may take evidence outside Australia

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

Subdivision B—Procedure at hearing

102 Who may be represented at a hearing

- 28 (1) A person giving evidence at a hearing may be represented by a
29 legal practitioner.
30

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Part 8 Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries

Division 2 Conducting hearings

Section 103

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

6 **103 Who may be present at a hearing held in private**

7 *Who may be present*

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

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

- 18 (3) If:
19 (a) a witness is giving evidence in private at a hearing; and
20 (b) another person is present at the hearing at that time; and
21 (c) the other person is not:
22 (i) a staff member of the CIC; or
23 (ii) a legal practitioner representing a person at the hearing;
24 the Integrity Commissioner must:
25 (d) inform the witness that the person is present; and
26 (e) give the witness an opportunity to comment on the person's
27 presence.
- 28 (4) To avoid doubt, a person is still entitled to be present during all or
29 part of the hearing even if:
30 (a) the Integrity Commissioner fails to comply with
31 subsection (3); or

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

3 *Offence*

- 4 (5) A person commits an offence if:
- 5 (a) the person is present while evidence is being given in private
6 at a hearing; and
 - 7 (b) the person is none of the following:
 - 8 (i) the person giving evidence;
 - 9 (ii) a person whom the Integrity Commissioner must, under
10 subsection (2), allow to be present while the evidence is
11 being given;
 - 12 (iii) a person who may be present at the hearing in
13 accordance with a determination under subsection (1).

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

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

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

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

19 **104 Evidence on oath or by affirmation**

- 20 (1) At a hearing, the Integrity Commissioner may:
- 21 (a) require a witness to either take an oath or make an
22 affirmation; and
 - 23 (b) administer an oath or affirmation to the witness.

24 Note 1: Failure to take an oath or make an affirmation is an offence: see
25 section 110.

26 Note 2: This means that a hearing is a *judicial proceeding* for the purposes of
27 Part III of the *Crimes Act 1914*, which creates various offences in
28 relation to judicial proceedings.

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Part 8 Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries

Division 2 Conducting hearings

Section 105

- 1 (2) The Integrity Commissioner may administer an oath or affirmation
2 to a person appearing as a witness in another country, but must do
3 so in accordance with:
- 4 (a) any provision of the arrangements made between Australia
5 and that other country, as referred to in section 101; and
6 (b) the laws of that other country.
- 7 (3) The oath or affirmation is an oath or affirmation that the evidence
8 the person will give will be true.
- 9 (4) The Integrity Commissioner may allow a person attending a
10 hearing who has been sworn, or who has made an affirmation, to
11 give evidence by tendering a written statement and verifying it by
12 oath or affirmation.

105 Examination and cross-examination of witnesses

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

106 Giving evidence in private

- 24 *Certain evidence must be given in private*
- 25
- 26 (1) A person giving evidence at a hearing held in public must give
27 particular evidence in private if giving the evidence:
28 (a) would disclose one of the following:
29 (i) legal advice given to a regulated entity or a
30 parliamentarian;
31 (ii) a communication between a staff member of a regulated
32 entity, or a parliamentarian, and another person or body,

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- 1 being a communication protected against disclosure by
2 legal professional privilege; or
3 (b) would breach a secrecy provision; or
4 (c) would disclose AUSTRAC information (within the meaning
5 of the Anti-Money Laundering Act); or
6 (d) would disclose information that relates to a public sector
7 corruption issue.

8 Note: If the evidence involves section 270 certified information, the
9 evidence may need to be given in private in order to comply with the
10 terms of the certificate. In some circumstances the terms of the
11 section 270 certificate may mean that the evidence may not be able to
12 be given at all.

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

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

22 **107 Directions in relation to confidentiality**

23 *Prohibition or limitation on use or disclosure*

- 24 (1) The Integrity Commissioner may direct that hearing material:
25 (a) must not be used or disclosed; or
26 (b) may only be used by, or disclosed to, specified persons in
27 specified ways or on specified conditions.

28 Note: Failure to comply with a direction is an offence: see subsection (7).

- 29 (2) If all or part of the hearing is held in private, the Integrity
30 Commissioner must give a direction under subsection (1) if:
31 (a) the hearing is being conducted for the purposes of:
32 (i) investigating a public sector corruption issue; or

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- 1 (ii) a corruption inquiry, to the extent that the inquiry relates
2 to a public sector agency, a higher education provider or
3 a research body; or
- 4 (b) the Integrity Commissioner is satisfied that the failure to give
5 such a direction:
- 6 (i) might prejudice a person's safety; or
7 (ii) would reasonably be expected to prejudice the witness'
8 fair trial, if the witness has been charged with a related
9 offence or such a charge is imminent; or
- 10 (iii) might lead to the publication of section 270 certified
11 information; or
- 12 (c) the Integrity Commissioner is satisfied that the failure to give
13 such a direction might lead to a person revealing:
- 14 (i) the identity, or information that may reveal the identity,
15 of a person of interest to the investigation of a public
16 sector corruption issue or a corruption inquiry (to the
17 extent that the corruption inquiry relates to a public
18 sector agency, a higher education provider or a research
19 body); or
- 20 (ii) the fact that a hearing has been or will be conducted for
21 the purposes of investigating a public sector corruption
22 issue or a corruption inquiry (to the extent that the
23 corruption inquiry relates to a public sector agency, a
24 higher education provider or a research body).
- 25 (3) The Integrity Commissioner may, in writing, vary or revoke a
26 direction.
- 27 (4) However, the direction cannot be varied or revoked if the Integrity
28 Commissioner is satisfied that the variation or revocation:
- 29 (a) might prejudice a person's safety; or
30 (b) would reasonably be expected to prejudice the witness' fair
31 trial, if the witness has been charged with a related offence or
32 such a charge is imminent; or
33 (c) might lead to the publication of section 270 certified
34 information.

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

3 (5) If:
4 (a) a person has been charged with an offence before a federal
5 court or a court of a State or Territory; and
6 (b) the court considers that it may be desirable in the interests of
7 justice that particular evidence given at a hearing, in respect
8 of which the Integrity Commissioner has given a direction
9 under subsection (1), be made available to the person or to a
10 legal practitioner representing the person;
11 the court may give to the Integrity Commissioner a certificate to
12 that effect. If the court does so, the Integrity Commissioner must
13 make the evidence available to the court.

14 (6) If:
15 (a) the Integrity Commissioner makes evidence available to a
16 court under subsection (5); and
17 (b) the court, after examining the evidence, is satisfied that the
18 interests of justice so require;
19 the court may make the evidence available to the person charged
20 with the offence concerned or to a legal practitioner representing
21 the person.

22 *Offence*

23 (7) A person commits an offence if:
24 (a) the person uses or discloses hearing material (whether or not
25 the person is the first to do so); and
26 (b) the use or disclosure contravenes a direction given under
27 subsection (1) about the hearing material; and
28 (c) the use or disclosure is not under subsection (5) or (6) of this
29 section or paragraph 115(1)(b).

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

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Section 108

1 *Direction is not a legislative instrument*

2 (8) A direction given under subsection (1) is not a legislative
3 instrument.

4 **Subdivision D—Prohibitions against disclosing information** 5 **about a summons**

6 **108 Disclosure of summons may be prohibited**

7 *Application*

- 8 (1) This section applies if:
9 (a) a summons is served on a person (the *person served*) under
10 section 100 to attend a hearing; and
11 (b) all or part of the hearing is to be held in private.

12 *Notation prohibiting disclosure of information about summons*

- 13 (2) The Integrity Commissioner may include a notation in the
14 summons to the effect that disclosure of information about:
15 (a) the summons; or
16 (b) any official matter connected with the summons;
17 is prohibited except in the circumstances (if any) specified in the
18 notation.
- 19 (3) The Integrity Commissioner must include a notation in the
20 summons if:
21 (a) the hearing is being conducted for the purposes of:
22 (i) investigating a public sector corruption issue; or
23 (ii) a corruption inquiry, to the extent that the inquiry relates
24 to a public sector agency, a higher education provider or
25 a research body; or
26 (b) the Integrity Commissioner is satisfied that failure to do so
27 would reasonably be expected to prejudice:
28 (i) a person's safety or reputation; or
29 (ii) a person's fair trial, if the person has been charged with
30 a related offence or such a charge is imminent; or

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- 1 (iii) the investigation or corruption inquiry to which the
2 hearing relates or another corruption investigation or
3 corruption inquiry; or
4 (iv) any action taken as a result of an investigation or
5 inquiry referred to in subparagraph (iii).
- 6 (4) The Integrity Commissioner may include a notation in the
7 summons if the Integrity Commissioner is satisfied that:
8 (a) failure to do so might prejudice:
9 (i) a person's safety or reputation; or
10 (ii) a person's fair trial, if the person has been charged with
11 a related offence or such a charge is imminent; or
12 (iii) the investigation or corruption inquiry to which the
13 hearing relates or another corruption investigation or
14 corruption inquiry; or
15 (iv) any action taken as a result of an investigation or
16 inquiry referred to in subparagraph (iii); or
17 (b) failure to do so might otherwise be contrary to the public
18 interest.
- 19 (5) The Integrity Commissioner must not include a notation in the
20 summons in any other case.

Written statement to accompany notation

- 21
22 (6) If a notation is included in the summons, it must be accompanied
23 by a written statement setting out the rights and obligations
24 conferred or imposed by section 109 on the person served.

Cancellation of notation

- 25
26 (7) A notation included in the summons is cancelled by this subsection
27 if:
28 (a) the Integrity Commissioner concludes the investigation or
29 corruption inquiry to which the hearing relates; and
30 (b) any criminal proceedings, civil penalty proceedings or
31 confiscation proceedings, resulting from the investigation or
32 inquiry, are commenced.

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- 1 (8) If a notation is cancelled by subsection (7), the Integrity
2 Commissioner must advise the person served, in writing, of the
3 cancellation.

4 *Relationship of notation with the Privacy Act 1988*

- 5 (9) If:
6 (a) a notation has been included in the summons in relation to
7 the disclosure of information about the summons or any
8 official matter connected with the summons; and
9 (b) the notation has not been cancelled; and
10 (c) apart from this subsection, a credit reporting body (within the
11 meaning of the *Privacy Act 1988*) would be required, under
12 subsection 20E(5) of the *Privacy Act 1988*, to make a note
13 about the disclosure of the information;
14 such a note must not be made until the notation is cancelled.

15 **109 Offences of disclosure**

- 16 (1) A person commits an offence if:
17 (a) the person is served with a summons under section 100; and
18 (b) the summons includes a notation under section 108; and
19 (c) the person discloses the existence of, or any information
20 about:
21 (i) the summons; or
22 (ii) any official matter connected with the summons; and
23 (d) when the disclosure is made:
24 (i) the notation has not been cancelled by
25 subsection 108(7); and
26 (ii) the period of 5 years after the summons is served under
27 section 100 has not ended.

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

- 29 (2) In proceedings for an offence against subsection (1), it is a defence
30 if the person makes the disclosure:
31 (a) in the circumstances, if any, permitted by the terms of the
32 notation; or

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- 1 (b) to a legal practitioner for the purpose of obtaining legal
2 advice or representation in relation to the summons; or
3 (c) to a legal aid officer for the purpose of obtaining assistance
4 under section 133 in relation to the summons; or
5 (d) if the person is a body corporate—to an officer or agent of
6 the body corporate for the purpose of ensuring compliance
7 with the summons; or
8 (e) if the person is a legal practitioner—for the purpose of
9 obtaining the agreement of another person under
10 subsection 112(3) to the legal practitioner answering a
11 question or producing a document or thing at the hearing.

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

- 14 (3) A person commits an offence if:
15 (a) a disclosure is made to the person about:
16 (i) a summons under section 100 that includes a notation
17 under section 108; or
18 (ii) any official matter connected with a summons under
19 section 100 that includes a notation under section 108;
20 and
21 (b) the disclosure is permitted under subsection (2) or (4)
22 because the person is a person of a particular kind; and
23 (c) while the person is a person of that kind, the person discloses
24 the existence of, or any information about:
25 (i) the summons; or
26 (ii) any official matter connected with the summons; and
27 (d) when the disclosure by the person is made:
28 (i) the notation has not been cancelled by
29 subsection 108(7); and
30 (ii) the period of 5 years after the summons is served under
31 section 100 has not ended.

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

- 33 (4) In proceedings for an offence against subsection (3), it is a defence
34 if the person discloses the information:

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Section 109

- 1 (a) if the person is an officer or agent of a body corporate
2 referred to in paragraph (2)(d):
3 (i) to another officer or agent of the body corporate for the
4 purpose of ensuring compliance with the summons; or
5 (ii) to a legal practitioner for the purpose of obtaining legal
6 advice or representation in relation to the summons; or
7 (iii) to a legal aid officer for the purpose of obtaining
8 assistance under section 133 in relation to the summons;
9 or
10 (b) if the person is a legal practitioner—for the purpose of giving
11 legal advice, making representations, or obtaining assistance
12 under section 133, in relation to the summons; or
13 (c) if the person is a legal aid officer—for the purpose of
14 obtaining legal advice or representation in relation to the
15 summons.

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

- 18 (5) A person commits an offence if:
19 (a) a disclosure is made to the person about:
20 (i) a summons under section 100 that includes a notation
21 under section 108; or
22 (ii) any official matter connected with a summons under
23 section 100 that includes a notation under section 108;
24 and
25 (b) the disclosure is permitted under subsection (2) or (4)
26 because the person is a person of a particular kind; and
27 (c) when the person is no longer a person of that kind, the
28 person:
29 (i) makes a record of the summons; or
30 (ii) discloses the existence of the summons; or
31 (iii) discloses any information about the summons or the
32 existence of it; and
33 (d) when the record, or disclosure, is made by the person:
34 (i) the notation has not been cancelled by
35 subsection 108(7); and

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Section 110

1 (ii) the period of 5 years after the summons is served under
2 section 100 has not ended.

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

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

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

8 **110 Offences—attendance at hearings etc.**

9 *Failure to attend hearing*

- 10 (1) A person commits an offence if:
- 11 (a) the person is served with a summons to attend a hearing; and
- 12 (b) the person:
- 13 (i) fails to attend as required by the summons; or
- 14 (ii) fails to appear and report from day to day unless
- 15 excused or released from further attendance by the
- 16 Integrity Commissioner.

17 Note: A defendant bears an evidential burden in relation to the excuse or

18 release from further attendance referred to in subparagraph (b)(ii): see

19 subsection 13.3(3) of the *Criminal Code*.

20 Penalty: Imprisonment for 12 months.

21 *Failure to swear an oath, make an affirmation or answer a*

22 *question*

- 23 (2) A person commits an offence if:
- 24 (a) the person is served with a summons to attend a hearing; and
- 25 (b) the person fails:
- 26 (i) to be sworn or to make an affirmation at the hearing
- 27 when required to do so under section 104; or
- 28 (ii) to answer a question at the hearing that the Integrity
- 29 Commissioner requires the person to answer.

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Section 111

1 Note 1: A legal practitioner may refuse to answer a question in certain
2 circumstances: see section 112.

3 Note 2: This subsection is not subject to the privilege against
4 self-incrimination but there are limits on the uses to which the
5 evidence the person gives may be put: see section 113.

6 Penalty: Imprisonment for 2 years.

7 (3) Subsection (2) has effect subject to section 271 (which deals with
8 section 270 certified information).

9 *Failure to produce a document or thing*

10 (4) A person commits an offence if:

11 (a) the person is served with a summons to produce a document
12 or thing specified in the summons; and

13 (b) the person fails to produce the document or thing that the
14 person was required to produce.

15 Note 1: A legal practitioner may refuse to produce a document or thing in
16 certain circumstances: see section 112.

17 Note 2: This subsection is not subject to the privilege against
18 self-incrimination but there are limits on the uses to which the
19 evidence the person gives may be put: see section 113.

20 Penalty: Imprisonment for 2 years.

21 (5) Subsection (4) has effect subject to section 271 (which deals with
22 section 270 certified information).

23 **111 Offences—obstructing or hindering the conduct of hearings etc.**

24 A person commits an offence if the person:

25 (a) obstructs or hinders the Integrity Commissioner in the
26 performance of the Integrity Commissioner's functions or the
27 exercise of the Integrity Commissioner's powers; or

28 (b) disrupts a hearing being held under this Part; or

29 (c) threatens any person present at a hearing being held under
30 this Part.

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

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112 Legal practitioner not required to disclose privileged communications

- 1
2
- 3 (1) A legal practitioner may refuse:
- 4 (a) to answer a question asked by the Integrity Commissioner at
5 a hearing; or
- 6 (b) to produce a document or thing to the Integrity
7 Commissioner at a hearing;
- 8 if the answer to the question would disclose, or the document or
9 thing contains, a privileged communication made by or to the legal
10 practitioner in the capacity of a legal practitioner.
- 11 (2) Subsection (1) has effect subject to paragraphs 113(6)(c) and (d).
- 12 (3) Subsection (1) does not apply if the person to whom or by whom
13 the communication was made agrees to the legal practitioner:
- 14 (a) answering the question; or
15 (b) producing the document or thing.
- 16 (4) If the legal practitioner refuses:
- 17 (a) to answer the question; or
18 (b) to produce the document or thing;
- 19 the legal practitioner must, if required by the Integrity
20 Commissioner, give the Integrity Commissioner the name and
21 address of the person to whom or by whom the communication
22 was made.
- 23 (5) If a legal practitioner gets agreement, as mentioned in
24 subsection (3):
- 25 (a) the fact that the legal practitioner:
- 26 (i) answers the question; or
27 (ii) produces a document or thing;
- 28 does not otherwise affect a claim of legal professional
29 privilege that anyone may make in relation to the answer,
30 document or thing; and
- 31 (b) the answer, document or thing does not cease to be the
32 subject of legal professional privilege merely because it is
33 given, produced or referred to.

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Division 2 Conducting hearings

Section 113

1 **113 Self-incrimination etc.**

2 *Self-incrimination*

3 (1) A person is not excused from answering a question, or producing a
4 document or thing:

5 (a) when summoned under section 100 to do so; or

6 (b) when required to do so under subsection 100(7);

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

9 (2) Subsections (3) and (4) do not apply to the production of a
10 document that is, or forms part of, a record of an existing or past
11 business.

12 (3) The answer given, or the document or thing produced, is not
13 admissible in evidence against the person in:

14 (a) a criminal proceeding; or

15 (b) a proceeding for the imposition or recovery of a penalty; or

16 (c) a confiscation proceeding.

17 (4) Subsection (3) does not affect whether the answer, document or
18 thing is admissible in evidence against the person in:

19 (a) a confiscation proceeding, if the answer was given, or the
20 document or thing was produced, at a time when the
21 proceeding had not commenced and was not imminent; or

22 (b) a proceeding for an offence against section 94, 109, 110 or
23 111; or

24 (c) a proceeding for an offence against section 137.1 or 137.2 of
25 the *Criminal Code* (about false or misleading information or
26 documents) that relates to this Act; or

27 (d) a disciplinary proceeding against the person if the person is a
28 staff member of a regulated entity; or

29 (e) a proceeding relating to an application for a person to be
30 dealt with for being in contempt of the CIC.

31 Note: For paragraph (a), the court may order otherwise (see
32 subsection 120(4)).

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

3 *Public interest grounds*

4 (6) A person is not excused from answering a question, or producing a
5 document or thing:

6 (a) when summoned under section 100 to do so; or

7 (b) when required to do so under subsection 100(7);

8 on the ground that doing so:

9 (c) would disclose legal advice given to a law enforcement
10 agency, public sector agency, higher education provider or
11 research body; or

12 (d) would disclose a communication between:

13 (i) a staff member of a law enforcement agency, public
14 sector agency, higher education provider or research
15 body; and

16 (ii) another person or body;

17 being a communication protected against disclosure by legal
18 professional privilege; or

19 (e) would breach a secrecy provision other than:

20 (i) a taxation secrecy provision; or

21 (ii) a law enforcement secrecy provision; or

22 (iii) a secrecy provision under the *My Health Records Act*
23 *2012*; or

24 (f) would be otherwise contrary to the public interest.

25 Note: See also subsection 271(3) in relation to section 270 certified
26 information.

27 (7) Paragraph (6)(c) does not apply in relation to legal advice given to
28 either of the following public sector agencies:

29 (a) the Australian Broadcasting Corporation;

30 (b) the Special Broadcasting Service Corporation;

31 if the legal advice is given for the purposes of a staff member's
32 work for the agency as a journalist.

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Division 2 Conducting hearings

Section 114

- 1 (8) Paragraph (6)(d) does not apply in relation to a communication by
2 or to a staff member of either of the following public sector
3 agencies:
4 (a) the Australian Broadcasting Corporation;
5 (b) the Special Broadcasting Service Corporation;
6 if the communication occurs in the normal course of the staff
7 member's work for the agency as a journalist.
- 8 (9) The fact that a person is not excused under subsection (6) from:
9 (a) answering a question; or
10 (b) producing a document or thing;
11 does not otherwise affect a claim of legal professional privilege
12 that anyone may make in relation to that answer, document or
13 thing.
- 14 (10) A person who is served with a summons under section 100 does
15 not commit an offence, and is not liable to any penalty, under the
16 provisions of any other enactment (other than a law enforcement
17 secrecy provision, a taxation secrecy provision or a secrecy
18 provision under the *My Health Records Act 2012*) because the
19 person:
20 (a) answers a question at a hearing that the Integrity
21 Commissioner requires the person to answer; or
22 (b) produces a document or thing that the person is required to
23 produce in accordance with the summons or under
24 subsection 100(7).

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

114 Obtaining derivative material

- 28 (1) An entity mentioned in subsection (3), that may lawfully use or
29 disclose hearing material, may lawfully use or disclose the material
30 for the purpose of obtaining derivative material if the use or
31 disclosure is:
32 (a) a pre-charge use or disclosure of the material; or

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- 1 (b) a post-charge use or disclosure of pre-charge hearing
2 material; or
3 (c) a post-charge use or disclosure of post-charge hearing
4 material; or
5 (d) a pre-confiscation application use or disclosure of the hearing
6 material; or
7 (e) a post-confiscation application use or disclosure of
8 pre-confiscation application hearing material; or
9 (f) a post-confiscation application use or disclosure of
10 post-confiscation application hearing material.
- 11 (2) Subsection (1) has effect subject to:
12 (a) any direction given under subsection 107(1); and
13 (b) in the case of a disclosure to a prosecutor of the witness—
14 paragraph 115(1)(b).
15 Subsection (1) does not, by implication, limit the use or disclosure
16 of the hearing material for any other purpose.
- 17 (3) The entities are as follows:
18 (a) a staff member of the CIC;
19 (b) a person or body investigating whether the witness
20 committed an offence against a law of the Commonwealth or
21 of a State or Territory;
22 (c) a prosecutor of the witness;
23 (d) a prosecuting authority;
24 (e) a proceeds of crime authority;
25 (f) any other person or body lawfully in possession of the
26 hearing material.
- 27 (4) Without limiting its effect apart from this subsection, this Act also
28 has the effect it would have if:
29 (a) one or more of paragraphs (1)(b), (c), (e) and (f) had not been
30 enacted; or
31 (b) subsection (3) were, by express provision, confined to
32 persons or bodies other than either or both of the following:
33 (i) prosecutors of the witness;
34 (ii) proceeds of crime authorities.
-

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Division 2 Conducting hearings

Section 115

1 **115 Disclosing hearing material to prosecutors of the witness**

2 (1) A person or body, that may lawfully disclose hearing material, may
3 lawfully disclose the material to a prosecutor of the witness if the
4 disclosure is:

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

6 (b) a post-charge disclosure of:

7 (i) pre-charge hearing material; or

8 (ii) post-charge hearing material;

9 under an order made under subsection 117(1).

10 (2) Subsection (1) has effect subject to any direction given under
11 subsection 107(1), in the case of a pre-charge disclosure of the
12 material.

13 Note: In the case of a post-charge disclosure, the court will have regard to
14 any direction under subsection 107(1) in deciding whether to make an
15 order under subsection 117(1).

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

19 **116 Disclosing derivative material to prosecutors of the witness**

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

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

24 (b) a post-charge disclosure of derivative material obtained from
25 pre-charge hearing material (whether from a pre-charge use
26 of that hearing material or otherwise); or

27 (c) a post-charge disclosure of derivative material obtained from
28 post-charge hearing material, and the disclosure is under an
29 order made under subsection 117(1).

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

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

Court may order that material may be disclosed

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

(a) in the interests of justice; and

(b) despite any direction given under subsection 107(1).

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

(2) Subsection (1) applies to the following courts:

(a) if the witness has been charged with a related offence before a federal court or a court of a State or Territory—that court;

(b) otherwise—a federal court (other than the Family Court of Australia) or a court of a State or Territory.

Court's powers to ensure the witness' fair trial

(3) This Subdivision does not, by implication, restrict a court's power to make any orders necessary to ensure that the witness' fair trial is not prejudiced by the possession or use of hearing material or derivative material by a prosecutor of the witness.

(4) However, a person's trial for:

(a) an offence against a law of the Commonwealth or of a Territory; or

(b) an offence against a law of a State that has a federal aspect; is not unfair merely because the person has been a witness. This applies whether the person became a witness:

(c) before being charged with the offence and before such a charge was imminent; or

(d) after being charged with the offence or after such a charge was imminent.

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Section 118

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

4 **118 Certain material may always be disclosed to prosecutors of the** 5 **witness**

6 (1) A person or body, that may lawfully disclose hearing material of a
7 kind covered by paragraph 21(1)(c), (d), (e) or (f), may lawfully
8 disclose the material to a prosecutor of the witness.

9 (2) A person or body, that may lawfully disclose hearing material or
10 derivative material, may lawfully disclose the material to a
11 prosecutor of the witness if the witness is suspected of, or has been
12 charged with:

13 (a) an offence against section 94, 109, 110 or 111 in relation to
14 the hearing; or

15 (b) an offence against section 137.1 or 137.2 of the *Criminal*
16 *Code* (about false or misleading information or documents)
17 in relation to the hearing.

18 (3) Subsection (1) or (2) has effect subject to any direction given under
19 subsection 107(1).

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

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

22 (b) a post-charge disclosure of:

23 (i) pre-charge hearing material; or

24 (ii) derivative material obtained from pre-charge hearing
25 material (whether from a pre-charge use of the hearing
26 material or otherwise); or

27 (c) a post-charge disclosure of:

28 (i) post-charge hearing material; or

29 (ii) derivative material obtained from post-charge hearing
30 material;

31 and whether or not an order has been made under
32 subsection 117(1).

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

4 **119 Other matters about prosecutors and witnesses**

- 5 (1) If a prosecutor of the witness lawfully possesses hearing material
6 or derivative material, the prosecutor may use that material for
7 purposes that include:

- 8 (a) making a decision whether to prosecute the witness; and
9 (b) prosecuting the witness.

10 This use of the hearing material is subject to subsection 113(4) and
11 any direction given under subsection 107(1).

- 12 (2) If material is lawfully in the possession of a prosecutor of the
13 witness, the fact that the material is hearing material or derivative
14 material does not prevent it from being admissible in evidence
15 against the witness in a criminal proceeding or a confiscation
16 proceeding.

17 Note: The material may be inadmissible for other reasons (for example,
18 because of subsection 113(3)).

- 19 (3) This Subdivision does not, by implication, restrict the use of
20 hearing material or derivative material by, or the disclosure of that
21 material to:

- 22 (a) a prosecuting authority; or
23 (b) an individual employed or engaged by a prosecuting
24 authority;
25 who is not a prosecutor of the witness.

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

28 **120 Proceeds of crime authorities and hearings**

- 29 (1) A person or body, that may lawfully disclose hearing material or
30 derivative material, may lawfully disclose the material to a
31 proceeds of crime authority if the disclosure is:

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

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- 1 (b) a post-confiscation application disclosure of:
2 (i) pre-confiscation application hearing material; or
3 (ii) derivative material obtained from pre-confiscation
4 application hearing material (whether from a
5 pre-confiscation application use of the hearing material
6 or otherwise); or
7 (c) a post-confiscation application disclosure of:
8 (i) post-confiscation application hearing material; or
9 (ii) derivative material obtained from post-confiscation
10 application hearing material.
- 11 (2) Subsection (1) has effect subject to any direction given under
12 subsection 107(1).
- 13 (3) If material is lawfully in the possession of a proceeds of crime
14 authority, the fact that the material is hearing material or derivative
15 material does not prevent it from being admissible in evidence
16 against the witness in a confiscation proceeding.
- 17 Note: The material may be inadmissible for other reasons (for example,
18 because of subsection 113(3)).
- 19 (4) Subsections (3), 97(4) and 113(4) do not, by implication, restrict a
20 court's power to make any orders necessary to prevent prejudice to
21 the proper administration of justice.
- 22 (5) Without limiting its effect apart from this subsection, this Act also
23 has the effect it would have if paragraph (1)(b) or (c), or both, had
24 not been enacted.

Subdivision G—Contempt of the CIC

121 Contempt of the CIC

- 27 (1) A person is *in contempt of the CIC* if the person:
28 (a) when served with a summons to attend a hearing:
29 (i) fails to attend as required by the summons; or
30 (ii) fails to appear and report from day to day unless
31 excused or released from further attendance by the
32 Integrity Commissioner; or

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- 1 (iii) refuses or fails to be sworn or make an affirmation at
2 the hearing; or
- 3 (iv) subject to subsection (2), refuses or fails to answer a
4 question at the hearing that the Integrity Commissioner
5 requires the person to answer; or
- 6 (v) subject to subsection (3), refuses or fails to produce a
7 document or thing that the person was required to
8 produce by a summons or notice under this Act that was
9 served on the person as prescribed by the rules; or
- 10 (vi) subject to subsection (3), refuses or fails to produce a
11 document or thing that the person was required to
12 produce under subsection 100(7); or
- 13 (b) is a legal practitioner who is required to answer a question or
14 produce a document or thing at a hearing and both of the
15 following apply:
- 16 (i) the answer to the question would disclose, or the
17 document or thing contains, a privileged communication
18 made by or to the legal practitioner in the capacity of a
19 legal practitioner;
- 20 (ii) the legal practitioner refuses to comply with the
21 requirement and does not, when required by the
22 Integrity Commissioner, give the Integrity
23 Commissioner the name and address of the person to
24 whom or by whom the communication was made; or
- 25 (c) gives evidence at a hearing that the person knows is false or
26 misleading in a material particular; or
- 27 (d) insults, disturbs or uses insulting language towards someone
28 who the person knows:
- 29 (i) is the Integrity Commissioner, the Law Enforcement
30 Integrity Commissioner, the Public Sector Integrity
31 Commissioner or an Assistant Integrity Commissioner;
32 and
- 33 (ii) is holding a hearing in the performance of functions, or
34 the exercise of powers, as the Integrity Commissioner,
35 the Law Enforcement Integrity Commissioner, the
36 Public Sector Integrity Commissioner or an Assistant
37 Integrity Commissioner; or

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- 1 (e) creates a disturbance, or takes part in creating or continuing a
2 disturbance, in or near a place that the person knows is being
3 used to hold a hearing for the purpose of:
4 (i) investigating a corruption issue; or
5 (ii) conducting a corruption inquiry; or
6 (f) obstructs or hinders a CIC office holder in the performance
7 of functions or the exercise of powers as a CIC office holder;
8 or
9 (g) disrupts a hearing that is being held for the purpose of:
10 (i) investigating a corruption issue; or
11 (ii) conducting a corruption inquiry; or
12 (h) threatens a person present at a hearing that is being held for
13 the purpose of:
14 (i) investigating a corruption issue; or
15 (ii) conducting a corruption inquiry.
- 16 (2) Subparagraph (1)(a)(iv) does not apply in the case of a legal
17 practitioner who refuses or fails to answer a question at a hearing
18 on the ground that the answer to the question would disclose a
19 privileged communication made by or to the legal practitioner in
20 the capacity of a legal practitioner.
- 21 (3) Subparagraphs (1)(a)(v) and (vi) do not apply in the case of a legal
22 practitioner who refuses or fails to produce a document or thing at
23 a hearing on the ground that the document or thing contains a
24 privileged communication made by or to the legal practitioner in
25 the capacity of a legal practitioner.

26 **122 Federal Court or Supreme Court to deal with contempt**

27 *Application*

- 28 (1) If, in respect of a hearing, the Integrity Commissioner is of the
29 opinion that a person is in contempt of the CIC, the Integrity
30 Commissioner may apply to either of the following courts for the
31 person to be dealt with in relation to the contempt:
32 (a) the Federal Court;

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- 1 (b) the Supreme Court of the State or Territory in which the
2 hearing is held.
- 3 (2) Before making the application, the Integrity Commissioner must
4 inform the person that the Integrity Commissioner proposes to
5 make the application.
- 6 (3) The application must be accompanied by a certificate that states:
7 (a) the grounds for making the application; and
8 (b) evidence in support of the application.
- 9 (4) A copy of the certificate must be given to the person before, or at
10 the same time as, the application is made.
- 11 (5) To avoid doubt, if the Integrity Commissioner makes an
12 application under this section, the Integrity Commissioner need not
13 give the evidence to the relevant person or authority under
14 section 173.
- 15 *How court may deal with application*
- 16 (6) If, after:
17 (a) considering the matters specified in the certificate; and
18 (b) hearing or receiving any evidence or statements by or in
19 support of the CIC; and
20 (c) hearing or receiving any evidence or statements by or in
21 support of the person;
22 the court to which the application was made finds that the person
23 was in contempt of the CIC, the court may deal with the person as
24 if the acts or omissions involved constituted a contempt of that
25 court.
- 26 (7) For the purposes of determining whether a person is in contempt of
27 the CIC under subsection (1), Chapter 2 of the *Criminal Code*
28 applies as if:
29 (a) being in contempt of the CIC were an offence; and
30 (b) references to a person being criminally responsible for an
31 offence were references to a person being responsible for
32 being in contempt of the CIC.

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Division 2 Conducting hearings

Section 123

1 **123 Conduct of contempt proceedings**

- 2 (1) This section applies if an application is made to the Federal Court
3 or to the Supreme Court of a State or Territory under section 122.
- 4 (2) Proceedings in relation to the application are, subject to this Act, to
5 be instituted, carried on, heard and determined in accordance with
6 the laws (including any Rules of Court) that apply in relation to the
7 punishment of a contempt of the court to which the application was
8 made.
- 9 (3) In proceedings relating to the application, a certificate under
10 subsection 122(3) is prima facie evidence of the matters specified
11 in the certificate.

12 **124 Person in contempt may be detained**

- 13 (1) If the Integrity Commissioner proposes to make an application
14 under subsection 122(1) in respect of a person, the Integrity
15 Commissioner may, during the hearing concerned, direct a
16 constable or an authorised officer to detain the person for the
17 purpose of bringing the person before the relevant court for the
18 hearing of the application.
- 19 (2) If the person is so detained:
- 20 (a) the Integrity Commissioner must apply to the court as soon
21 as practicable under subsection 122(1) in respect of the
22 person; and
- 23 (b) the person must, subject to subsection (3) of this section, be
24 brought before the court as soon as practicable.
- 25 (3) The court may:
- 26 (a) direct that the person be released from detention on condition
27 that the person will appear before the court in relation to the
28 application; or
- 29 (b) order that the person continue to be detained until the
30 application is determined.
- 31 (4) The court may also impose any other condition on the release, for
32 example:

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Section 125

- 1 (a) that the person surrenders the following documents:
2 (i) any Australian travel document that has been issued to
3 the person;
4 (ii) any passport or other travel document that has been
5 issued to the person by or on behalf of the government
6 of a foreign country; or
7 (b) that the person give an undertaking as to the person's living
8 arrangements; or
9 (c) that the person report as required to:
10 (i) the AFP; or
11 (ii) a police force or police service of a State or Territory; or
12 (iii) any other authority or person responsible for the
13 enforcement of the laws of the Commonwealth or of the
14 States or Territories.
- 15 (5) The court may at any time vary or revoke a condition imposed
16 under subsection (4).

125 Integrity Commissioner may withdraw contempt application

- 18 (1) The Integrity Commissioner may, at any time, withdraw an
19 application under subsection 122(1).
20 (2) If:
21 (a) the Integrity Commissioner does so; and
22 (b) the person to whom the application relates is in detention
23 under section 124;
24 the person must be released from detention immediately.

126 Double jeopardy

- 26 (1) If an act or omission by a person is an offence against this Act and
27 is also an offence against a law of a State or Territory, the person
28 may be prosecuted and convicted under this Act or under that law
29 of that State or Territory in respect of the act or omission, but
30 nothing in this Act renders a person liable to be punished twice in
31 respect of the same act or omission.
32 (2) If:
-

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Section 127

- 1 (a) an application is made to the Federal Court or a Supreme
2 Court under subsection 122(1) in respect of an act or
3 omission by a person; and
4 (b) the person is dealt with by the court under that section in
5 respect of the act or omission;
6 the person is not liable to be prosecuted for an offence in respect of
7 that act or omission.
- 8 (3) If a person is prosecuted for an offence in respect of an act or
9 omission referred to in subsection 121(1) without an application
10 being made to the Federal Court or a Supreme Court under
11 subsection 122(1) in respect of the act or omission, an application
12 must not be made under subsection 122(1) in respect of the act or
13 omission.

Subdivision H—Court orders for delivery of travel documents, or for arrest, of witnesses

127 Integrity Commissioner may apply for order that witness deliver travel documents

- 18 (1) The Integrity Commissioner may apply to a Judge of the Federal
19 Court for an order that a person deliver a travel document
20 mentioned in paragraph (c) to the Integrity Commissioner if:
21 (a) either of the following apply:
22 (i) a summons under section 100 has been issued requiring
23 the person to attend a hearing (whether or not the
24 summons has been served) in relation to a corruption
25 investigation or corruption inquiry;
26 (ii) the person has appeared at a hearing in relation to a
27 corruption investigation or corruption inquiry to give
28 evidence or to produce documents or things; and
29 (b) there are reasonable grounds for believing that the person
30 may be able:
31 (i) to give evidence, or further evidence, that is relevant to
32 the investigation or corruption inquiry; or

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- 1 (ii) to produce documents or things, or further documents or
2 things, that are relevant to the investigation or
3 corruption inquiry; and
4 (c) there are reasonable grounds for suspecting that the person
5 intends to leave Australia and has in the person's possession,
6 custody or control:
7 (i) an Australian travel document that has been issued to
8 the person; or
9 (ii) a passport or other travel document that has been issued
10 to the person by or on behalf of the government of a
11 foreign country.
- 12 (2) The Integrity Commissioner must give the Judge information on
13 oath, or by affirmation, in support of the grounds for the
14 application.

128 Court orders

Court order for witness to appear before the Court

- 16
17 (1) If a Judge of the Federal Court, sitting in Chambers, is satisfied, on
18 the evidence, that the requirements of paragraphs 127(1)(a), (b)
19 and (c) are met, the Judge may make an order:
20 (a) requiring the person to appear before the Federal Court on a
21 date, and at a time and place, specified in the order; and
22 (b) requesting the person to show cause why the person should
23 not be ordered to deliver the travel document to the Integrity
24 Commissioner.

Offence

- 25
26 (2) A person commits an offence if:
27 (a) the person leaves Australia; and
28 (b) an order made in relation to the person under subsection (1)
29 is in force; and
30 (c) a copy of the order has been served on the person.

31 Penalty: Imprisonment for 2 years.

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Division 2 Conducting hearings

Section 128

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

- 3 (a) the person has appeared before the Federal Court as required
4 by the order referred to in paragraph (2)(b); and
5 (b) if the Court makes an order in relation to the person under
6 paragraph (4)(a)—the person has complied with the terms of
7 the order and any travel document delivered to the Integrity
8 Commissioner in accordance with the order has been
9 returned to the person.

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

12 *Court order that witness deliver travel document to Integrity*
13 *Commissioner*

- 14 (4) If the person appears before the Federal Court as required by the
15 order made under subsection (1), the Court may, if it thinks fit,
16 make an order:
17 (a) requiring the person to deliver to the Integrity Commissioner
18 a travel document of a kind mentioned in paragraph 127(1)(c)
19 that is in the person's possession, custody or control; and
20 (b) authorising the Integrity Commissioner to retain the travel
21 document until the end of the period (not exceeding 1 month)
22 that is specified in the order.

23 *Extension of period that Integrity Commissioner may retain travel*
24 *document*

- 25 (5) The Federal Court may, upon application by the Integrity
26 Commissioner, extend for a further period (of not more than 1
27 month), or further periods (of not more than 1 month in each case),
28 the period for which the Integrity Commissioner is authorised to
29 retain a travel document. However, the total period for which the
30 Integrity Commissioner is authorised to retain the travel document
31 must not exceed 3 months.

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1 *Revocation of court order*

2 (6) If the Federal Court makes an order authorising the Integrity
3 Commissioner to retain a travel document issued to a person, the
4 person may apply to the Federal Court for the order to be revoked.

5 (7) If the Federal Court revokes the order, the Integrity Commissioner
6 must return the travel document to the person immediately.

7 *Jurisdiction of the Federal Court*

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

10 *Definitions*

11 (9) In this section:

12 *Australia* includes the external Territories.

13 **129 Applying for a warrant to arrest witness**

14 (1) An authorised officer may apply to a superior court Judge for a
15 warrant to arrest a person if:

16 (a) both of the following apply:

17 (i) the person has been ordered to deliver a travel document
18 to the Integrity Commissioner (whether or not the
19 person has complied with the order);

20 (ii) the authorised officer has reasonable grounds to believe
21 that the person is likely to leave Australia for the
22 purpose of avoiding giving evidence at a hearing before
23 the Integrity Commissioner; or

24 (b) the person is to be served with a summons under section 100
25 and the authorised officer has reasonable grounds to believe
26 that the person:

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

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

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Division 2 Conducting hearings

Section 130

- 1 (c) the authorised officer has reasonable grounds to believe that
2 the person has committed an offence under subsection 110(1)
3 or is likely to do so.
- 4 (2) An authorised officer must give the Judge information on oath, or
5 by affirmation, in support of the grounds for the application.

6 **130 Warrant for arrest**

7 *Issue of warrant*

- 8 (1) If a superior court Judge, sitting in Chambers, is satisfied, on the
9 evidence, that there are reasonable grounds for believing that
10 paragraph 129(1)(a), (b) or (c) is met, the Judge may issue a
11 warrant authorising the arrest of the person.

12 *Execution of warrant*

- 13 (2) For the purpose of executing a warrant, if the authorised officer
14 executing the warrant (or an assisting officer) believes on
15 reasonable grounds that the person is on any premises, the
16 authorised officer (or the assisting officer) may break into and
17 enter those premises.
- 18 (3) However, the authorised officer executing the warrant (or an
19 assisting officer) must not enter a dwelling house at any time
20 during the period commencing at 9 pm on a day and ending at 6 am
21 on the following day unless the authorised officer (or the assisting
22 officer) believes on reasonable grounds that it would not be
23 practicable to arrest the person, either at the dwelling house or
24 elsewhere, at another time.
- 25 (4) The authorised officer executing the warrant (or an assisting
26 officer) must not, in the course of arresting the person, use more
27 force, or subject the other person to greater indignity, than is
28 necessary and reasonable:
- 29 (a) to make the arrest; or
30 (b) to prevent the escape of the person after the arrest.

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Section 131

- 1 (5) The warrant may be executed even if the authorised officer does
2 not have a copy of the warrant in the authorised officer's
3 possession at the time it is executed.
- 4 (6) The authorised officer executing the warrant (or an assisting officer
5 who arrests the person) must inform the person, at the time of the
6 arrest, of the reason for which the person is being arrested.
- 7 (7) It is sufficient if the person is informed of the substance of the
8 reason and it is not necessary that this be done in language of a
9 precise or technical nature.
- 10 (8) Subsection (6) does not apply to the arrest of the person if:
11 (a) the person should, in the circumstances, know the substance
12 of the reason for which the person is being arrested; or
13 (b) the person's actions make it impracticable for the authorised
14 officer executing the warrant (or an assisting officer making
15 the arrest) to inform the person of the reason for which the
16 person is being arrested.
- 17 (9) Nothing in this section prevents the arrest of a person in
18 accordance with any other law.
- 19 (10) To avoid doubt, the authorised officer executing the warrant need
20 not be the authorised officer who applied for the warrant.

Definitions

- 21 (11) In this Act:
22
23 ***dwelling house*** includes a conveyance, and a room in a hotel,
24 motel, boarding house or club, in which people ordinarily retire for
25 the night.

131 Powers of Judge in relation to person arrested

- 26 (1) A person arrested under a warrant issued under section 130 must
27 be brought, as soon as practicable, before a superior court Judge.
28
- 29 (2) The Judge may:
30 (a) grant the person bail:

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Division 2 Conducting hearings

Section 132

- 1 (i) on such security as the Judge thinks fit; and
2 (ii) on such conditions as the Judge thinks are necessary to
3 ensure that the person appears as a witness at a hearing
4 before the Integrity Commissioner; or
5 (b) order that the person continue to be detained for the purpose
6 of ensuring that the person appears as a witness at a hearing
7 before the Integrity Commissioner; or
8 (c) order that the person be released.
- 9 (3) A person who is detained under paragraph (2)(b) must be brought
10 before a superior court Judge:
11 (a) within 14 days after the person was brought, or last brought,
12 before such a Judge; or
13 (b) within such shorter or longer time as a superior court Judge
14 fixed on the person's last previous appearance before such a
15 Judge;
16 and the Judge may exercise any of the powers under subsection (2).

Subdivision I—Miscellaneous

132 Integrity Commissioner may retain documents or things

- 19 (1) If a document or thing is produced to the Integrity Commissioner
20 in accordance with a summons under section 100, or as required
21 under subsection 100(7), the Integrity Commissioner:
22 (a) may take possession of, and may make copies of, the
23 document or thing, or take extracts from the document; and
24 (b) may retain possession of the document or thing for such
25 period as is necessary for the purposes of the investigation or
26 corruption inquiry to which the document or thing relates.
- 27 (2) While the Integrity Commissioner retains the document or thing,
28 the Integrity Commissioner must allow a person who would
29 otherwise be entitled to inspect the document or view the thing to
30 do so at the times that the person would ordinarily be able to do so.

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133 Person may apply for legal and financial assistance

(1) A person who is summoned under section 100 to attend a hearing before the Integrity Commissioner may apply to the Attorney-General for assistance in respect of the person's:

- (a) attendance at the hearing; or
- (b) representation at the hearing by a legal practitioner.

Note 1: A person summoned to appear as a witness at a hearing is entitled to be paid allowances for travelling and other expenses prescribed by the rules: see subsection 100(8).

Note 2: A person may also apply for assistance in respect of an application to the Federal Court or the Federal Circuit Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act: see section 280.

(2) A person who:

- (a) is not giving evidence at a hearing before the Integrity Commissioner; and
- (b) is being represented at the hearing by a legal practitioner with the consent of the Integrity Commissioner;

may apply to the Attorney-General for assistance in respect of that representation.

Note: A person may also apply for assistance in respect of an application to the Federal Court or the Federal Circuit Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act: see section 280.

(3) If a person applies under subsection (1) or (2), the Attorney-General may, if satisfied that:

- (a) it would involve substantial hardship to the person to refuse the application; or
- (b) the circumstances of the case are of such a special nature that the application should be granted;

authorise the Commonwealth to provide the person with legal or financial assistance, determined by the Attorney-General, in respect of:

- (c) the person's attendance at the hearing; or
- (d) the person's representation at the hearing by a legal practitioner.

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Division 2 Conducting hearings

Section 134

- 1 (4) Legal or financial assistance may be given:
2 (a) unconditionally; or
3 (b) subject to such conditions as the Attorney-General
4 determines.
- 5 (5) An instrument made under paragraph (4)(b) that determines the
6 conditions on which legal or financial assistance may be given is
7 not a legislative instrument.

8 **134 Protection of CIC office holders etc.**

- 9 (1) A CIC office holder has, in exercising the power to hold a hearing,
10 the same protection and immunity as a Justice of the High Court.
- 11 (2) A legal practitioner assisting a CIC office holder, or representing a
12 person, has the same protection and immunity as a barrister
13 appearing for a party in proceedings in the High Court.
- 14 (3) To avoid doubt, this section does not limit the powers of the
15 Ombudsman under the *Ombudsman Act 1976* to investigate issues
16 of administrative practice in relation to a hearing that has been held
17 under this Act.

18 **135 Protection of witnesses etc.**

- 19 (1) A person who:
20 (a) gives evidence at a hearing conducted under this Act; or
21 (b) produces a document or thing at a hearing conducted under
22 this Act; or
23 (c) makes a submission to the Integrity Commissioner in relation
24 to a corruption inquiry in response to an invitation under
25 subsection 89(1);
26 has the same protection as a witness in proceedings in the High
27 Court.
- 28 (2) Subsection (3) applies if it appears to the Integrity Commissioner
29 that, because a person:
30 (a) is to give evidence, or produce a document or thing, at a
31 hearing under this Act; or

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- 1 (b) has given evidence, or produced a document or thing, at a
2 hearing under this Act; or
3 (c) is to make, or has made, a submission to the Integrity
4 Commissioner in relation to a corruption inquiry in response
5 to an invitation under subsection 89(1);
6 either:
7 (d) the safety of the person or any other person may be
8 prejudiced; or
9 (e) the person or any other person may be subjected to
10 intimidation or harassment.
- 11 (3) The Integrity Commissioner may make such arrangements as are
12 necessary:
13 (a) to protect the safety of any person mentioned in
14 paragraph (2)(d); or
15 (b) to protect any person mentioned in paragraph (2)(e) from
16 intimidation or harassment.
- 17 (4) For the purposes of subsection (3), the arrangements that the
18 Integrity Commissioner may make include arrangements with:
19 (a) the Minister; or
20 (b) members of the AFP; or
21 (c) members of the police force of a State or Territory.
- 22 (5) This section does not affect the *Witness Protection Act 1994*.

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Division 3 Entering certain places without a search warrant

Section 136

1 **Division 3—Entering certain places without a search**
2 **warrant**

3 **136 Power to enter places occupied by law enforcement agencies**

- 4 (1) For the purposes of investigating a corruption issue or conducting a
5 corruption inquiry, the Integrity Commissioner (or another
6 authorised officer) may:
- 7 (a) enter any place occupied by a law enforcement agency at any
8 reasonable time of the day; and
 - 9 (b) carry on the investigation of the corruption issue, or conduct
10 the corruption inquiry, at that place; and
 - 11 (c) inspect any documents relevant to the investigation or inquiry
12 that are kept at that place; and
 - 13 (d) make copies of, or take extracts from, any documents so
14 inspected; and
 - 15 (e) for the purpose of making a copy of, or taking an extract
16 from, a document, remove the document from that place; and
 - 17 (f) seize things found at that place if the Integrity Commissioner
18 (or other authorised officer) believes on reasonable grounds
19 that:
 - 20 (i) the thing is relevant to an indictable offence; and
 - 21 (ii) seizure of the thing is necessary to prevent its
22 concealment, loss or destruction or its use in committing
23 an indictable offence.
- 24 (2) While the Integrity Commissioner (or other authorised officer)
25 retains a document or thing, the Integrity Commissioner (or other
26 authorised officer) must allow a person who would otherwise be
27 entitled to inspect the document or view the thing to do so at the
28 times that the person would ordinarily be able to do so.
- 29 (3) Subsection (1) does not authorise a person to enter, carry on an
30 investigation or conduct an inquiry at:
 - 31 (a) a place that is a prohibited area for the purposes of the
32 *Defence (Special Undertakings) Act 1952* under section 7 of
33 that Act; or

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

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Division 3 Entering certain places without a search warrant

Section 137

1 **137 Receipts of things seized without warrant**

- 2 (1) If a thing is seized, or removed from a place, under section 136, the
3 Integrity Commissioner (or another authorised officer) must
4 provide a receipt for the thing.
- 5 (2) If 2 or more things are seized or moved, they may be covered by
6 the one receipt.

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Integrity Commissioner's powers in investigating corruption issues and conducting
corruption inquiries **Part 8**
Search warrants **Division 4**

Section 138

1 **Division 4—Search warrants**

2 **Subdivision A—Preliminary**

3 **138 Application to things under the control of a person**

4 For the purposes of this Division, a person who has control of a
5 thing in any place (whether for the person's use or benefit or the
6 use or benefit of another person) is taken to have the thing in the
7 person's possession, even if another person has the actual
8 possession or custody of the thing.

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

10 **139 Authorised officer may apply for a search warrant**

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

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

20 Note: In special circumstances and urgent cases, an application may be made
21 by telephone, fax, email or other electronic means: see section 142.

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

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

27 Note: In special circumstances and urgent cases, an application may be made
28 by telephone, fax, email or other electronic means: see section 142.

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Division 4 Search warrants

Section 139

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 the person's possession, or will within the next 72 hours have
7 in the person's 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 made
12 by telephone, fax, email or other electronic means: see section 142.

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

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

20 Note: In special circumstances and urgent cases, an application may be made
21 by telephone, fax, email or other electronic means: see section 142.

22 *Information in support of application*

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

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1 or premises, the authorised officer must state particulars of those
2 applications, and their outcome, in the information given under
3 subsection (5).

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

5 **140 When search warrants may be issued**

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

7 (1) If:

- 8 (a) an authorised officer makes an application to an issuing
9 officer under subsection 139(1); and
10 (b) the issuing officer is satisfied, on the information given under
11 subsection 139(5), that:
12 (i) there are reasonable grounds for suspecting that there is,
13 or there will be within the next 72 hours, evidential
14 material on the premises in relation to which the
15 application is made; and
16 (ii) there are reasonable grounds for believing that, if a
17 person was served with a summons to produce the
18 evidential material, the material might be concealed,
19 lost, mutilated or destroyed;

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

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

23 (2) If:

- 24 (a) an authorised officer makes an application to an issuing
25 officer under subsection 139(2); and
26 (b) the issuing officer is satisfied, on the information given under
27 subsection 139(5), that there are reasonable grounds for
28 suspecting that there is, or there will be within the next 72
29 hours, evidential material on the premises in relation to
30 which the application is made;

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

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Division 4 Search warrants

Section 140

1 *Issue of a warrant to search a person (investigation warrant)*

2 (3) If:

3 (a) an authorised officer makes an application to an issuing
4 officer under subsection 139(3); and

5 (b) the issuing officer is satisfied, on the information given under
6 subsection 139(5), that:

7 (i) there are reasonable grounds for suspecting that the
8 person in relation to whom the application is made has
9 in the person's possession, or will within the next 72
10 hours have in the person's possession, evidential
11 material; and

12 (ii) there are reasonable grounds for believing that, if the
13 person was served with a summons to produce the
14 evidential material, the material might be concealed,
15 lost, mutilated or destroyed;

16 the issuing officer may issue an investigation warrant authorising
17 the authorised officer to carry out an ordinary search or a frisk
18 search of the person.

19 *Issue of a warrant to search a person (offence warrant)*

20 (4) If:

21 (a) an authorised officer makes an application to an issuing
22 officer under subsection 139(4); and

23 (b) the issuing officer is satisfied, on the information given under
24 subsection 139(5), that there are reasonable grounds for
25 suspecting that the person in relation to whom the application
26 is made has in the person's possession, or will within the next
27 72 hours have in the person's possession, evidential material;

28 the issuing officer may issue an offence warrant authorising the
29 authorised officer to carry out an ordinary search or a frisk search
30 of the person.

31 *Issue of a warrant by State/Territory issuing officers*

32 (5) An issuing officer in a State or internal Territory may:

33 (a) issue a search warrant in relation to premises or a person in
34 that State or Territory; or

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Section 141

- 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 the issuing officer is satisfied that there are
6 special circumstances that make the issue of the warrant
7 appropriate; 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 the issuing
10 officer is satisfied that it is not possible to predict where the
11 person 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; or
17 (b) a Judge of the Federal Circuit Court.
- 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 the issuing officer were performing that function as, or as a
25 member of, the court of which the issuing officer is a member.

26 **141 Content of warrants**

27 *General contents of warrant*

- 28 (1) If an issuing officer issues a search warrant under section 140, 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 corruption inquiry to which the
3 warrant 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 the authorised
11 officer inserts the name of another authorised officer in the
12 warrant, 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 corruption
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 the person's possession:
14 (i) in the case of an investigation warrant—any evidential
15 material in relation to the corruption issue or corruption
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; or
23 (v) in any case—any eligible seizable items.

24 *Additional matters for warrant in relation to person*

- 25 (4) If the search warrant relates to a person, the issuing officer is also
26 to state:
27 (a) the kind of search (ordinary or frisk) of the person that the
28 warrant authorises; and
29 (b) that the warrant authorises the seizure of a thing (other than
30 evidential material of the kind referred to in paragraph (1)(c))
31 found, in the course of the search, in the possession of the
32 person or in, or on, an aircraft, vehicle or vessel that the
33 person had operated or occupied at any time within 24 hours
34 before the search began, being a thing that the authorised
35 officer or an assisting officer believes on reasonable grounds
36 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 corruption
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; or
10 (v) in any case—any eligible seizable item;
11 if the authorised officer or the assisting officer believes on
12 reasonable grounds that seizure of the thing is necessary to
13 prevent its concealment, loss or destruction or its use in
14 committing an offence.

15 *Successive warrants*

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

18 **142 Application by telephone etc. and issue of warrant**

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

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- 1 (4) If an application is made under this section:
2 (a) sections 139 and 140 apply as if subsections 139(1), (2), (3)
3 and (4) and 140(1), (2), (3) and (4) referred to 48 hours rather
4 than 72 hours; and
5 (b) section 141 applies as if subsection 141(2) referred to the end
6 of the 48th hour rather than the end of the seventh day.
- 7 (5) If an application is made to an issuing officer under this section
8 and the issuing officer, after considering the information and
9 having received and considered such further information (if any) as
10 the issuing officer required, is satisfied that:
11 (a) a search warrant in the terms of the application should be
12 issued urgently; or
13 (b) the delay that would occur if an application were made in
14 person would frustrate the effective execution of the warrant;
15 the issuing officer may complete and sign the same form of search
16 warrant that would be issued under section 140.
- 17 (6) If the issuing officer decides to issue the search warrant, the issuing
18 officer is to inform the applicant, by telephone, fax, email or other
19 electronic means, of the terms of the warrant and the day on which
20 and the time at which it was signed.
- 21 (7) The applicant must then complete a form of search warrant in
22 terms substantially corresponding to those given by the issuing
23 officer, stating on the form the name of the issuing officer and the
24 day on which and the time at which the warrant was signed.
- 25 (8) The applicant must give or transmit to the issuing officer:
26 (a) the form of search warrant completed by the applicant; and
27 (b) if the information referred to in subsection (3) was not sworn
28 or affirmed—that information duly sworn or affirmed.
- 29 (9) The applicant must do so not later than the day after the warrant
30 expires or the day after the day on which the search warrant was
31 executed, whichever is the earlier.
- 32 (10) The issuing officer is to attach to the documents provided under
33 subsection (8) the form of search warrant the issuing officer has
34 completed.
-

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

143 The things authorised by a search warrant in relation to premises

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

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

21 **144 The things authorised by a search warrant in relation to a**
22 **person**

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

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

26 **145 Restrictions on personal searches**

27 A search warrant may not authorise a strip search or a search of a

28 person's body cavities.

29 **146 Other rules about the things authorised by a search warrant**

30 *When warrant may be executed*

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

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1 *Making seized things available to regulated entities and State or*
2 *Territory government entities*

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

8 **Subdivision D—General provisions about executing a search** 9 **warrant**

10 **147 Announcement before entry**

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

24 **148 Availability of assistance and use of force in executing a warrant**

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

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- 1 (a) if an assisting officer is also an authorised officer or a
2 constable—the assisting officer may use the force against
3 persons and things that is necessary and reasonable in the
4 circumstances; and
5 (b) if an assisting officer is not an authorised officer or a
6 constable—the assisting officer may use the force against
7 things that is necessary and reasonable in the circumstances.
- 8 (3) Only an authorised officer or a constable may take part in
9 searching a person.

10 **Subdivision E—Specific provisions about executing a warrant** 11 **in relation to premises**

12 **149 Application**

13 This Subdivision applies if a search warrant in relation to premises
14 is being executed.

15 **150 Copy of warrant to be shown to occupier etc.**

- 16 (1) If the occupier of the premises, or another person who apparently
17 represents the occupier, is present at the premises, the authorised
18 officer executing the search warrant or an assisting officer must
19 make a copy of the warrant available to the person.
- 20 (2) If a person is searched under a search warrant in relation to
21 premises, the authorised officer executing the warrant or an
22 assisting officer must show the person a copy of the warrant.
- 23 (3) The authorised officer must identify themselves to the person at the
24 premises.
- 25 (4) The copy of the search warrant need not include the signature of
26 the issuing officer who issued it.

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1 **151 Occupier entitled to watch search**

- 2 (1) The occupier of the premises, or another person who apparently
3 represents the occupier, who is present at the premises, is entitled
4 to watch the search.
- 5 (2) Subsection (1) is subject to Part IC of the *Crimes Act 1914*.
- 6 (3) The right to watch the search being conducted ceases if the person
7 impedes the search.
- 8 (4) This section does not prevent 2 or more areas of the premises being
9 searched at the same time.

10 **152 Specific powers available to person executing a warrant**

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

27 **153 Use of equipment to examine or process things**

- 28 (1) The authorised officer executing the search warrant or an assisting
29 officer may bring to the premises any equipment (including
30 electronic equipment) reasonably necessary to examine or process

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Division 4 Search warrants

Section 153

- 1 things found at the premises in order to determine whether they are
2 things that may be seized under the warrant.
- 3 (2) A thing found at the premises may be moved to another place for
4 examination or processing in order to determine whether it may be
5 seized under a warrant if:
- 6 (a) both of the following apply:
- 7 (i) it is significantly more practicable to do so having
8 regard to the timeliness and cost of examining or
9 processing the thing at another place and the availability
10 of expert assistance;
- 11 (ii) there are reasonable grounds to believe that the thing
12 contains or constitutes evidential material; or
- 13 (b) the occupier of the premises consents in writing.
- 14 (3) If things are moved to another place for the purpose of examination
15 or processing, the authorised officer must, if it is practicable to do
16 so:
- 17 (a) inform the occupier of the address of the place and the time
18 at which the examination or processing will be carried out;
19 and
- 20 (b) allow the occupier or the occupier's representative to be
21 present during the examination or processing.
- 22 (4) The thing may be moved to another place for examination or
23 processing for no longer than 72 hours.
- 24 (5) An authorised officer may apply to an issuing officer for one or
25 more extensions of that time if the authorised officer believes on
26 reasonable grounds that the thing cannot be examined or processed
27 within 72 hours or that time as previously extended.
- 28 (6) The authorised officer must give notice of the application to the
29 occupier of the premises, and the occupier is entitled to be heard in
30 relation to the application.
- 31 (7) The authorised officer executing the search warrant or an assisting
32 officer may operate equipment (including electronic equipment)
33 already on the premises to examine or process a thing found on the
34 premises in order to determine whether it may be seized under the
-

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1 warrant, if the authorised officer or the assisting officer believes on
2 reasonable grounds that:

- 3 (a) the equipment is suitable for the examination or processing;
4 and
5 (b) the examination or processing can be carried out without
6 damaging the equipment or thing.

7 **154 Use of electronic equipment at premises without expert**
8 **assistance**

9 (1) The authorised officer executing the search warrant or an assisting
10 officer may operate electronic equipment on the premises to access
11 data (including data not held at the premises) if the authorised
12 officer or assisting officer believes on reasonable grounds that:

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

15 Note: An authorised officer can obtain an order requiring a person with
16 knowledge of a computer or computer system to provide assistance:
17 see section 156.

18 (2) If the authorised officer or the assisting officer believes on
19 reasonable grounds that any data accessed by operating the
20 electronic equipment might constitute evidential material, the
21 authorised officer or assisting officer may:

- 22 (a) copy the data to a disk, tape or other associated device
23 brought to the premises; or
24 (b) if the occupier of the premises agrees in writing—copy the
25 data to a disk, tape or other associated device at the premises;
26 and take the device from the premises.

27 (3) If:

- 28 (a) the authorised officer or the assisting officer takes the device
29 from the premises; and
30 (b) the Integrity Commissioner is satisfied that the data is not
31 required (or is no longer required) for:
32 (i) investigating a corruption issue; or
33 (ii) conducting a corruption inquiry; or

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Section 155

- 1 (iii) judicial proceedings or administrative review
2 proceedings; or
- 3 (iv) investigating or resolving AFP conduct or practices
4 issues under Part V of the *Australian Federal Police Act*
5 *1979*;
- 6 the Integrity Commissioner must arrange for:
- 7 (c) the removal of the data from any device in the control of the
8 CIC; and
- 9 (d) the destruction of any other reproduction of the data in the
10 control of the CIC.
- 11 (4) However, the Integrity Commissioner must not do so if the data is
12 evidence that the Integrity Commissioner must deal with in
13 accordance with Division 1 of Part 9.
- 14 (5) If the authorised officer or the assisting officer, after operating the
15 equipment, finds that evidential material is accessible by doing so,
16 the authorised officer or assisting officer may:
- 17 (a) seize the equipment and any disk, tape or other associated
18 device; or
- 19 (b) if the material can, by using facilities at the premises, be put
20 in documentary form—operate the facilities to put the
21 material in that form and seize the documents so produced.
- 22 (6) A person may seize equipment under paragraph (5)(a) only if:
- 23 (a) it is not practicable to put the material in documentary form
24 as referred to in paragraph (5)(b); or
- 25 (b) possession of the equipment by the occupier could constitute
26 an offence.

155 Use of electronic equipment at premises with expert assistance

- 28 (1) If the authorised officer executing the search warrant or an
29 assisting officer believes on reasonable grounds that:
- 30 (a) evidential material may be accessible by operating electronic
31 equipment at the premises; and
- 32 (b) expert assistance is required to operate the equipment; and

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Section 156

- 1 (c) if the authorised officer or assisting officer does not take
2 action under this subsection, the material may be destroyed,
3 altered or otherwise interfered with;
4 the authorised officer or assisting officer may do whatever is
5 necessary to secure the equipment, whether by locking it up,
6 placing a guard or otherwise.
- 7 (2) The authorised officer or the assisting officer must notify the
8 occupier of the premises, in writing, of:
9 (a) the intention of the authorised officer or assisting officer to
10 secure the equipment; and
11 (b) the fact that the equipment may be secured for up to 24
12 hours.
- 13 (3) The equipment may be secured for up to 24 hours to allow the
14 equipment to be operated by an expert.
- 15 (4) If the authorised officer or the assisting officer believes on
16 reasonable grounds that expert assistance will not be available
17 within 24 hours, the authorised officer or assisting officer may
18 apply to an issuing officer for an extension of that period.
- 19 (5) The authorised officer or the assisting officer must notify the
20 occupier of the premises of the intention of the authorised officer
21 or assisting officer to apply for an extension, and the occupier is
22 entitled to be heard in relation to the application.
- 23 (6) The provisions of this Division in relation to the issuing of search
24 warrants apply, with such modifications as are necessary, to the
25 issuing of an extension.

156 Person with knowledge of a computer or a computer system to assist access etc.

- 26
27
- 28 (1) The authorised officer executing the search warrant may apply to
29 an issuing officer for an order requiring a specified person to
30 provide any information or assistance that is reasonable and
31 necessary to allow the officer or an assisting officer or to do one or
32 more of the following:

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Division 4 Search warrants

Section 157

- 1 (a) access data held in a computer, or accessible from a
2 computer, that is on premises in relation to which the warrant
3 is in force;
- 4 (b) copy the data to a data storage device;
- 5 (c) convert the data into documentary form.
- 6 (2) The issuing officer may grant the order if the issuing officer is
7 satisfied that:
- 8 (a) there are reasonable grounds for suspecting that evidential
9 material is held in, or is accessible from, the computer; and
- 10 (b) the specified person is:
- 11 (i) in the case of an investigation warrant—reasonably
12 suspected of having, or having access to, data that may
13 be relevant to the corruption issue or corruption inquiry
14 to which the warrant relates; or
- 15 (ii) in the case of an offence warrant—reasonably suspected
16 of having committed the offence stated in the warrant;
17 or
- 18 (iii) the owner or lessee of the computer; or
- 19 (iv) an employee of the owner or lessee of the computer; and
- 20 (c) the specified person has relevant knowledge of:
- 21 (i) the computer or a computer network of which the
22 computer forms a part; or
- 23 (ii) measures applied to protect data held in, or accessible
24 from, the computer.
- 25 (3) A person commits an offence if the person fails to comply with the
26 order.

27 Penalty: Imprisonment for 2 years.

28 **157 Accessing data held on other premises—notification to occupier** 29 **of those premises**

- 30 (1) If:
- 31 (a) data that is held on premises (other than the premises in
32 relation to which the warrant is in force) is accessed under
33 subsection 154(1); and

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Section 158

- 1 (b) it is practicable to notify the occupier of the other premises
2 that the data has been accessed under a warrant;
3 the authorised officer executing the search warrant must:
4 (c) do so as soon as practicable; and
5 (d) if the authorised officer or an assisting officer has arranged,
6 or intends to arrange, for continued access to the data under
7 subsection 154(2) or (5)—include that information in the
8 notification.
- 9 (2) A notification under subsection (1) must include sufficient
10 information to allow the occupier of the other premises to contact
11 the authorised officer.

12 **158 Compensation for damage to electronic equipment**

- 13 (1) This section applies if:
14 (a) as a result of equipment being operated as mentioned in
15 section 153, 154 or 155:
16 (i) damage is caused to the equipment; or
17 (ii) the data recorded on the equipment is damaged; or
18 (iii) programs associated with the use of the equipment, or
19 with the use of the data, are damaged or corrupted; and
20 (b) the damage or corruption occurs because:
21 (i) insufficient care was exercised in selecting the person
22 who was to operate the equipment; or
23 (ii) insufficient care was exercised by the person operating
24 the equipment.
- 25 (2) The Commonwealth must pay the owner of the equipment, or the
26 user of the data or programs, such reasonable compensation for the
27 damage or corruption as the Commonwealth and the owner or user
28 agree on.
- 29 (3) However, if the owner or user and the Commonwealth fail to
30 agree, the owner or user may institute proceedings in the Federal
31 Court for such reasonable amount of compensation as the Court
32 determines.

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Division 4 Search warrants

Section 159

- 1 (4) In determining the amount of compensation payable, regard is to
2 be had to whether the occupier of the premises, or the occupier's
3 employees or agents, if they were available at the time, had
4 provided any appropriate warning or guidance on the operation of
5 the equipment.
- 6 (5) In this Act:
- 7 *damage*, in relation to data, includes damage by erasure of data or
8 addition of other data.

9 **159 Copies of seized things to be provided**

- 10 (1) If the authorised officer executing the search warrant or an
11 assisting officer seizes:
- 12 (a) a document, film, computer file or other thing that can be
13 readily copied; or
14 (b) a device storing information that can be readily copied;
15 the authorised officer or the assisting officer must, if requested to
16 do so by the occupier of the premises or another person who
17 apparently represents the occupier and who is present when the
18 warrant is executed, give a copy of the thing or the information to
19 that person as soon as practicable after the seizure.
- 20 (2) However, subsection (1) does not apply if:
- 21 (a) the thing that has been seized was seized under
22 subsection 154(2) or paragraph 154(5)(a); or
23 (b) possession of the document, film, computer file, thing or
24 information by the occupier could constitute an offence.

25 **160 Receipts for things seized under warrant**

- 26 (1) If a thing is seized under a search warrant or moved under
27 subsection 153(2), the authorised officer executing the warrant or
28 an assisting officer must provide a receipt for the thing.
- 29 (2) If 2 or more things are seized or moved, they may be covered by
30 the one receipt.

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corruption inquiries **Part 8**
Search warrants **Division 4**

Section 161

1 **Subdivision F—Specific provisions about executing a warrant**
2 **in relation to a person**

3 **161 Copy of warrant to be shown to person**

- 4 (1) If a search warrant in relation to a person is being executed, the
5 authorised officer executing the warrant or an assisting officer
6 must make a copy of the warrant available to that person.
- 7 (2) The authorised officer must identify themselves to the person being
8 searched.
- 9 (3) The copy of the warrant need not include the signature of the
10 issuing officer who issued it.

11 **162 Conduct of an ordinary search or a frisk search**

12 An ordinary search or a frisk search of a person must, if
13 practicable, be conducted by a person of the same sex as the person
14 being searched.

15 **Subdivision G—Offences**

16 **163 Making false statements in warrants**

17 A person commits an offence if:

- 18 (a) the person makes a statement in applying for a search
19 warrant; and
20 (b) the person knows that the statement is false or misleading in
21 a material particular.

22 Penalty: Imprisonment for 2 years.

23 **164 Offence for stating incorrect names in telephone warrants**

24 A person commits an offence if:

- 25 (a) the person states a name of an issuing officer in a document;
26 and

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Division 4 Search warrants

Section 165

- 1 (b) the document purports to be a form of search warrant under
2 section 142; and
3 (c) the name is not the name of the issuing officer who issued the
4 search warrant.

5 Penalty: Imprisonment for 2 years.

6 **165 Offence for unauthorised form of warrant**

7 A person commits an offence if:

- 8 (a) the person states a matter in a form of search warrant under
9 section 142; and
10 (b) the person knows that the matter departs in a material
11 particular from the form authorised by the issuing officer.

12 Penalty: Imprisonment for 2 years.

13 **166 Offence for executing etc. an unauthorised form of warrant**

14 A person commits an offence if:

- 15 (a) the person executes or presents a document to another
16 person; and
17 (b) the document purports to be a form of search warrant under
18 section 142; and
19 (c) the person knows that the document:
20 (i) has not been approved by an issuing officer under that
21 section; or
22 (ii) departs in a material particular from the terms
23 authorised by an issuing officer under that section.

24 Penalty: Imprisonment for 2 years.

25 **167 Offence for giving unexecuted form of warrant**

26 A person commits an offence if:

- 27 (a) the person gives an issuing officer a form of search warrant
28 under section 142; and
29 (b) the document is not the form of search warrant that the
30 person executed.
-

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corruption inquiries **Part 8**
Search warrants **Division 4**

Section 168

1 Penalty: Imprisonment for 2 years.

2 **Subdivision H—Miscellaneous**

3 **168 Other laws about search, arrest etc. not affected**

- 4 (1) This Division is not intended to limit or exclude the operation of
5 another law of the Commonwealth relating to:
6 (a) the search of persons or premises; or
7 (b) arrest and related matters; or
8 (c) the seizure of things.
- 9 (2) To avoid doubt, even though another law of the Commonwealth
10 provides power to do one or more of the things referred to in
11 subsection (1), a similar power conferred by this Division may be
12 used despite the existence of the power under the other law.

13 **169 Law relating to legal professional privilege not affected**

14 This Division does not affect the law relating to legal professional
15 privilege.

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Part 8 Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries

Division 5 Powers of arrest

Section 170

1 **Division 5—Powers of arrest**

2 **170 Authorised officers may exercise powers of arrest**

3 For the purposes of investigating a corruption issue, an authorised
4 officer who is not a constable for the purposes of the *Crimes Act*
5 *1914* has the same powers and duties under Divisions 4 and 5 of
6 Part IAA of that Act as a constable has under those Divisions.

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Integrity Commissioner's powers in investigating corruption issues and conducting
corruption inquiries **Part 8**
Authorised officers **Division 6**

Section 171

1 **Division 6—Authorised officers**

2 **171 Appointment of authorised officers**

- 3 (1) The Integrity Commissioner may, in writing, appoint a person to be
4 an authorised officer for the purposes of this Part.
- 5 (2) The person may exercise such powers of an authorised officer
6 under this Part as are specified in the appointment.
- 7 (3) The person must be:
8 (a) a staff member of the CIC:
9 (i) who the Integrity Commissioner considers has suitable
10 qualifications or experience; or
11 (ii) who is also a member of the AFP; 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 AFP.
- 15 (4) The Integrity Commissioner may appoint a person referred to in
16 subparagraph (3)(a)(ii) or paragraph (3)(b) only if the AFP
17 Commissioner agrees to the appointment.
- 18 (5) The Integrity Commissioner may appoint a person referred to in
19 subparagraph (3)(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 (6) In exercising powers as an authorised officer, an authorised officer
23 must comply with any directions given by the Integrity
24 Commissioner.
- 25 (7) If the Integrity Commissioner gives a direction under
26 subsection (6) in writing, the direction is not a legislative
27 instrument.

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Part 8 Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries

Division 6 Authorised officers

Section 172

1 **172 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 rules; 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 the authorised officer's identity card for inspection
17 by the 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 the
22 authorised officer's identity card for inspection by the
23 person; and
24 (b) the authorised officer fails to comply with the requirement.

25 *Offence*

- 26 (6) A person commits an offence if:
27 (a) the person has been issued with an identity card; and
28 (b) the person ceases to be an authorised officer; and

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Integrity Commissioner's powers in investigating corruption issues and conducting
corruption inquiries **Part 8**
Authorised officers **Division 6**

Section 172

1 (c) the person does not return the identity card to the Integrity
2 Commissioner within 14 days after ceasing to be an
3 authorised officer.

4 Penalty: 5 penalty units.

5 (7) An offence against subsection (6) is an offence of strict liability.

6 (8) Subsection (6) does not apply if the identity card was lost or
7 destroyed.

8 Note: A defendant bears an evidential burden in relation to the matter in
9 subsection (8): see subsection 13.3(3) of the *Criminal Code*.

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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 1 Dealing with evidence and information obtained in investigation or corruption inquiry

Section 173

1 **Part 9—Outcomes of investigations by Integrity**
2 **Commissioner and of corruption inquiries**

3 **Division 1—Dealing with evidence and information**
4 **obtained in investigation or corruption inquiry**

5 **173 Evidence of offence or liability to civil penalty**

6 *Commonwealth offence or civil penalty*

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

24 *State or Territory offence or civil penalty*

- 25 (2) If, in investigating a corruption issue or conducting a corruption
26 inquiry, the Integrity Commissioner obtains:
- 27 (a) evidence of an offence against a law of a State or Territory
28 that would be admissible in a prosecution for the offence; or

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- 1 (b) evidence of the contravention of a law of a State or Territory:
2 (i) in relation to which civil penalty proceedings may be
3 brought; and
4 (ii) that would be admissible in civil penalty proceedings
5 for the contravention;
6 the Integrity Commissioner must:
7 (c) assemble the evidence; and
8 (d) give the evidence to:
9 (i) the head (however described) of the police force of the
10 State or Territory; or
11 (ii) another person or authority who is authorised by or
12 under a law of the State or Territory to prosecute the
13 offence or bring the civil penalty proceedings.
14 Note: See also subsection 122(5).

15 **174 Evidence that could be used in confiscation proceedings**

16 *Commonwealth proceedings*

- 17 (1) If, in investigating a corruption issue or conducting a corruption
18 inquiry, the Integrity Commissioner obtains evidence that would be
19 admissible in a proceeding under the *Proceeds of Crime Act 2002*
20 (other than a criminal prosecution for an offence under that Act),
21 the Integrity Commissioner must:
22 (a) assemble the evidence; and
23 (b) give the evidence to:
24 (i) the AFP Commissioner; or
25 (ii) another person or authority who is authorised by or
26 under a law of the Commonwealth to bring the
27 proceeding.

28 *State or Territory proceedings*

- 29 (2) If, in investigating a corruption issue or conducting a corruption
30 inquiry, the Integrity Commissioner obtains evidence that would be
31 admissible in a proceeding under a corresponding law within the
32 meaning of the *Proceeds of Crime Act 2002* (other than a criminal
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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

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- 1 prosecution for an offence under the corresponding law), the
2 Integrity Commissioner must:
- 3 (a) assemble the evidence; and
 - 4 (b) give the evidence to:
 - 5 (i) the head (however described) of the police force of the
6 State or Territory; or
 - 7 (ii) another person or authority who is authorised by or
8 under a law of the State or Territory to bring the
9 proceeding.

10 **175 Informing entity heads of action taken under section 173 or 174**

- 11 (1) This section applies if the Integrity Commissioner takes action
12 under section 173 or 174 in relation to the investigation of a
13 corruption issue that relates to a regulated entity.
- 14 (2) The Integrity Commissioner must inform the following that the
15 action has been taken:
- 16 (a) the head of the regulated entity;
 - 17 (b) if the regulated entity is an intelligence agency—the IGIS;
 - 18 (c) the entity heads mentioned in subsection (3), if the corruption
19 issue relates to conduct of a person while a secondee to a
20 regulated entity and the person is employed by either of the
21 following (the *home entity*):
 - 22 (i) another regulated entity;
 - 23 (ii) a State or Territory government entity.
- 24 (3) For the purposes of paragraph (2)(c), the entity heads are as
25 follows:
- 26 (a) the head of the home entity;
 - 27 (b) if the home entity is an intelligence agency—the IGIS;
 - 28 (c) if the home entity is a State or Territory government entity
29 and the Integrity Commissioner is satisfied that the issue is
30 relevant to the functions of a State or Territory integrity
31 agency—the head of the State or Territory integrity agency.

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- 1 (4) However, the Integrity Commissioner need not inform an entity
2 head under subsection (2) if doing so is likely to prejudice:
3 (a) the investigation of the corruption issue or another corruption
4 investigation; or
5 (b) any action taken as a result of an investigation referred to in
6 paragraph (a).
- 7 (5) If the Integrity Commissioner does not inform an entity head
8 because of subsection (4), the Integrity Commissioner must:
9 (a) inform the Minister that the entity head has not been
10 informed; and
11 (b) give the Minister the Integrity Commissioner's reasons for
12 not informing the entity head.
- 13 (6) However, the Integrity Commissioner must not take action
14 described in subsection (5) if the entity head is the Minister, or any
15 other parliamentarian, as the head of the office of a
16 parliamentarian.

17 **176 Evidence of breach of duty or misconduct**

- 18 (1) The Integrity Commissioner must bring evidence of a breach of
19 duty or misconduct by a person while a staff member of a regulated
20 entity, to the notice of the entity heads mentioned in subsection (2),
21 if the Integrity Commissioner:
22 (a) obtains the evidence in investigating a corruption issue or
23 conducting a corruption inquiry; and
24 (b) is satisfied that the evidence may justify:
25 (i) terminating the person's employment or, if the person is
26 a secondee to the regulated entity, the person's
27 secondment; or
28 (ii) initiating disciplinary proceedings against the staff
29 member; and
30 (c) is satisfied that the evidence is, in all the circumstances, of
31 sufficient force to justify taking action under this section.
- 32 (2) The Integrity Commissioner must bring the evidence to the notice
33 of the following entity heads:
-

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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 1 Dealing with evidence and information obtained in investigation or corruption inquiry

Section 177

- 1 (a) the head of the regulated entity;
- 2 (b) if the regulated entity is an intelligence agency—the IGIS;
- 3 (c) the entity heads mentioned in subsection (3), if the person is
- 4 a secondee to the regulated entity and the person is employed
- 5 by either of the following (the *home entity*):
- 6 (i) another regulated entity;
- 7 (ii) a State or Territory government entity.
- 8 (3) For the purposes of paragraph (2)(c), the entity heads are as
- 9 follows:
- 10 (a) the head of the home entity;
- 11 (b) if the home entity is an intelligence agency—the IGIS;
- 12 (c) if the home entity is a State or Territory government entity
- 13 and the Integrity Commissioner is satisfied that the issue is
- 14 relevant to the functions of a State or Territory integrity
- 15 agency—the head of the State or Territory integrity agency.

177 Evidence of, or information suggesting, wrongful conviction

- 17 (1) If the Integrity Commissioner:
- 18 (a) in investigating a corruption issue or conducting a corruption
- 19 inquiry, obtains evidence that a person was wrongly
- 20 convicted of an offence against a law of the Commonwealth;
- 21 and
- 22 (b) is satisfied that the evidence is, in all the circumstances, of
- 23 sufficient force to justify doing so;
- 24 the Integrity Commissioner must:
- 25 (c) bring the evidence to the notice of the Minister; and
- 26 (d) advise the person that the Integrity Commissioner has
- 27 brought the evidence to the notice of the Minister.
- 28 (2) If the Integrity Commissioner:
- 29 (a) in investigating a corruption issue or conducting a corruption
- 30 inquiry, obtains evidence that a person was wrongly
- 31 convicted of an offence against a law of a State or Territory;
- 32 and

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Section 177

- 1 (b) is satisfied that the evidence is, in all the circumstances, of
2 sufficient force to justify doing so;
3 the Integrity Commissioner must:
4 (c) bring the evidence to the notice of the Attorney-General of
5 the State or Territory; and
6 (d) advise the person that the Integrity Commissioner has
7 brought the evidence to the notice of that Attorney-General.

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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 2 Reporting at the end of an investigation into a corruption issue relating to a regulated entity

Section 178

1 **Division 2—Reporting at the end of an investigation into a**
2 **corruption issue relating to a regulated entity**

3 **178 Report on investigation into corruption issue relating to**
4 **regulated entity**

5 *Requirement for report*

- 6 (1) After completing an investigation of a corruption issue that relates
7 to a regulated entity, the Integrity Commissioner must prepare a
8 report on the investigation.
- 9 (2) The Integrity Commissioner must prepare separate reports under
10 subsection (1) about each of the following:
11 (a) any law enforcement corruption issues the subject of the
12 investigation;
13 (b) any corruption issues the subject of the investigation that
14 relate to public sector agencies, higher education providers or
15 research bodies;
16 (c) any corruption issues the subject of the investigation that
17 relate to offices of parliamentarians.
- 18 (3) The Integrity Commissioner may also prepare separate reports
19 under subsection (1) in relation to different law enforcement
20 agencies, public sector agencies, offices of parliamentarians, higher
21 education providers or research bodies.

22 *Content of report*

- 23 (4) A report prepared under subsection (1) about a law enforcement
24 corruption issue must set out:
25 (a) the Integrity Commissioner's findings on the corruption
26 issue; and
27 (b) the evidence and other material on which those findings are
28 based; and

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- 1 (c) any action that the Integrity Commissioner has taken, or
2 proposes to take, under Division 1 in relation to the
3 corruption issue; and
4 (d) any recommendations that the Integrity Commissioner thinks
5 fit to make in relation to the corruption issue and, if
6 recommendations are made, the reasons for those
7 recommendations.

8 This subsection has effect subject to subsections (7) to (11).

9 Note: See section 189 for the need for the Integrity Commissioner to give
10 certain people an opportunity to be heard before including critical
11 opinions or findings in a report under this section.

- 12 (5) A report prepared under subsection (1) about a public sector
13 corruption issue must set out:

- 14 (a) any action that the Integrity Commissioner has taken, or
15 proposes to take, under Division 1 in relation to the
16 corruption issue; and
17 (b) any recommendations that the Integrity Commissioner thinks
18 fit to make in relation to the corruption issue and, if
19 recommendations are made, the reasons for those
20 recommendations.

21 This subsection has effect subject to subsections (7) to (11).

- 22 (6) Without limiting paragraphs (4)(d) and (5)(b), the Integrity
23 Commissioner may recommend:

- 24 (a) that the head of a regulated entity consider:
25 (i) taking action in relation to any staff member of the
26 entity, in accordance with the procedures of the entity,
27 with a view to the staff member improving the staff
28 member's performance; or
29 (ii) terminating a staff member's employment in accordance
30 with the procedures of the entity; or
31 (b) the taking of action to rectify or mitigate the effects of
32 conduct engaged in by a staff member of a regulated entity;
33 or

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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 2 Reporting at the end of an investigation into a corruption issue relating to a regulated entity

Section 178

- 1 (c) adopting measures to remedy deficiencies in policy or
2 practice for the purpose of preventing, detecting, disrupting
3 or combatting corrupt conduct.

4 *Excluding certain information from report prepared under*
5 *subsection (1)*

- 6 (7) The Integrity Commissioner must exclude section 270 certified
7 information from a report prepared under subsection (1) about a
8 law enforcement corruption issue, if one or more public hearings
9 were held in the course of the investigation.

10 Note: A copy of a report to which this subsection applies must be laid before
11 each House of the Parliament under section 188.

- 12 (8) The Integrity Commissioner may exclude information from a
13 report prepared under subsection (1) if the Integrity Commissioner
14 is satisfied that:

- 15 (a) the information is sensitive information or section 270
16 certified information; and
17 (b) it is desirable in the circumstances to exclude the information
18 from the report.

- 19 (9) In deciding under subsection (8) whether to exclude information
20 from a report, the Integrity Commissioner must seek to achieve an
21 appropriate balance between:

- 22 (a) the public interest that would be served by including the
23 information in the report; and
24 (b) the prejudicial consequences that might result from including
25 the information in the report.

- 26 (10) If the Integrity Commissioner excludes information from a report
27 under subsection (7) or (8), the Integrity Commissioner must
28 prepare a supplementary report that sets out:

- 29 (a) the information; and
30 (b) the reasons for excluding the information.

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1 *Opinions and findings about whether persons engaged in corrupt*
2 *conduct etc.*

3 (11) A report prepared under subsection (1) or a supplementary report
4 prepared under subsection (10) may include an opinion or finding
5 about whether a person engaged in corrupt conduct while a staff
6 member of a law enforcement agency.

7 (12) Except as provided by subsection (11), a report prepared under
8 subsection (1) and a supplementary report prepared under
9 subsection (10) must not include an opinion or finding:

10 (a) about whether a particular person engaged in corrupt
11 conduct; or

12 (b) about corruption by, or the integrity of, a particular person.

13 Note: If the Integrity Commissioner obtains certain evidence in the course of
14 a corruption investigation, the Integrity Commissioner may be
15 required to take action under Division 1.

16 **179 Giving reports relating to certain regulated entities to Minister** 17 **administering this Act**

18 The Integrity Commissioner must give the Minister:

19 (a) a report prepared under subsection 178(1) in relation to the
20 investigation of a corruption issue that relates to a law
21 enforcement agency, public sector agency, higher education
22 provider or research body; and

23 (b) if a supplementary report is prepared under
24 subsection 178(10) in relation to the investigation—the
25 supplementary report.

26 Note: Section 188 provides that the Minister must lay before each House of
27 the Parliament a copy of a report prepared under subsection 178(1)
28 about a law enforcement corruption issue if a public hearing was held
29 in the course of the investigation. The Minister is not required,
30 however, to lay a copy of a supplementary report under
31 subsection 178(10) before each House of the Parliament.

EXPOSURE DRAFT

Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 2 Reporting at the end of an investigation into a corruption issue relating to a regulated entity

Section 180

1 **180 Giving copies of reports to certain entity heads**

- 2 (1) The Integrity Commissioner must give the following a copy of a
3 report prepared under subsection 178(1) in relation to the
4 investigation of a corruption issue:
- 5 (a) the head of the regulated entity to which the corruption issue
6 relates;
 - 7 (b) if the corruption issue relates to an intelligence agency—the
8 IGIS;
 - 9 (c) the entity heads mentioned in subsection (2), if the corruption
10 issue relates to conduct of a person while a secondee to a law
11 enforcement agency, public sector agency, higher education
12 provider or research body and the person is employed by
13 either of the following (the *home entity*):
 - 14 (i) another regulated entity;
 - 15 (ii) a State or Territory government entity.
- 16 (2) For the purposes of paragraph (1)(c), the entity heads are as
17 follows:
- 18 (a) the head of the home entity;
 - 19 (b) if the home entity is an intelligence agency—the IGIS;
 - 20 (c) if the home entity is a State or Territory government entity
21 and the Integrity Commissioner is satisfied that the report is
22 relevant to the functions of a State or Territory integrity
23 agency—the head of the State or Territory integrity agency.
- 24 (3) The copy of the report must be given:
- 25 (a) if the regulated entity to which the corruption issue relates is
26 a law enforcement agency, a public sector agency, a higher
27 education provider or a research body—as soon as
28 practicable after the report is given to the Minister under
29 section 179; or
 - 30 (b) if the regulated entity to which the corruption issue relates is
31 the office of a parliamentarian—as soon as practicable after
32 the report is prepared.
- 33 (4) A copy of a report prepared under subsection 178(1) may be given
34 under subsection (1) of this section together with a copy of the
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Section 181

1 whole or a part of a supplementary report prepared under
2 subsection 178(10) in relation to the investigation.

- 3 (5) The Integrity Commissioner must remove information from a copy
4 of a report given to an entity head under subsection (1) or (4) if:
5 (a) the information is section 270 certified information; and
6 (b) the disclosure of the information to the entity head would
7 contravene the certificate issued under section 270.

8 **181 Follow-up action on reports—certain regulated entities**

- 9 (1) If a report is given under subsection 180(1) to the head of a law
10 enforcement agency, public sector agency, higher education
11 provider or research body, the Integrity Commissioner may request
12 that entity head to give the Integrity Commissioner, within a
13 specified time, details of any action that the entity head proposes to
14 take with respect to a recommendation included in the report.
- 15 (2) The entity head must comply with the request.
- 16 (3) If the entity is a law enforcement agency and the Integrity
17 Commissioner is not satisfied with the response of the entity head
18 to the request, the Integrity Commissioner may refer to the
19 responsible Minister for the entity:
20 (a) the Integrity Commissioner's recommendation and the
21 reasons for that recommendation; and
22 (b) the response of the entity head to the recommendation; and
23 (c) the Integrity Commissioner's reasons for not being satisfied
24 with that response.
- 25 (4) If the Integrity Commissioner refers material to a Minister under
26 subsection (3), the Integrity Commissioner may also send a copy of
27 that material to the Presiding Officer of each House of the
28 Parliament for presentation to that House.
- 29 (5) The Integrity Commissioner must exclude section 270 certified
30 information from the copy of the material sent under
31 subsection (4).

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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 2 Reporting at the end of an investigation into a corruption issue relating to a regulated entity

Section 182

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

182 Advising person who referred or notified corruption issue of investigation's outcome

Advice to person who referred or notified issue

- 21 (1) If a corruption issue investigated by the Integrity Commissioner
22 was referred by the Attorney-General under section 33, or by a
23 responsible Minister for a regulated entity under section 34, the
24 Integrity Commissioner must advise the Minister who made the
25 referral of the outcome of the investigation.
- 26 (2) If a corruption issue investigated by the Integrity Commissioner
27 was referred under section 44, or notified under section 46, the
28 Integrity Commissioner may advise:
29 (a) the person who made the referral or notification; or
30 (b) for a referral under section 44—a representative nominated
31 by the person who made the referral;
32 of the outcome of the investigation.

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- 1 (3) If:
2 (a) the corruption issue is a law enforcement corruption issue
3 notified by a Commonwealth integrity office holder under
4 section 46; and
5 (b) the office holder became aware of the corruption issue
6 because another person notified the office holder of an
7 allegation or information raising the corruption issue;
8 the Integrity Commissioner may also advise the other person (or a
9 representative nominated by the other person) of the outcome of
10 the investigation.

11 *Manner of giving advice*

- 12 (4) Without limiting any of subsections (1) to (3), the Integrity
13 Commissioner may advise a person under any of those subsections
14 by giving the person a copy of all or part of any report prepared
15 under subsection 178(1) in relation to the investigation.

- 16 (5) However, if:

- 17 (a) the corruption issue relates to the conduct of a person while a
18 staff member of the office of a parliamentarian; and
19 (b) information that may be prejudicial to the person's reputation
20 is included in a report prepared under section 82 in relation to
21 the investigation;
22 the Integrity Commissioner must not give to any other person
23 under this section a copy of any part of the report that includes the
24 prejudicial information.

- 25 (6) In advising the person of the outcome of the investigation, the
26 Integrity Commissioner:

- 27 (a) must not disclose section 270 certified information to the
28 person if the disclosure of the information to the person
29 would contravene the certificate issued under section 270;
30 and
31 (b) may exclude information from the advice if the Integrity
32 Commissioner is satisfied that:
33 (i) the information is sensitive information; and

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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 2 Reporting at the end of an investigation into a corruption issue relating to a regulated entity

Section 183

- 1 (ii) it is desirable in the circumstances to exclude the
2 information from the advice.
- 3 (7) In deciding whether to exclude information from the advice under
4 paragraph (6)(b), the Integrity Commissioner must seek to achieve
5 an appropriate balance between:
- 6 (a) the person's interest in having the information included in the
7 advice; and
- 8 (b) the prejudicial consequences that might result from including
9 the information in the advice.

10 **183 Advising person whose conduct is investigated of investigation's** 11 **outcome**

- 12 (1) If the Integrity Commissioner investigates a corruption issue that
13 relates to whether a person has engaged in corrupt conduct as a
14 staff member of a regulated entity, or as a parliamentarian, the
15 Integrity Commissioner:
- 16 (a) may advise the person of the outcome of the investigation;
17 and
- 18 (b) must do so if the issue relates to conduct of a person as a
19 parliamentarian.
- 20 (2) However, the Integrity Commissioner must not advise a person as
21 required by subsection (1) if the Integrity Commissioner is
22 satisfied that doing so is likely to prejudice:
- 23 (a) any action taken as a result of the investigation; or
24 (b) another corruption investigation; or
25 (c) any action taken as a result of another corruption
26 investigation.
- 27 (3) Without limiting subsection (1), the Integrity Commissioner may
28 advise the person of the outcome of the investigation by giving the
29 person a copy of all or part of a report prepared in relation to the
30 investigation under subsection 178(1).
- 31 (4) In advising the person under subsection (1), the Integrity
32 Commissioner:

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Outcomes of investigations by Integrity Commissioner and of corruption inquiries **Part 9**
Reporting at the end of an investigation into a corruption issue relating to a regulated
entity **Division 2**

Section 183

- 1 (a) must not disclose section 270 certified information to the
2 person if the disclosure of the information to the person
3 would contravene the certificate issued under section 270;
4 and
5 (b) may exclude information from the advice if the Integrity
6 Commissioner is satisfied that:
7 (i) the information is sensitive information; and
8 (ii) it is desirable in the circumstances to exclude the
9 information from the advice.
- 10 (5) In deciding whether to exclude information from the advice under
11 paragraph (4)(b), the Integrity Commissioner must seek to achieve
12 an appropriate balance between:
13 (a) the person's interest in having the information included in the
14 advice; and
15 (b) the prejudicial consequences that might result from including
16 the information in the advice.

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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 3 Reporting at the end of a corruption inquiry

Section 184

1 **Division 3—Reporting at the end of a corruption inquiry**

2 **184 Report on corruption inquiry**

3 *Report and its contents*

4 (1) After conducting a corruption inquiry, the Integrity Commissioner
5 must prepare a report on the inquiry.

6 (2) The report must set out:

7 (a) the Integrity Commissioner’s findings as a result of the
8 corruption inquiry; 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, under Division 1 in relation to the inquiry;
13 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 This subsection has effect subject to subsections (3) to (8).

18 Note 1: Under section 188, the copy of the report must be laid before each
19 House of the Parliament.

20 Note 2: See section 189 for the need for the Integrity Commissioner to give
21 certain people an opportunity to be heard before including critical
22 opinions or findings in a report under this section.

23 *Excluding certain information from report prepared under*
24 *subsection (1)*

25 (3) The Integrity Commissioner must exclude from the report:

26 (a) any opinion, finding or recommendation about an individual;
27 and

28 (b) any information that would allow the identification of an
29 individual in relation to whom action has been, or is proposed
30 to be, taken under Division 1.

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- 1 (4) The Integrity Commissioner must exclude section 270 certified
2 information from the report.
- 3 (5) The Integrity Commissioner may exclude information from the
4 report if the Integrity Commissioner is satisfied that:
5 (a) both:
6 (i) the information is sensitive information; and
7 (ii) it is desirable in the circumstances to exclude the
8 information from the report; or
9 (b) inclusion of the information in the report would be likely to
10 cause unfair prejudice to a person's reputation.
- 11 (6) In deciding whether to exclude information from the report under
12 subsection (5), the Integrity Commissioner must seek to achieve an
13 appropriate balance between:
14 (a) the public interest that would be served by including the
15 information in the report; and
16 (b) the prejudicial consequences that might result from including
17 the information in the report.
- 18 (7) If the Integrity Commissioner excludes information from the report
19 under subsection (3), (4) or (5), the Integrity Commissioner must
20 prepare a supplementary report that sets out:
21 (a) the information; and
22 (b) the reasons for excluding the information.
- 23 *No opinions or findings about whether person engaged in corrupt*
24 *conduct etc.*
- 25 (8) A report prepared under subsection (1), and a supplementary report
26 prepared under subsection (7), must not include any opinion or
27 finding:
28 (a) about whether a particular person engaged in corrupt
29 conduct; or
30 (b) about corruption by, or the integrity of, a particular person.
- 31 Note: The Integrity Commissioner may, on the Integrity Commissioner's
32 own initiative, deal with a corruption issue raised in the course of a
33 corruption inquiry: see section 61.
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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 3 Reporting at the end of a corruption inquiry

Section 185

1 *No opinions, findings or recommendations about parliamentarians*
2 *or their offices*

3 (9) A report prepared under this section must not include any opinion,
4 finding or recommendation about a parliamentarian, the office of a
5 parliamentarian or a staff member of the office of a
6 parliamentarian.

7 **185 Giving reports to Minister administering this Act**

8 The Integrity Commissioner must give the Minister:

- 9 (a) the report prepared under subsection 184(1); and
10 (b) if a supplementary report is prepared under
11 subsection 184(7)—the supplementary report.

12 Note: Section 188 provides that the Minister must lay a copy of the report
13 prepared under subsection 184(1) before each House of the
14 Parliament. The Minister is not required, however, to lay a copy of a
15 supplementary report under subsection 184(7) before each House of
16 the Parliament.

17 **186 Giving copies of reports relating to certain regulated entities to** 18 **entity heads**

- 19 (1) As soon as practicable after the Integrity Commissioner gives to
20 the Minister a report prepared under subsection 184(1) that relates
21 to a regulated entity, the Integrity Commissioner must give the
22 following a copy of the report:
23 (a) the head of the regulated entity;
24 (b) if the report relates to an intelligence agency—the IGIS;
25 (c) the entity heads mentioned in subsection (2), if an opinion,
26 finding or recommendation about conduct of a person while a
27 secondee to the regulated entity is included in a
28 supplementary report on the corruption inquiry prepared
29 under subsection 184(7) and the person is employed by either
30 of the following (the *home entity*):
31 (i) another regulated entity;
32 (ii) a State or Territory government entity.

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- 1 (2) For the purposes of paragraph (1)(c), the entity heads are as
2 follows:
- 3 (a) the head of the home entity;
- 4 (b) if the home entity is an intelligence agency—the IGIS;
- 5 (c) if the home entity is a State or Territory government entity
6 and the Integrity Commissioner is satisfied that the report is
7 relevant to the functions of a State or Territory integrity
8 agency—the head of the State or Territory integrity agency.
- 9 (3) A copy of a report prepared under subsection 184(1) may be given
10 under subsection (1) of this section together with a copy of the
11 whole or a part of a supplementary report prepared under
12 subsection 184(7) in relation to the corruption inquiry.
- 13 (4) The Integrity Commissioner must remove information from a copy
14 of a report given to an entity head under subsection (1) or (3) if:
- 15 (a) the information is section 270 certified information; and
16 (b) the disclosure of the information to the entity head would
17 contravene the certificate issued under section 270.

18 **187 Follow-up action on reports—certain regulated entities**

- 19 (1) The Integrity Commissioner may request the head of a regulated
20 entity to whom a report is given under subsection 186(1) to give
21 the Integrity Commissioner, within a specified time, details of any
22 action that the entity head proposes to take with respect to a
23 recommendation included in the report.
- 24 (2) The entity head must comply with the request.
- 25 (3) If the entity is a law enforcement agency and the Integrity
26 Commissioner is not satisfied with the response of the entity head
27 to the request, the Integrity Commissioner may refer to the
28 responsible Minister for the entity:
- 29 (a) the Integrity Commissioner’s recommendation and the
30 reasons for that recommendation; and
31 (b) the response of the entity head to the recommendation; and
32 (c) the Integrity Commissioner’s reasons for not being satisfied
33 with that response.

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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 3 Reporting at the end of a corruption inquiry

Section 187

- 1 (4) If the Integrity Commissioner refers material to a Minister under
2 subsection (3), the Integrity Commissioner may also send a copy of
3 that material to the Presiding Officer of each House of the
4 Parliament for presentation to that House.
- 5 (5) The Integrity Commissioner must exclude section 270 certified
6 information from the copy of the material sent under
7 subsection (4).
- 8 (6) The Integrity Commissioner may exclude information from the
9 copy of the material sent under subsection (4) if the Integrity
10 Commissioner is satisfied that:
11 (a) the information is sensitive information; and
12 (b) it is desirable in the circumstances to exclude the information
13 from the material sent.
- 14 (7) In deciding whether to exclude information from the copy of the
15 material sent under subsection (4), the Integrity Commissioner
16 must seek to achieve an appropriate balance between:
17 (a) the public interest that would be served by including the
18 information in the material sent; and
19 (b) the prejudicial consequences that might result from including
20 the information in the material sent.
- 21 (8) The Integrity Commissioner must exclude information from the
22 copy of material sent under subsection (4) if:
23 (a) an individual is named, or otherwise specifically identified,
24 in the relevant report given under subsection 186(1); and
25 (b) the recommendation to which the material relates is about the
26 individual; and
27 (c) it is reasonably likely that the information would lead to the
28 individual being identified.
- 29 (9) After the material is presented to each House of the Parliament, the
30 Integrity Commissioner may discuss any matter to which the
31 material relates with the entity head for the purpose of resolving
32 the matter.

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1 **Division 4—Release of certain reports to the Parliament**

2 **188 Release of reports about certain law enforcement corruption**
3 **issues and corruption inquiries**

4 (1) If:

5 (a) both:

6 (i) the Integrity Commissioner gives the Minister a report
7 prepared under subsection 178(1) about a law
8 enforcement corruption issue; and

9 (ii) one or more public hearings were held in the course of
10 the investigation to which the report relates; or

11 (b) the Integrity Commissioner gives the Minister a report
12 prepared under subsection 184(1);

13 the Minister must cause a copy of the report to be laid before each
14 House of the Parliament as soon as practicable after its receipt by
15 the Minister.

16 (2) Before the copy of the report is laid before each House of the
17 Parliament, the Minister must remove information from the copy of
18 the report if the Minister is of the view that its inclusion may:

19 (a) endanger a person's life or physical safety; or

20 (b) prejudice proceedings brought as a result of:

21 (i) a corruption investigation or corruption inquiry; or

22 (ii) an investigation of a corruption issue that the Integrity
23 Commissioner manages or oversees; or

24 (c) compromise operational activities, or methodologies, of the
25 CIC, a law enforcement agency or an intelligence agency.

26 (3) To avoid doubt, the Minister is not required by subsection (1) to
27 cause a supplementary report prepared under subsection 178(10) or
28 184(7) to be laid before each House of the Parliament.

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Part 9 Outcomes of investigations by Integrity Commissioner and of corruption inquiries

Division 5 Opportunity to be heard in relation to critical opinions and findings

Section 189

1 **Division 5—Opportunity to be heard in relation to critical**
2 **opinions and findings**

3 **189 Opportunity to be heard in relation to critical opinions and**
4 **findings**

5 *Critical opinions and findings*

6 (1) Subject to subsection (2), the Integrity Commissioner must not
7 include in:

8 (a) a report under section 178 in relation to an investigation of a
9 corruption issue; or

10 (b) a report under section 184 in relation to a corruption inquiry;
11 an opinion or finding that is critical (either expressly or impliedly)
12 of a regulated entity, a State or Territory government entity or any
13 other person unless the Integrity Commissioner has taken the
14 action required by subsection (3) or (4) of this section before
15 completing the investigation or inquiry.

16 Note 1: Subsection 178(12) limits the opinions or findings that may be
17 included in a report under section 178 about whether a particular
18 person engaged in corrupt conduct, or about corruption by, or the
19 integrity of, a particular person.

20 Note 2: Subsections 184(8) and (9) limit the opinions, findings and
21 recommendations that may be included in a report under section 184.

22 (2) Subsection (1) does not apply if the Integrity Commissioner is
23 satisfied that:

24 (a) a person may have:

25 (i) committed a criminal offence; or

26 (ii) contravened a civil penalty provision; or

27 (iii) engaged in conduct that could be the subject of
28 disciplinary proceedings; or

29 (iv) engaged in conduct that could be grounds for
30 terminating the person's appointment or employment;
31 and

32 (b) taking action under subsection (3) or (4) would compromise
33 the effectiveness of:

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- 1 (i) the investigation or inquiry or another corruption
2 investigation or corruption inquiry; or
3 (ii) any action taken as a result of an investigation or
4 inquiry referred to in subparagraph (i).

5 *Opportunity to appear and make submissions*

- 6 (3) If the opinion or finding is critical of a regulated entity or a State or
7 Territory government entity, the Integrity Commissioner must give
8 the head of the entity:
9 (a) a statement setting out the opinion or finding; and
10 (b) a reasonable opportunity to appear before the Integrity
11 Commissioner and to make submissions in relation to the
12 opinion or finding.
- 13 (4) If the opinion or finding is critical of a person (other than a
14 regulated entity or a State or Territory government entity), the
15 Integrity Commissioner must give the person:
16 (a) a statement setting out the opinion or finding; and
17 (b) a reasonable opportunity to appear before the Integrity
18 Commissioner and to make submissions in relation to the
19 opinion or finding.
- 20 (5) Submissions under subsection (3) or (4) may be made orally or in
21 writing.

22 *Representation*

- 23 (6) The head of a regulated entity or of a State or Territory government
24 entity may:
25 (a) appear before the Integrity Commissioner personally; or
26 (b) authorise another person to appear before the Integrity
27 Commissioner on behalf of the head.
- 28 (7) A person referred to in subsection (4):
29 (a) may appear before the Integrity Commissioner personally; or
30 (b) may, with the Integrity Commissioner's approval, be
31 represented by another person.

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Part 10 Dealing with CIC corruption issues

Division 1 Referral and notification of CIC corruption issues to Minister

Section 190

1 **Part 10—Dealing with CIC corruption issues**

2 **Division 1—Referral and notification of CIC corruption**
3 **issues to Minister**

4 **190 Integrity Commissioner and CIC staff notifying Minister of CIC**
5 **corruption issues**

6 *Integrity Commissioner to notify Minister of CIC corruption issues*

- 7 (1) If the Integrity Commissioner becomes aware of a CIC corruption
8 issue that relates to the conduct of another person who is, or has
9 been, a staff member of the CIC, the Integrity Commissioner must,
10 as soon as practicable after becoming aware of the issue, notify the
11 Minister of the issue in writing.
- 12 (2) The Integrity Commissioner commits an offence if the Integrity
13 Commissioner:
14 (a) becomes aware of a CIC corruption issue that relates to the
15 conduct of a person who is, or has been, a staff member of
16 the CIC (other than the Integrity Commissioner themselves);
17 and
18 (b) does not, as soon as practicable after becoming aware of the
19 CIC corruption issue, notify the Minister of the issue in
20 writing.

21 Penalty: Imprisonment for 6 months.

- 22 (3) Subsections (1) and (2) do not apply if the Integrity Commissioner
23 has reasonable grounds to believe that the Minister has already
24 been notified of the CIC corruption issue.

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

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1 *CIC staff members to notify Integrity Commissioner or Minister of*
2 *CIC corruption issues*

3 (4) If a staff member of the CIC (other than the Integrity
4 Commissioner) becomes aware of a CIC corruption issue, the staff
5 member must, as soon as practicable after becoming aware of the
6 issue, notify the following person of the issue in writing:

- 7 (a) unless paragraph (b) applies—the Integrity Commissioner;
8 (b) if the issue relates to the conduct of the person who is the
9 Integrity Commissioner—the Minister.

10 (5) A person commits an offence if the person:

- 11 (a) is a staff member of the CIC (other than the Integrity
12 Commissioner); and
13 (b) becomes aware of a CIC corruption issue that relates to the
14 conduct of another person who is, or has been, a staff
15 member of the CIC; and
16 (c) does not, as soon as practicable after becoming aware of the
17 CIC corruption issue, notify the following person of the issue
18 in writing:
19 (i) unless subparagraph (ii) applies—the Integrity
20 Commissioner;
21 (ii) if the issue relates to the conduct of the person who is
22 the Integrity Commissioner—the Minister.

23 Penalty: Imprisonment for 6 months.

24 (6) Subsections (4) and (5) do not apply if the staff member of the
25 CIC, who would otherwise be required under those subsections to
26 give the notification, has reasonable grounds to believe that the
27 Integrity Commissioner or the Minister (as the case requires) has
28 already been notified of the CIC corruption issue.

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

EXPOSURE DRAFT

Part 10 Dealing with CIC corruption issues

Division 1 Referral and notification of CIC corruption issues to Minister

Section 191

1 **191 Inspector-General and persons assisting notifying Minister of**
2 **CIC corruption issues**

3 *Inspector-General to notify Minister of CIC corruption issues*

4 (1) If the Inspector-General becomes aware of a CIC corruption issue,
5 the Inspector-General must, as soon as practicable after becoming
6 aware of the issue, notify the Minister of the issue in writing.

7 (2) Subsection (1) does not apply if the Inspector-General has
8 reasonable grounds to believe that the Minister has already been
9 notified of the CIC corruption issue.

10 *Persons assisting to notify Inspector-General of CIC corruption*
11 *issues*

12 (3) If a person assisting the Inspector-General becomes aware of a CIC
13 corruption issue, the person must, as soon as practicable after
14 becoming aware of the issue, notify the Inspector-General of the
15 issue in writing.

16 (4) A person commits an offence if the person:
17 (a) is a person assisting the Inspector-General; and
18 (b) becomes aware of a CIC corruption issue; and
19 (c) does not, as soon as practicable after becoming aware of the
20 CIC corruption issue, notify the Inspector-General of the
21 issue in writing.

22 Penalty: Imprisonment for 6 months.

23 (5) Subsections (3) and (4) do not apply if the person has reasonable
24 grounds to believe that the Inspector-General has already been
25 notified of the CIC corruption issue.

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

28 **192 Referral of CIC corruption issues by other persons**

29 (1) A person (other than a staff member of the CIC, the
30 Inspector-General or a person assisting the Inspector-General) may

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1 refer to the Minister an allegation, or information, that raises a CIC
2 corruption issue.

3 Note: Staff members of the CIC, the Inspector-General, and persons
4 assisting the Inspector-General, are required to notify CIC corruption
5 issues under sections 190 and 191.

6 (2) Without limiting subsection (1):

7 (a) the person may refer the allegation or information
8 anonymously; and

9 (b) the person may refer the allegation or information either
10 orally or in writing.

11 (3) If the person refers the allegation or information orally, the
12 Minister may require the person to put the allegation or
13 information in writing.

14 (4) If the person is asked to put the allegation or information in
15 writing, the Minister may refuse to deal with the CIC corruption
16 issue raised by the allegation or information until the allegation or
17 the information is put in writing.

18 (5) Nothing in this section limits a person's right to make a complaint
19 to the Ombudsman in relation to action taken by the Integrity
20 Commissioner or a staff member of the CIC.

21 **193 Person may elect to be kept informed**

22 (1) If a person refers an allegation or information to the Minister under
23 section 192, the Minister must ask the person to elect whether or
24 not to be kept informed of the action taken in relation to the CIC
25 corruption issue raised by the allegation or information.

26 (2) Subsection (1) does not apply if the person refers the allegation or
27 information anonymously.

28 (3) If the person fails to make an election when asked to do so, the
29 person is taken to have elected not to be kept informed of the
30 action taken in relation to the CIC corruption issue.

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Part 10 Dealing with CIC corruption issues

Division 1 Referral and notification of CIC corruption issues to Minister

Section 193

- 1 (4) If the person elects to be kept informed of the action taken in
2 relation to the CIC corruption issue, the person may revoke the
3 election at any time by notice to:
4 (a) the Minister; or
5 (b) the person conducting the investigation of the issue.

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Dealing with CIC corruption issues **Part 10**
How Minister deals with CIC corruption issues **Division 2**

Section 194

1 **Division 2—How Minister deals with CIC corruption**
2 **issues**

3 **194 How Minister deals with CIC corruption issues**

4 *Application of section*

- 5 (1) This section applies if:
- 6 (a) the Integrity Commissioner, or another staff member of the
7 CIC, notifies the Minister of a CIC corruption issue under
8 section 190; or
 - 9 (b) the Inspector-General notifies the Minister of a CIC
10 corruption issue under section 191; or
 - 11 (c) a person refers a CIC corruption issue to the Minister under
12 section 192; or
 - 13 (d) the Minister otherwise becomes aware of a CIC corruption
14 issue.

15 *How Minister must deal with CIC corruption issue*

- 16 (2) The Minister must deal with the CIC corruption issue by:
- 17 (a) referring the CIC corruption issue to the Integrity
18 Commissioner for investigation under Division 3; or
 - 19 (b) authorising a person to conduct a special investigation of the
20 CIC corruption issue under Division 4; or
 - 21 (c) deciding to take no further action in relation to the CIC
22 corruption issue.

23 Note: For paragraph (b), generally only the Inspector-General may be
24 authorised to conduct a special investigation: see section 195.

- 25 (3) The Minister must not refer the CIC corruption issue to the
26 Integrity Commissioner for investigation under Division 3 if the
27 CIC corruption issue relates to the conduct of a CIC office holder.
- 28 (4) The Minister may, at any time, reconsider how the CIC corruption
29 issue should be dealt with.
- 30 (5) If the Minister decides:

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Part 10 Dealing with CIC corruption issues

Division 2 How Minister deals with CIC corruption issues

Section 194

- 1 (a) to authorise a person under paragraph (2)(b) to conduct a
2 special investigation of the CIC corruption issue under
3 Division 4; or
4 (b) to take no further action in relation to the CIC corruption
5 issue;
6 the Minister must notify the Integrity Commissioner of the
7 decision.
- 8 (6) If the Inspector-General notified the Minister of the CIC corruption
9 issue under section 191 and the Minister decides:
10 (a) to refer the CIC corruption issue to the Integrity
11 Commissioner for investigation under Division 3; or
12 (b) to authorise a person other than the Inspector-General to
13 conduct a special investigation of the CIC corruption issue
14 under Division 4; or
15 (c) to take no further action in relation to the CIC corruption
16 issue;
17 the Minister must notify the Inspector-General of the decision.
- 18 *Integrity Commissioner to pass on information and documents*
- 19 (7) The Integrity Commissioner must, as soon as practicable after
20 being notified of an authorisation under paragraph (2)(b), give the
21 special investigator any information or document that:
22 (a) relates to the CIC corruption issue; and
23 (b) is in the possession, or under the control, of the Integrity
24 Commissioner.
- 25 (8) If:
26 (a) the Minister notifies the Integrity Commissioner that the
27 Minister has authorised a person under paragraph (2)(b) to
28 conduct a special investigation of a CIC corruption issue; and
29 (b) the Integrity Commissioner becomes aware of information or
30 a document that is relevant to the issue; and
31 (c) the special investigator does not already have the information
32 or document;
33 the Integrity Commissioner must give the information or document
34 to the special investigator.

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1 (9) Subsections (7) and (8) have effect subject to section 274 (which
2 deals with section 270 certified information).

3 *Inspector-General to pass on information and documents*

4 (10) The Inspector-General must, as soon as practicable after being
5 notified:

6 (a) in accordance with paragraph (6)(a) of a decision to refer the
7 CIC corruption issue to the Integrity Commissioner for
8 investigation under Division 3; or

9 (b) in accordance with paragraph (6)(b) of a decision to authorise
10 a person other than the Inspector-General to conduct a special
11 investigation of the CIC corruption issue under Division 4;

12 give the Integrity Commissioner or the special investigator (as the
13 case requires) any information or document that:

14 (c) relates to the CIC corruption issue; and

15 (d) is in the possession, or under the control, of the
16 Inspector-General.

17 (11) If:

18 (a) the Minister notifies the Inspector-General:

19 (i) in accordance with paragraph (6)(a) of a decision to
20 refer the CIC corruption issue to the Integrity
21 Commissioner for investigation under Division 3; or

22 (ii) in accordance with paragraph (6)(b) of a decision to
23 authorise a person other than the Inspector-General to
24 conduct a special investigation of the CIC corruption
25 issue under Division 4; and

26 (b) the Inspector-General becomes aware of information or a
27 document that is relevant to the issue; and

28 (c) the Integrity Commissioner or special investigator (as the
29 case requires) does not already have the information or
30 document;

31 the Inspector-General must give the information or document to
32 the person mentioned in paragraph (c).

33 (12) Subsections (10) and (11) have effect subject to section 275 (which
34 deals with section 270 certified information).

EXPOSURE DRAFT

Part 10 Dealing with CIC corruption issues

Division 2 How Minister deals with CIC corruption issues

Section 195

1 *Originals or copies of documents may be given*

2 (13) For the purposes of subsection (7), (8), (10) or (11), the Integrity
3 Commissioner or Inspector-General may give either the original or
4 a copy of a document.

5 **195 Inspector-General generally to conduct special investigations**

6 (1) The Minister must not authorise a person other than the
7 Inspector-General to conduct a special investigation under
8 Division 4 unless the Minister is satisfied that it would be
9 inappropriate, in the circumstances, for the Inspector-General to
10 conduct the special investigation.

11 (2) Before authorising a person other than the Inspector-General to
12 conduct a special investigation under Division 4, the Minister must
13 be satisfied that the person has appropriate qualifications,
14 knowledge or experience to conduct the special investigation.

15 **196 Counsel assisting special investigator**

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

EXPOSURE DRAFT

Division 3—Investigation by Integrity Commissioner

197 Application of Division

This Division applies if the Minister refers a CIC corruption issue to the Integrity Commissioner for investigation under this Division.

198 Investigation and investigative powers

- (1) The provisions covered by subsection (2) apply in relation to the investigation of the CIC corruption issue by the Integrity Commissioner as if the following substitutions were made:

Substitutions to be made		
Item	For a reference to ...	substitute a reference to ...
1	a corruption issue	a CIC corruption issue
2	a law enforcement corruption issue	a CIC corruption issue
3	a staff member of a regulated entity	a staff member of the CIC
4	a staff member of a law enforcement agency	a staff member of the CIC
5	a regulated entity	the CIC
6	a law enforcement agency	the CIC
7	a report under section 178	a report under section 200

- (2) The provisions covered by this subsection are as follows:
- (a) Division 1 of Part 5 (conduct of investigation), other than section 73 (coordinating Integrity Commissioner's investigation and operations);
 - (b) Part 8 (Integrity Commissioner's powers in investigating corruption issues and conducting corruption inquiries);
 - (c) the following provisions of Part 9 (outcomes of investigations by Integrity Commissioner and of corruption inquiries):

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Part 10 Dealing with CIC corruption issues

Division 3 Investigation by Integrity Commissioner

Section 198

- 1 (i) Division 1 (dealing with evidence and information
2 obtained in investigation or corruption inquiry);
3 (ii) section 180 (giving copies of reports relating to
4 regulated entities to entity heads);
5 (iii) section 181 (follow-up action on reports—certain
6 regulated entities);
7 (iv) Division 4 (release of certain reports to the Parliament);
8 (v) Division 5 (opportunity to be heard in relation to critical
9 opinions and findings).
- 10 (3) The provisions covered by subsection (2) apply in relation to the
11 investigation of the CIC corruption issue by the Integrity
12 Commissioner with such further modifications as are specified in
13 this section or the regulations.
- 14 (4) For the purposes of applying section 103 in relation to the
15 investigation of the CIC corruption issue by the Integrity
16 Commissioner, subsection 103(3) applies as if
17 subparagraph 103(3)(c)(i) were omitted.
- 18 (5) Subsections 175(2), (6) and (7) do not apply in relation to the
19 investigation of the CIC corruption issue.
- 20 (6) The Integrity Commissioner need not inform a person under
21 subsection 175(3), (4) or (5) about the taking of action under
22 section 173 or 174 in relation to the investigation of the CIC
23 corruption issue if doing so would be likely to prejudice:
24 (a) the investigation of the 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 (7) If the Integrity Commissioner does not inform a person because of
29 subsection (6), the Integrity Commissioner must:
30 (a) inform the Minister that the person has not been consulted or
31 informed; and
32 (b) give the Minister the Integrity Commissioner's reasons for
33 not consulting or informing the person.

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1 **199 Keeping Minister, and person who referred or notified CIC**
2 **corruption issue, informed of progress of the investigation**

3 The Integrity Commissioner must take such steps as the Integrity
4 Commissioner considers reasonable to keep the following
5 informed of the progress of the investigation of the CIC corruption
6 issue:

- 7 (a) the Minister;
8 (b) if the Inspector-General notified the Minister of the issue
9 under section 191—the Inspector-General;
10 (c) if a person has elected under section 193 to be kept informed
11 of the action taken in relation to the issue and has not
12 revoked the election—that person.

13 **200 Report on investigation**

14 *Report and its contents*

- 15 (1) After completing the investigation of the CIC corruption issue, the
16 Integrity Commissioner must prepare a report on the investigation.
17 (2) The report must set out:
18 (a) the Integrity Commissioner’s findings on the CIC corruption
19 issue; and
20 (b) the evidence and other material on which those findings are
21 based; and
22 (c) any action that the Integrity Commissioner has taken, or
23 proposes to take, in relation to the issue.

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

25 Note: See section 189 (as applied by section 198) for the need for the
26 Integrity Commissioner to give certain people an opportunity to be
27 heard before including critical opinions or findings in a report under
28 this section.

- 29 (3) Without limiting paragraph (2)(c), the action that the Integrity
30 Commissioner may take in relation to the CIC corruption issue
31 includes:

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Part 10 Dealing with CIC corruption issues

Division 3 Investigation by Integrity Commissioner

Section 200

- 1 (a) taking action in relation to a staff member of the CIC with a
2 view to the staff member improving the staff member's
3 performance; or
4 (b) terminating:
5 (i) the secondment to the CIC; or
6 (ii) the engagement as consultant to the CIC;
7 of a staff member of the CIC; or
8 (c) taking action to rectify or mitigate the effects of the conduct
9 of a staff member of the CIC; or
10 (d) adopting measures to remedy deficiencies in policy or
11 practice that facilitated:
12 (i) an unsuitable person becoming a staff member of the
13 CIC; or
14 (ii) a staff member of the CIC engaging in corrupt conduct;
15 or
16 (iii) the failure to detect corrupt conduct engaged in by a
17 staff member of the CIC.

18 *Section 270 certified information and sensitive information*

- 19 (4) The Integrity Commissioner must exclude section 270 certified
20 information from the report if one or more public hearings were
21 held in the investigation to which the report relates.

22 Note: Under section 188 (as applied by section 198), a copy of the report
23 must be laid before each House of the Parliament.

- 24 (5) The Integrity Commissioner may exclude information from the
25 report if the Integrity Commissioner is satisfied that:
26 (a) the information is sensitive information or section 270
27 certified information; and
28 (b) it is desirable in the circumstances to exclude the information
29 from the report.
- 30 (6) In deciding whether to exclude information from the report under
31 subsection (5), the Integrity Commissioner must seek to achieve an
32 appropriate balance between:
33 (a) the public interest that would be served by including the
34 information in the report; and

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

3 *Supplementary report*

- 4 (7) If the Integrity Commissioner excludes information from a report
5 under subsection (4) or (5), the Integrity Commissioner must
6 prepare a supplementary report that sets out:

- 7 (a) the information; and
8 (b) the reasons for excluding the information.

9 **201 Integrity Commissioner to give report to Minister**

10 The Integrity Commissioner must give the Minister:

- 11 (a) the report prepared under subsection 200(1); and
12 (b) if a supplementary report is prepared under subsection 200(7)
13 in relation to the investigation—the supplementary report.

14 Note: Section 188 (as applied by section 198) provides that the Minister
15 must lay a copy of the report prepared under subsection 200(1) before
16 each House of the Parliament if a public hearing has been held in the
17 course of the investigation to which the report relates. The Minister is
18 not required, however, to lay a copy of a supplementary report under
19 subsection 200(7) before each House of the Parliament.

20 **202 Advising person who referred or notified allegation or**
21 **information of investigation's outcome**

- 22 (1) The Integrity Commissioner must advise the following of the
23 outcome of the investigation of the CIC corruption issue:
24 (a) if the Inspector-General notified the Minister of the issue
25 under section 191—the Inspector-General;
26 (b) if a person has elected under section 193 to be kept informed
27 of the action taken in relation to the issue and has not
28 revoked the election—that person.
- 29 (2) However, the Integrity Commissioner need not advise a person as
30 required by paragraph (1)(b) if the Integrity Commissioner is
31 satisfied that doing so is likely to prejudice:
32 (a) the investigation of the CIC corruption issue or another
33 corruption investigation; or

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Part 10 Dealing with CIC corruption issues

Division 3 Investigation by Integrity Commissioner

Section 203

- 1 (b) any action taken as a result of an investigation referred to in
2 paragraph (a).
- 3 (3) Without limiting subsection (1), the Integrity Commissioner may
4 advise a person under that subsection by giving the person a copy
5 of the whole or a part of the report prepared under
6 subsection 200(1) in relation to the investigation.
- 7 (4) In advising a person of the outcome of the investigation as required
8 by subsection (1), the Integrity Commissioner:
9 (a) must not disclose section 270 certified information to the
10 person if the disclosure of the information to the person
11 would contravene the certificate issued under section 270;
12 and
13 (b) may exclude information from advice given as required by
14 paragraph (1)(b) if the Integrity Commissioner is satisfied
15 that:
16 (i) the information is sensitive information; and
17 (ii) it is desirable in the circumstances to exclude the
18 information from the advice.
- 19 (5) In deciding whether to exclude information from advice under
20 paragraph (4)(b), the Integrity Commissioner must seek to achieve
21 an appropriate balance between:
22 (a) the person's interest in having the information included in the
23 advice; and
24 (b) the prejudicial consequences that might result from including
25 the information in the advice.

26 **203 Advising person whose conduct is investigated of investigation's** 27 **outcome**

- 28 (1) If the Integrity Commissioner investigates a CIC corruption issue
29 that relates to a person who is, or has been, a staff member of the
30 CIC, the Integrity Commissioner may advise the person of the
31 outcome of the investigation.
- 32 (2) Without limiting subsection (1), the Integrity Commissioner may
33 advise the person by giving the person a copy of the whole or a

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Dealing with CIC corruption issues **Part 10**
Investigation by Integrity Commissioner **Division 3**

Section 203

- 1 part of the report prepared in relation to the investigation under
2 subsection 200(1).
- 3 (3) If the Integrity Commissioner advises the person, the Integrity
4 Commissioner:
- 5 (a) must not disclose section 270 certified information to the
6 person if the disclosure of the information to the person
7 would contravene the certificate issued under section 270;
8 and
- 9 (b) may exclude information from the advice if the Integrity
10 Commissioner is satisfied that:
- 11 (i) the information is sensitive information; and
12 (ii) it is desirable in the circumstances to exclude the
13 information from the advice.
- 14 (4) In deciding whether to exclude information from the advice under
15 paragraph (3)(b), the Integrity Commissioner must seek to achieve
16 an appropriate balance between:
- 17 (a) the person's interest in having the information included in the
18 advice; and
- 19 (b) the prejudicial consequences that might result from including
20 the information in the advice.

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Part 10 Dealing with CIC corruption issues

Division 4 Special investigations

Section 204

1 **Division 4—Special investigations**

2 **204 Application of Division**

3 This Division applies if the Minister authorises a person (the
4 *special investigator*) to conduct a special investigation of a CIC
5 corruption issue under this Division.

6 **205 Investigation and investigative powers**

7 (1) The provisions covered by subsection (2) apply in relation to the
8 investigation of the CIC corruption issue by the special investigator
9 as if the following substitutions were made:

10

Substitutions to be made		
Item	For a reference to ...	substitute a reference to ...
1	the Integrity Commissioner	a special investigator
2	a corruption issue	a CIC corruption issue
3	a law enforcement corruption issue	a CIC corruption issue
4	a staff member of a regulated entity	a staff member of the CIC
5	a staff member of a law enforcement agency	a staff member of the CIC
6	a regulated entity	the CIC
7	a law enforcement agency	the CIC
8	a report under section 178	a report under section 207

11 (2) The provisions covered by this subsection are as follows:
12 (a) Division 1 of Part 5 (conduct of investigation), other than
13 section 73 (coordinating Integrity Commissioner's
14 investigation and operations);
15 (b) Part 8 (Integrity Commissioner's powers in investigating
16 corruption issues and conducting corruption inquiries);

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- 1 (c) the following provisions of Part 9 (outcomes of
2 investigations by Integrity Commissioner and of corruption
3 inquiries):
- 4 (i) Division 1 (dealing with evidence and information
5 obtained in investigation or corruption inquiry);
- 6 (ii) section 180 (giving copies of reports relating to
7 regulated entities to entity heads);
- 8 (iii) section 181 (follow-up action on reports—certain
9 regulated entities);
- 10 (iv) Division 4 (release of certain reports to the Parliament);
- 11 (v) Division 5 (opportunity to be heard in relation to critical
12 opinions and findings).
- 13 (3) The provisions covered by subsection (2) apply in relation to the
14 investigation of the CIC corruption issue by the special investigator
15 with such further modifications as are specified in this section or
16 the regulations.
- 17 (4) For the purposes of applying section 103 in relation to the
18 investigation of the CIC corruption issue by the special
19 investigator, subsection 103(3) applies as if
20 subparagraph 103(3)(c)(i) were omitted.
- 21 (5) Subsections 175(2), (6) and (7) do not apply to the investigation of
22 the CIC corruption issue by the special investigator.
- 23 (6) The special investigator need not inform a person under
24 subsection 175(3), (4) or (5) about the taking of action under
25 section 173 or 174 in relation to the investigation of the CIC
26 corruption issue if doing so would be likely to prejudice:
- 27 (a) the investigation of the issue or another corruption
28 investigation; or
- 29 (b) any action taken as a result of an investigation referred to in
30 paragraph (a).
- 31 (7) If a special investigator does not inform a person because of
32 subsection (6), the special investigator must:
- 33 (a) inform the Minister that the person has not been informed;
34 and

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Part 10 Dealing with CIC corruption issues

Division 4 Special investigations

Section 206

- 1 (b) give the Minister the special investigator's reasons for not
2 informing the person.

206 Keeping Minister, and person who referred or notified CIC corruption issue, informed of progress of the investigation

5 The special investigator must take such steps as the special
6 investigator considers reasonable to keep the following informed of
7 the progress of the investigation of the CIC corruption issue:

- 8 (a) the Minister;
9 (b) if the Inspector-General notified the Minister of the issue
10 under section 191—the Inspector-General;
11 (c) if a person has elected under section 193 to be kept informed
12 of the action taken in relation to the issue and has not
13 revoked the election—that person.

14 207 Report on investigation

15 *Report and its contents*

16 (1) After completing the special investigation of the CIC corruption
17 issue, the special investigator must prepare a report on the special
18 investigation.

- 19 (2) The report must set out:
20 (a) the special investigator's findings on the CIC corruption
21 issue; and
22 (b) the evidence and other material on which those findings are
23 based; and
24 (c) any recommendations to the Minister or Integrity
25 Commissioner that the special investigator thinks fit to make
26 and, if recommendations are made, the reasons for those
27 recommendations.

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

29 Note: See section 189 (as applied by section 205) for the need for the special
30 investigator to give certain people an opportunity to be heard before
31 including critical opinions or findings in a report under this section.

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- 1 (3) Without limiting paragraph (2)(c), the special investigator may
2 recommend that the Integrity Commissioner consider:
- 3 (a) taking action in relation to a staff member of the CIC with a
4 view to the staff member improving the staff member's
5 performance; or
- 6 (b) terminating:
- 7 (i) the employment; or
8 (ii) the secondment to the CIC; or
9 (iii) the engagement as consultant to the CIC;
10 of a staff member of the CIC; or
- 11 (c) taking action to rectify or mitigate the effects of the conduct
12 of a staff member of the CIC; or
- 13 (d) adopting measures to remedy deficiencies in policy or
14 practice that facilitated:
- 15 (i) an unsuitable person becoming a staff member of the
16 CIC; or
17 (ii) a staff member of the CIC engaging in corrupt conduct;
18 or
19 (iii) the failure to detect corrupt conduct engaged in by a
20 staff member of the CIC.

21 *Section 270 certified information and sensitive information*

- 22 (4) The special investigator must exclude section 270 certified
23 information from the report if one or more public hearings were
24 held in relation to the investigation to which the report relates.

25 Note: Under section 188 (as applied by section 205), a copy of the report
26 must be laid before each House of the Parliament.

- 27 (5) The special investigator may exclude information from the report if
28 the special investigator is satisfied that:
- 29 (a) the information is sensitive information or section 270
30 certified information; and
31 (b) it is desirable in the circumstances to exclude the information
32 from the report.

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Part 10 Dealing with CIC corruption issues

Division 4 Special investigations

Section 208

- 1 (6) In deciding whether to exclude information from the report under
2 subsection (5), the special investigator must seek to achieve an
3 appropriate balance between:
4 (a) the public interest that would be served by including the
5 information in the report; and
6 (b) the prejudicial consequences that might result from including
7 the information in the report.

8 *Supplementary report*

- 9 (7) If the special investigator excludes information from a report under
10 subsection (4) or (5), the special investigator must prepare a
11 supplementary report that sets out:
12 (a) the information; and
13 (b) the reasons for excluding the information.

208 Special investigator to give report to Minister

- 15 (1) The special investigator must give the Minister:
16 (a) the report prepared under subsection 207(1); and
17 (b) if a supplementary report is prepared under subsection 207(7)
18 in relation to the investigation—the supplementary report.

19 Note: Section 188 (as applied by section 205) provides that the Minister
20 must lay a copy of the report prepared under subsection 207(1) before
21 each House of the Parliament if a public hearing has been held in the
22 course of the investigation to which the report relates. The Minister is
23 not required, however, to lay a copy of a supplementary report under
24 subsection 207(7) before each House of the Parliament.

- 25 (2) The Minister must give a copy of the report, and the supplementary
26 report (if any), to the Integrity Commissioner.

209 Minister may direct Integrity Commissioner to consider taking action

29 *Minister may give direction to Integrity Commissioner*

- 30 (1) If:

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- 1 (a) the Minister authorises a person under paragraph 194(2)(b) to
2 conduct a special investigation of the CIC corruption issue
3 under this Division; and
4 (b) the person gives the Minister a report prepared under
5 section 207 in relation to the special investigation;
6 the Minister may direct the Integrity Commissioner:
7 (c) to consider whether action should be taken to terminate the
8 employment or appointment, or the secondment to the CIC,
9 of a person referred to in the report; or
10 (d) to consider whether disciplinary proceedings should be taken
11 against a person referred to in the report.

12 (2) The Integrity Commissioner must comply with a direction under
13 subsection (1).

14 (3) If the direction under subsection (1) relates to a member of the staff
15 referred to in section 221 (staff engaged under the *Public Service*
16 *Act 1999*), the Integrity Commissioner must, in giving effect to the
17 direction, also comply with:

- 18 (a) section 15 of the *Public Service Act 1999*; and
19 (b) regulations made for the purposes of that section; and
20 (c) procedures established and directions given under that
21 section.

22 *Direction is not a legislative instrument*

23 (4) A direction given to the Integrity Commissioner under
24 subsection (1) is not a legislative instrument.

25 **210 Advising person who referred or notified allegation or** 26 **information of investigation's outcome**

- 27 (1) The special investigator must advise the following of the outcome
28 of the investigation of the CIC corruption issue:
29 (a) if the Inspector-General notified the Minister of the issue
30 under section 191—the Inspector-General;
31 (b) if a person has elected under section 193 to be kept informed
32 of the action taken in relation to the issue and has not
33 revoked the election—that person.

EXPOSURE DRAFT

Part 10 Dealing with CIC corruption issues

Division 4 Special investigations

Section 211

- 1 (2) However, the special investigator need not advise a person as
2 required by paragraph (1)(b) if the special investigator is satisfied
3 that doing so is likely to prejudice:
4 (a) the investigation of the CIC corruption issue or another
5 corruption investigation; or
6 (b) any action taken as a result of an investigation referred to in
7 paragraph (a).
- 8 (3) Without limiting subsection (1), the special investigator may
9 advise a person under that subsection by giving the person a copy
10 of the whole or a part of the report prepared under
11 subsection 207(1) in relation to the special investigation.
- 12 (4) In advising a person of the outcome of the special investigation as
13 required by subsection (1), the special investigator:
14 (a) must not disclose section 270 certified information to the
15 person if the disclosure of the information to the person
16 would contravene the certificate issued under section 270;
17 and
18 (b) may exclude information from advice given as required by
19 paragraph (1)(b) if the special investigator is satisfied that:
20 (i) the information is sensitive information; and
21 (ii) it is desirable in the circumstances to exclude the
22 information from the advice.
- 23 (5) In deciding whether to exclude information from advice under
24 paragraph (4)(b), the special investigator must seek to achieve an
25 appropriate balance between:
26 (a) the person's interest in having the information included in the
27 advice; and
28 (b) the prejudicial consequences that might result from including
29 the information in the advice.

211 Advising person whose conduct is investigated of investigation's outcome

- 30 (1) If a special investigator investigates a CIC corruption issue that
31 relates to a person who is, or has been, a staff member of the CIC,
32
33

EXPOSURE DRAFT

- 1 the special investigator may advise the person of the outcome of
2 the special investigation.
- 3 (2) Without limiting subsection (1), a special investigator may advise
4 the person by giving the person a copy of the whole or a part of the
5 report prepared in relation to the special investigation under
6 subsection 207(1).
- 7 (3) If a special investigator advises the person, the special investigator:
8 (a) must not disclose section 270 certified information to the
9 person if the disclosure of the information to the person
10 would contravene the certificate issued under section 270;
11 and
12 (b) may exclude information from the advice if the special
13 investigator is satisfied that:
14 (i) the information is sensitive information; and
15 (ii) it is desirable in the circumstances to exclude the
16 information from the advice.
- 17 (4) In deciding whether to exclude information from the advice under
18 paragraph (3)(b), the special investigator must seek to achieve an
19 appropriate balance between:
20 (a) the person's interest in having the information included in the
21 advice; and
22 (b) the prejudicial consequences that might result from including
23 the information in the advice.

EXPOSURE DRAFT

Part 11 Administrative provisions for the CIC

Division 1 CIC office holders

Section 212

1 **Part 11—Administrative provisions for the CIC**

2 **Division 1—CIC office holders**

3 **212 Appointment of CIC office holders**

4 *Appointment by Governor-General*

- 5 (1) A CIC office holder is to be appointed by the Governor-General by
6 written instrument.

7 Note: A CIC office holder may be reappointed: see section 33AA of the *Acts*
8 *Interpretation Act 1901*.

9 *Period of appointment*

- 10 (2) A CIC office holder holds office for the period specified in the
11 instrument of appointment. The period must not exceed 5 years.

- 12 (3) The sum of the periods for which a person holds office as a CIC
13 officer holder of a particular kind must not exceed 7 years.

14 *Basis of appointment*

- 15 (4) The following CIC office holders are to be appointed on a full-time
16 basis:

- 17 (a) the Integrity Commissioner;
18 (b) the Law Enforcement Integrity Commissioner;
19 (c) the Public Sector Integrity Commissioner.

- 20 (5) An Assistant Integrity Commissioner may be appointed on a
21 full-time or part-time basis.

22 **213 Acting appointment**

23 The Minister may, by written instrument, appoint a person to act as
24 a CIC office holder:

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Administrative provisions for the CIC **Part 11**
CIC office holders **Division 1**

Section 214

- 1 (a) during a vacancy in the office of the CIC office holder
2 (whether or not an appointment has previously been made to
3 the office); or
4 (b) during any period, or during all periods, when the CIC office
5 holder:
6 (i) is absent from duty or from Australia; or
7 (ii) is, for any reason, unable to perform the duties of the
8 office.

9 Note: For rules that apply to acting appointments, see sections 33AB and
10 33A of the *Acts Interpretation Act 1901*.

11 **214 Remuneration**

- 12 (1) A CIC office holder is to be paid the remuneration that is
13 determined by the Remuneration Tribunal. If no determination of
14 that remuneration by the Tribunal is in operation, the CIC office
15 holder is to be paid the remuneration that is prescribed by the rules.
16 (2) A CIC office holder is to be paid the allowances that are prescribed
17 by the rules.
18 (3) Subsections (1) and (2) have effect subject to the *Remuneration*
19 *Tribunal Act 1973*.

20 **215 Leave**

- 21 (1) A CIC office holder appointed on a full-time basis has the
22 recreation leave entitlements that are determined by the
23 Remuneration Tribunal.
24 (2) The Minister may grant a CIC office holder appointed on a
25 full-time basis leave of absence, other than recreation leave, on the
26 terms and conditions as to remuneration or otherwise that the
27 Minister determines.
28 (3) The Minister may grant an Assistant Integrity Commissioner
29 appointed on a part-time basis leave of absence on the terms and
30 conditions that the Minister determines.

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Part 11 Administrative provisions for the CIC

Division 1 CIC office holders

Section 216

1 **216 Other paid work**

- 2 (1) A CIC office holder appointed on a full-time basis must not engage
3 in paid work outside the duties of the CIC office holder's office
4 without the Minister's approval.
- 5 (2) An Assistant Integrity Commissioner appointed on a part-time
6 basis must not engage in any paid work that conflicts or may
7 conflict with the proper performance of the Assistant Integrity
8 Commissioner's duties.

9 **217 Disclosure of interests**

- 10 (1) A disclosure by a CIC office holder (other than the Integrity
11 Commissioner) under section 29 of the *Public Governance,*
12 *Performance and Accountability Act 2013* (which deals with the
13 duty to disclose interests) must be made to the Minister.

14 Note: The Integrity Commissioner also has obligations under that section in
15 relation to disclosure of interests.

- 16 (2) Subsection (1) applies in addition to any rules made for the
17 purposes of that section.
- 18 (3) For the purposes of this Act and the *Public Governance,*
19 *Performance and Accountability Act 2013*, a CIC office holder to
20 whom subsection (1) applies is taken not to have complied with
21 section 29 of that Act if the CIC office holder does not comply
22 with subsection (1) of this section.

23 **218 Other terms and conditions**

24 A CIC office holder holds office on the terms and conditions (if
25 any) in relation to matters not covered by this Act that are
26 determined by the Governor-General.

27 **219 Resignation**

- 28 (1) A CIC office holder may resign the CIC office holder's
29 appointment by giving the Governor-General a written resignation.

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- 1 (2) The resignation takes effect on the day it is received by the
2 Governor-General or, if a later day is specified in the resignation,
3 on that later day.

4 **220 Termination of appointment**

- 5 (1) The Governor-General may terminate the appointment of a CIC
6 office holder:
7 (a) for misbehaviour; or
8 (b) if the CIC office holder is unable to perform the duties of the
9 CIC office holder's office because of physical or mental
10 incapacity.
- 11 (2) The Governor-General must terminate the appointment of a CIC
12 office holder if:
13 (a) the CIC office holder:
14 (i) becomes bankrupt; or
15 (ii) applies to take the benefit of any law for the relief of
16 bankrupt or insolvent debtors; or
17 (iii) compounds with the CIC office holder's creditors; or
18 (iv) makes an assignment of the CIC office holder's
19 remuneration for the benefit of the CIC office holder's
20 creditors; or
21 (b) for a CIC office holder appointed on a full-time basis—the
22 CIC office holder:
23 (i) is absent, except on leave of absence, for 14 consecutive
24 days or for 28 days in any 12 months; or
25 (ii) engages, except with the Minister's approval, in paid
26 work outside the duties of the CIC office holder's office
27 (see subsection 216(1)); or
28 (c) for an Assistant Integrity Commissioner appointed on a
29 part-time basis—the Assistant Integrity Commissioner
30 engages in paid work that conflicts or may conflict with the
31 proper performance of the Assistant Integrity
32 Commissioner's duties (see subsection 216(2)); or
33 (d) the CIC office holder fails, without reasonable excuse, to
34 comply with section 29 of the *Public Governance,*
35 *Performance and Accountability Act 2013* (which deals with

EXPOSURE DRAFT

Part 11 Administrative provisions for the CIC

Division 1 CIC office holders

Section 220

1
2

the duty to disclose interests) or rules made for the purposes
of that section.

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1 **Division 2—The Commonwealth Integrity Commission**

2 **221 Staff**

- 3 (1) The staff of the CIC must be persons engaged under the *Public*
4 *Service Act 1999*.
- 5 (2) For the purposes of the *Public Service Act 1999*:
6 (a) the Integrity Commissioner and the APS employees assisting
7 the Integrity Commissioner together constitute a Statutory
8 Agency; and
9 (b) the Integrity Commissioner is the Head of that Statutory
10 Agency.

11 **222 Consultants**

- 12 (1) The Integrity Commissioner may, on behalf of the Commonwealth,
13 engage persons having suitable qualifications and experience as
14 consultants to the CIC.
- 15 (2) The engagement of a consultant must be by written agreement.
- 16 (3) The terms and conditions of engagement are those that the Integrity
17 Commissioner determines in writing.

18 **223 Secondment of persons to assist Integrity Commissioner**

19 *Police personnel*

- 20 (1) The Integrity Commissioner may make an arrangement with:
21 (a) the AFP Commissioner; or
22 (b) the head (however described) of the police force of:
23 (i) a State or Territory; or
24 (ii) a foreign country;
25 under which the AFP or the police force may make its members or
26 employees available to the Integrity Commissioner to perform
27 services in connection with the performance or exercise of any of
28 the Integrity Commissioner's functions or powers.

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Part 11 Administrative provisions for the CIC
Division 2 The Commonwealth Integrity Commission

Section 224

1

Officers and employees

2

(2) The Integrity Commissioner may make an arrangement with the head of any of the following (the *home entity*):

3

4

(a) a regulated entity (other than the AFP);

5

(b) a State or Territory integrity agency;

6

(c) a government body or authority of a foreign country that has similar functions to a State or Territory integrity agency;

7

8

under which the home entity may make its officers or employees

9

available to the Integrity Commissioner to perform services in

10

connection with the performance or exercise of any of the Integrity

11

Commissioner's functions or powers.

12

(3) An arrangement under subsection (1) or (2) may provide for the

13

Commonwealth to reimburse a State or Territory, or the

14

government of a foreign country, with respect to the services of a

15

person or persons to whom the arrangement relates.

16

224 Counsel assisting Integrity Commissioner

17

The Integrity Commissioner may appoint a legal practitioner to

18

assist the Integrity Commissioner as counsel:

19

(a) generally; or

20

(b) in relation to a particular investigation of a corruption issue

21

or CIC corruption issue; or

22

(c) in relation to a corruption inquiry.

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Administrative provisions for the CIC **Part 11**
Meaning of staff member and secondee for the CIC **Division 3**

Section 225

1 **Division 3—Meaning of staff member and secondee for the**
2 **CIC**

3 **225 Meaning of *staff member* and *secondee* for the CIC**

- 4 (1) The following are *staff members* of the CIC for the purposes of
5 this Act:
- 6 (a) the Integrity Commissioner;
 - 7 (b) the Law Enforcement Integrity Commissioner;
 - 8 (c) the Public Sector Integrity Commissioner;
 - 9 (d) an Assistant Integrity Commissioner;
 - 10 (e) a member of the staff referred to in section 221;
 - 11 (f) a person engaged under section 222;
 - 12 (g) a person referred to in section 223 whose services are made
13 available to the Integrity Commissioner;
 - 14 (h) a legal practitioner appointed under section 224 to assist the
15 Integrity Commissioner as counsel.
- 16 (2) For the purposes of this Act, a person referred to in
17 paragraph (1)(g) is a *secondee* to the CIC.

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Part 11 Administrative provisions for the CIC

Division 4 Public reporting

Section 226

1 **Division 4—Public reporting**

2 **226 Annual report by Integrity Commissioner**

3 The annual report prepared by the Integrity Commissioner and
4 given to the Minister under section 46 of the *Public Governance,*
5 *Performance and Accountability Act 2013* for a period must
6 include:

7 (a) the particulars prescribed by the rules about the following
8 matters:

9 (i) corruption issues referred or notified to the Integrity
10 Commissioner under Division 1 of Part 4 during that
11 period;

12 (ii) corruption issues dealt with by the Integrity
13 Commissioner on the Integrity Commissioner's own
14 initiative in accordance with section 61 during that
15 period;

16 (iii) corruption issues investigated by the Integrity
17 Commissioner during that period;

18 (iv) corruption issues that the Integrity Commissioner
19 referred to a regulated entity, or a State or Territory
20 government entity, for investigation during that period;

21 (v) referrals made by the Integrity Commissioner to
22 Commonwealth integrity office holders under section 54
23 during that period;

24 (vi) corruption inquiries conducted by the Integrity
25 Commissioner during that period;

26 (vii) CIC corruption issues investigated during that period;

27 (viii) certificates issued under section 270 during that period;
28 and

29 (b) a description of investigations conducted by the Integrity
30 Commissioner during the period that the Integrity
31 Commissioner considers raise significant issues or
32 developments in connection with the Integrity
33 Commissioner's functions; and

34 (c) a description, which may include statistics, of any patterns or
35 trends, and the nature and scope, of corruption among those

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- 1 who are subject to this Act that have come to the Integrity
2 Commissioner's attention during that period in the
3 performance of the Integrity Commissioner's functions; and
4 (d) any recommendations for changes to the laws of the
5 Commonwealth that the Integrity Commissioner, as a result
6 of performing the Integrity Commissioner's functions during
7 that period, considers should be made; and
8 (e) the extent to which investigations by the Integrity
9 Commissioner have resulted in the Integrity Commissioner
10 giving evidence obtained in the course of such an
11 investigation to any of the following under section 173 in that
12 period:
13 (i) the AFP Commissioner;
14 (ii) the head (however described) of the police force of a
15 State or Territory;
16 (iii) a person or authority who is authorised by or under a
17 law of the Commonwealth, or of a State or Territory, to
18 prosecute an offence or bring civil penalty proceedings;
19 and
20 (f) the extent to which investigations by the Integrity
21 Commissioner have resulted in the prosecution in that period
22 of persons for offences or the bringing in that period of civil
23 penalty proceedings; and
24 (g) the extent to which investigations by the Integrity
25 Commissioner have resulted in confiscation proceedings in
26 that period; and
27 (h) details of the number and results of:
28 (i) applications made to the Federal Court or the Federal
29 Circuit Court under the *Administrative Decisions*
30 *(Judicial Review) Act 1977* for orders of review in
31 respect of matters arising under this Act in connection
32 with the performance of functions or exercise of powers
33 by the Integrity Commissioner; and
34 (ii) other court proceedings involving the Integrity
35 Commissioner;
36 being applications and proceedings that were determined, or
37 otherwise disposed of, during that period; and

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Part 11 Administrative provisions for the CIC

Division 4 Public reporting

Section 227

- 1 (i) details about how the Integrity Commissioner has addressed,
2 or proposes to address, any recommendations that:
3 (i) are contained in a copy of a report on an inquiry by the
4 Inspector-General under Part 12 given to the Integrity
5 Commissioner during that period; and
6 (ii) relate to the performance of functions, or exercise of
7 powers, by CIC office holders or other staff members of
8 the CIC.

9 Note: For other rules about the content of annual reports, see section 228.

10 **227 Special reports by Integrity Commissioner in relation to law** 11 **enforcement corruption issues**

12 *Integrity Commissioner may give Minister special reports*

- 13 (1) The Integrity Commissioner may, from time to time, give the
14 Minister, for presentation to the Parliament, a special report on:
15 (a) the operations of the Integrity Commissioner for a part of a
16 financial year in relation to law enforcement agencies or law
17 enforcement corruption issues; or
18 (b) any matter relating to, or arising in connection with, the
19 performance of the Integrity Commissioner's functions, or
20 the exercise of the Integrity Commissioner's powers, under
21 this Act in relation to law enforcement agencies or law
22 enforcement corruption issues.
- 23 (2) If the Integrity Commissioner gives a special report to the Minister
24 under subsection (1), the Minister must cause the report to be laid
25 before each House of the Parliament as soon as practicable after its
26 receipt by the Minister.

27 *Critical opinions and findings*

- 28 (3) The Integrity Commissioner must not disclose information in a
29 special report prepared under subsection (1) that includes an
30 opinion or finding that is critical (either expressly or impliedly) of
31 a regulated entity, a State or Territory government entity or any
32 other person unless the Integrity Commissioner has taken the

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Administrative provisions for the CIC **Part 11**

Public reporting **Division 4**

Section 227

- 1 action required by subsection (4) or (5) before giving the special
2 report to the Minister.
- 3 (4) If the opinion or finding is critical of a regulated entity or a State or
4 Territory government entity, the Integrity Commissioner must give
5 the head of the entity:
6 (a) a statement setting out the opinion or finding; and
7 (b) a reasonable opportunity to appear before the Integrity
8 Commissioner and to make submissions in relation to the
9 opinion or finding.
- 10 (5) If the opinion or finding is critical of a person (other than a
11 regulated entity or a State or Territory government entity), the
12 Integrity Commissioner must give the person:
13 (a) a statement setting out the opinion or finding; and
14 (b) a reasonable opportunity to appear before the Integrity
15 Commissioner and to make submissions in relation to the
16 opinion or finding.
- 17 (6) Submissions under subsection (4) or (5) may be made orally or in
18 writing.
- 19 (7) The head of a regulated entity or of a State or Territory government
20 entity may:
21 (a) appear before the Integrity Commissioner personally; or
22 (b) authorise another person to appear before the Integrity
23 Commissioner on behalf of the head.
- 24 (8) A person referred to in subsection (5):
25 (a) may appear before the Integrity Commissioner personally; or
26 (b) may, with the Integrity Commissioner's approval, be
27 represented by another person.
- 28 Note: For other rules about the content of special reports, see section 228.

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Part 11 Administrative provisions for the CIC

Division 4 Public reporting

Section 228

1 **228 Contents of annual or special report by Integrity Commissioner**

2 *Section 270 certified information*

3 (1) An annual report referred to in section 226, or a special report
4 under section 227, must not include section 270 certified
5 information.

6 *Sensitive information*

7 (2) The Integrity Commissioner may exclude information from an
8 annual report referred to in section 226, or a special report under
9 section 227, if the Integrity Commissioner is satisfied that:
10 (a) the information is sensitive information; and
11 (b) it is desirable in the circumstances to exclude the information
12 from the report.

13 (3) In deciding whether to exclude information under subsection (2),
14 the Integrity Commissioner must seek to achieve an appropriate
15 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 *Opinions and findings about whether persons engaged in corrupt
21 conduct etc.*

22 (4) The Integrity Commissioner may disclose information in an annual
23 report referred to in section 226, or a special report under
24 section 227, that includes an opinion or finding about whether a
25 person engaged in corrupt conduct while a staff member of a law
26 enforcement agency.

27 (5) Except as provided by subsection (4), the Integrity Commissioner
28 must not disclose information in an annual report referred to in
29 section 226, or a special report under section 227, that includes an
30 opinion or finding:
31 (a) about whether a particular person engaged in corrupt
32 conduct; or

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Administrative provisions for the CIC **Part 11**
Public reporting **Division 4**

Section 228

1 (b) about corruption by, or the integrity of, a particular person.

2 *Public sector corruption issues—person whose conduct is*
3 *investigated not to be identified*

4 (6) The Integrity Commissioner must not disclose information in an
5 annual report referred to in section 226, or a special report under
6 section 227, if:

7 (a) the information relates to the investigation of a public sector
8 corruption issue; and

9 (b) the corruption issue relates to whether a person engaged or is
10 engaging in corrupt conduct; and

11 (c) the information would allow the identification of the person;
12 and

13 (d) the information is not already publicly available.

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Part 12 Inspector-General of the Commonwealth Integrity Commission

Division 1 Establishment and functions of the Inspector-General

Section 229

1 **Part 12—Inspector-General of the Commonwealth**
2 **Integrity Commission**

3 **Division 1—Establishment and functions of the**
4 **Inspector-General**

5 **229 Inspector-General of the Commonwealth Integrity Commission**

6 There is to be an Inspector-General of the Commonwealth Integrity
7 Commission.

8 Note: For provisions in relation to the Inspector-General's appointment, see
9 Division 4.

10 **230 Functions of the Inspector-General**

11 The Inspector-General has the following functions:

- 12 (a) to inquire into the performance of functions, or exercise of
13 powers, by the Integrity Commissioner or any other staff
14 member of the CIC under this Act or another Act;
- 15 (b) to report on the outcomes of those inquiries;
- 16 (c) to conduct special investigations of CIC corruption issues
17 when authorised to do by the Minister under
18 paragraph 194(2)(b);
- 19 (d) any other function conferred on the Inspector-General by
20 other provisions of this Act, by another Act, or by a
21 legislative instrument made under this Act.

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1 **Division 2—Conducting inquiries**

2 **231 Decision to conduct an inquiry**

- 3 (1) The Inspector-General may inquire into the performance of
4 functions, or exercise of powers, by the Integrity Commissioner or
5 any other staff member of the CIC under this Act or another Act:
6 (a) if requested to do so by the Minister or the Integrity
7 Commissioner; or
8 (b) on the Inspector-General's own initiative.
- 9 (2) An inquiry under this Part may be of a general nature or in relation
10 to the performance of a function, or the exercise of a power, in one
11 or more particular cases.
- 12 (3) Despite subsection (1), the Inspector-General must not inquire
13 under this Part into:
14 (a) the performance of a function, or the exercise of a power, if
15 the function or power is specified in rules made for the
16 purposes of this paragraph; or
17 (b) a CIC corruption issue.

18 Note: The Inspector-General may be authorised to conduct a special
19 investigation of a CIC corruption issue under Division 4 of Part 10:
20 see section 195.

21 **232 Giving relevant information and documents together with**
22 **request for inquiry**

- 23 (1) A person making a request under paragraph 231(1)(a) must, subject
24 to subsection (2) of this section, give the Inspector-General all the
25 information and documents that:
26 (a) are relevant to the request; and
27 (b) are in the possession, or under the control, of the person.
- 28 (2) Subsection (1) has effect subject to subsection 272(1) (about
29 Inspector-General's access to section 270 certified information) but
30 despite any secrecy provision (other than a law enforcement

EXPOSURE DRAFT

Part 12 Inspector-General of the Commonwealth Integrity Commission

Division 2 Conducting inquiries

Section 233

1 secrecy provision, a taxation secrecy provision or a secrecy
2 provision under the *My Health Records Act 2012*).

3 **233 Requesting additional information to assist in deciding whether** 4 **to conduct an inquiry**

5 (1) For the purposes of deciding under section 231 whether to conduct
6 an inquiry under this Part, the Inspector-General may request the
7 Integrity Commissioner or the head of a regulated entity to give the
8 Inspector-General the information specified in the request.

9 (2) The Integrity Commissioner or entity head must comply with the
10 request, subject to subsection (3).

11 (3) Subsection (2) has effect subject to subsection 272(1) (about
12 Inspector-General's access to section 270 certified information) but
13 despite any secrecy provision (other than a law enforcement
14 secrecy provision, a taxation secrecy provision or a secrecy
15 provision under the *My Health Records Act 2012*).

16 (4) Subsection (1) does not limit the information to which the
17 Inspector-General may have regard in making a decision under
18 section 231.

19 **234 Informing relevant persons of decision about conducting an** 20 **inquiry**

21 (1) The Inspector-General must inform both the Minister and the
22 Integrity Commissioner in writing of:

- 23 (a) the Inspector-General's decision on a request under
24 paragraph 231(1)(a) by either of those persons; and
25 (b) the Inspector-General's reasons for the decision.

26 (2) The Integrity Commissioner must do so as soon as reasonably
27 practicable after the decision is made.

28 (3) However, the Inspector-General need not inform the Minister or
29 the Integrity Commissioner of the decision, or the reasons for it, if
30 doing so would be likely to prejudice:

- 31 (a) the investigation of a CIC corruption issue; or
-

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- 1 (b) the inquiry the subject of the decision, or any other inquiry
2 under this Part; or
3 (c) any action taken as a result of an investigation referred to in
4 paragraph (a) or an inquiry referred to in paragraph (b).
- 5 (4) If the Inspector-General decides to conduct an inquiry under this
6 Part on the Inspector-General's own initiative, the
7 Inspector-General may inform the Minister or the Integrity
8 Commissioner (or both) of either or both of the following:
9 (a) the decision;
10 (b) the Inspector-General's reasons for the decision.

11 **235 Manner of conducting inquiry**

- 12 (1) The Inspector-General may conduct an inquiry under this Part in
13 such manner as the Inspector-General thinks fit, subject to any
14 rules made for the purposes of subsection (2).
- 15 (2) The rules may make provision for or in relation to the process to be
16 followed in conducting an inquiry under this Part.
- 17 (3) The Inspector-General may end an inquiry under this Part before
18 completing it if the Inspector-General is satisfied that the inquiry,
19 or the continuation of the inquiry, is not warranted having regard to
20 all the circumstances.

21 **236 CIC staff members to assist Inspector-General**

- 22 (1) The staff members of the CIC must give the Inspector-General all
23 reasonable assistance requested by the Inspector-General for the
24 purpose of an inquiry under this Part.
- 25 (2) Without limiting subsection (1), the Inspector-General may:
26 (a) enter any place occupied by the CIC at any reasonable time
27 of the day; and
28 (b) carry on the inquiry at that place; and
29 (c) inspect any documents relevant to the inquiry that are kept at
30 that place (subject to subsection (5)); and
31 (d) make copies of, or take extracts from, any documents so
32 inspected; and

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Division 2 Conducting inquiries

Section 237

- 1 (e) for the purpose of making a copy of, or taking an extract
2 from, a document, remove the document from that place.
- 3 (3) While the Inspector-General retains a document or thing, the
4 Inspector-General must allow a person who would otherwise be
5 entitled to inspect the document or view the thing to do so at the
6 times that the person would ordinarily be able to do so.
- 7 (4) If the Inspector-General enters a place under subsection (2), any
8 staff members of the CIC at that place must give the
9 Inspector-General such access to documents and other things at
10 that place as the Inspector-General requires.
- 11 (5) However, the Inspector-General must not be given access to a
12 document or thing under subsection (4), or inspect a document
13 under paragraph (2)(c), if:
14 (a) the document or thing contains section 270 certified
15 information; and
16 (b) giving the Inspector-General access to the document or thing,
17 or the inspection of the document by the Inspector-General,
18 would contravene the certificate issued under section 270.

237 Inspector-General may require information etc. for inquiry

- 19 (1) For the purpose of an inquiry under this Part, the Inspector-General
20 may, by notice in writing, require a person to do either or both of
21 the following:
22 (a) give the information specified in the notice;
23 (b) produce the documents or things specified in the notice;
24 if the Inspector-General has reasonable grounds to suspect that the
25 information, documents or things will be relevant to the inquiry.
26
- 27 (2) The Inspector-General may require that information specified
28 under paragraph (1)(a) is to be given in writing.
- 29 (3) The notice must:
30 (a) be served on the person; and
31 (b) be signed by the Inspector-General; and
32 (c) specify the period within which, and the manner in which,
33 the person must comply with the notice.

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Inspector-General of the Commonwealth Integrity Commission **Part 12**
Conducting inquiries **Division 2**

Section 237

- 1 (4) The period specified under paragraph (3)(c) must be at least 14
2 days after the day the notice is served on the person.
- 3 (5) Division 1 of Part 8 (other than section 90) applies in relation to a
4 notice served on a person under this section in the same way as that
5 Division applies in relation to a notice served on a person under
6 section 90, with the following modifications:
- 7 (a) a reference in that Division to the Integrity Commissioner is
8 to be treated as if it were a reference to the
9 Inspector-General;
- 10 (b) such other modifications as are prescribed by the regulations.
- 11 Note 1: Division 1 of Part 8 sets out the Integrity Commissioner's power to
12 require people to give information and produce documents or things.
- 13 Note 2: One effect of this subsection is that a person may commit an offence if
14 the person does not comply with a notice served on the person under
15 this section: see sections 91 and 95 as they apply because of this
16 subsection.
- 17 Note 3: See also subsection 272(2) in relation to section 270 certified
18 information.

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Part 12 Inspector-General of the Commonwealth Integrity Commission

Division 3 Outcomes of inquiries

Section 238

1 **Division 3—Outcomes of inquiries**

2 **238 Dealing with evidence and information obtained in course of**
3 **inquiries**

4 Division 1 of Part 9 applies in relation to evidence obtained by the
5 Inspector-General in conducting an inquiry under this Part in the
6 same way as it applies in relation to evidence obtained by the
7 Integrity Commissioner in investigating a corruption issue, with
8 such modifications as are prescribed by the rules for the purposes
9 of this section.

10 Note: See also section 191 (which is about the Inspector-General notifying
11 the Minister of CIC corruption issues).

12 **239 Preparing reports on inquiries**

13 (1) After completing an inquiry under this Part, the Inspector-General
14 must prepare a report on the inquiry.

15 Note: Under section 243, the report must be laid before each House of the
16 Parliament.

17 (2) The report must, subject to subsections (4) and (6), set out:

- 18 (a) any findings or opinions that the Inspector-General thinks fit
19 to make; and
20 (b) the evidence and other material on which those findings or
21 opinions are based; and
22 (c) any action that the Inspector-General has taken, or proposes
23 to take, under Division 1 of Part 9 (as that Division applies
24 because of section 238); and
25 (d) any recommendations that the Inspector-General thinks fit to
26 make in relation to the performance of functions, or exercise
27 of powers, by CIC office holders or other staff members of
28 the CIC; and
29 (e) if any such recommendations are made, the reasons for those
30 recommendations; and
31 (f) if no such recommendations are made, the reasons for not
32 making any such recommendations; and

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- 1 (g) such other matters as are prescribed by the rules for the
2 purposes of this paragraph.
- 3 (3) Without limiting paragraph (2)(d), the Inspector-General may
4 recommend:
- 5 (a) that the Integrity Commissioner consider taking action in
6 relation to a staff member of the CIC with a view to the staff
7 member improving the staff member's performance; or
8 (b) that the Integrity Commissioner consider terminating:
9 (i) the employment; or
10 (ii) the secondment to the CIC; or
11 (iii) the engagement as consultant to the CIC;
12 of a staff member of the CIC; or
13 (c) that the Minister consider:
14 (i) taking action in relation to a CIC office holder with a
15 view to the CIC office holder improving the CIC office
16 holder's performance; or
17 (ii) recommending to the Governor-General the termination
18 of the appointment of a CIC office holder; or
19 (d) the taking of action to rectify or mitigate the effects of
20 conduct engaged in by a staff member of the CIC; or
21 (e) adopting measures to remedy deficiencies in policy or
22 practice for the purpose of preventing, detecting, disrupting
23 or combatting corrupt conduct.
- 24 (4) The Inspector-General must exclude information from a report
25 under subsection (1) if:
26 (a) the information is section 270 certified information; or
27 (b) the information is sensitive information; or
28 (c) inclusion of the information in the report would be likely to
29 cause unfair prejudice to a person's reputation.
- 30 (5) If the Inspector-General excludes information from a report under
31 subsection (4), the Inspector-General must prepare a
32 supplementary report that sets out:
33 (a) the information; and
34 (b) the reasons for excluding the information from the report.

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Part 12 Inspector-General of the Commonwealth Integrity Commission

Division 3 Outcomes of inquiries

Section 240

- 1 (6) A report under this section must not include any opinion or
2 finding:
3 (a) about whether a particular person engaged in corrupt
4 conduct; or
5 (b) about corruption by, or the integrity of, a particular person.
- 6 (7) A report under this section must not include any opinion or finding
7 that is critical (either expressly or impliedly) of, or a
8 recommendation about:
9 (a) a parliamentarian; or
10 (b) the office of a parliamentarian; or
11 (c) a staff member of the office of a parliamentarian.

240 Opportunity to be heard in relation to critical opinions and findings

Critical opinions and findings

- 14
- 15 (1) The Inspector-General must not include in a report under
16 section 239 an opinion or finding that is critical (either expressly or
17 impliedly) of the CIC, a regulated entity, a State or Territory
18 government entity or any other person unless the Inspector-General
19 has taken the action required by subsection (2) or (3) of this section
20 before completing the inquiry.

21 Note: A report under section 239 must not include certain opinions, findings
22 or recommendations: see subsections 239(6) and (7).

Opportunity to appear and make submissions

- 23
- 24 (2) If the opinion or finding is critical of the CIC, a regulated entity or
25 a State or Territory government entity, the Inspector-General must
26 give the Integrity Commissioner or the entity head (as the case
27 requires):
28 (a) a statement setting out the opinion or finding; and
29 (b) a reasonable opportunity to appear before the
30 Inspector-General and to make submissions in relation to the
31 opinion or finding.

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- 1 (3) If the opinion or finding is critical of a person (other than a
2 regulated entity or a State or Territory government entity), the
3 Inspector-General must give the person:
4 (a) a statement setting out the opinion or finding; and
5 (b) a reasonable opportunity to appear before the
6 Inspector-General and to make submissions in relation to the
7 opinion or finding.
- 8 (4) Submissions under subsection (2) or (3) may be made orally or in
9 writing.

Representation

- 11 (5) The Integrity Commissioner or the head of a regulated entity or of
12 a State or Territory government entity may:
13 (a) appear before the Inspector-General personally; or
14 (b) authorise another person to appear before the
15 Inspector-General on behalf of the Integrity Commissioner or
16 the entity head.
- 17 (6) A person referred to in subsection (3):
18 (a) may appear before the Inspector-General personally; or
19 (b) may, with the Inspector-General's approval, be represented
20 by another person.

241 Giving reports on inquiries to Minister and Integrity Commissioner

Giving reports to the Minister

- 24 (1) The Inspector-General must give the Minister:
25 (a) the report prepared under subsection 239(1); and
26 (b) if a supplementary report is prepared under subsection 239(5)
27 in relation to the inquiry—the supplementary report.

Giving copies of reports to the Integrity Commissioner

- 28 (2) The Inspector-General must give the Integrity Commissioner a
29 copy of the report prepared under subsection 239(1) and, subject to
30

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Part 12 Inspector-General of the Commonwealth Integrity Commission

Division 3 Outcomes of inquiries

Section 241

- 1 subsections (4) to (6) of this section, a copy of the supplementary
2 report, unless doing would be likely to prejudice:
- 3 (a) the investigation of a CIC corruption issue; or
4 (b) another inquiry under this Part; or
5 (c) any action taken as a result of an investigation referred to in
6 paragraph (a) or an inquiry referred to in paragraph (b).
- 7 (3) If the Inspector-General does not give the Integrity Commissioner
8 a copy of a report because of paragraph (2)(a), (b) or (c), the
9 Inspector-General must:
- 10 (a) inform the Minister that the Integrity Commissioner has not
11 been given the copy of the report; and
12 (b) give the Minister the Inspector-General's reasons for not
13 giving the Integrity Commissioner the copy of the report.
- 14 *Excluding certain information from copies of supplementary*
15 *reports given to Integrity Commissioner*
- 16 (4) The Inspector-General must not include information in a copy of a
17 supplementary report given to the Integrity Commissioner under
18 subsection (2) if:
- 19 (a) the information is section 270 certified information; and
20 (b) the disclosure of the information to the Integrity
21 Commissioner would contravene the certificate issued under
22 section 270.
- 23 (5) The Inspector-General may exclude information from a copy of a
24 supplementary report given to the Integrity Commissioner under
25 subsection (2) if the Inspector-General 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 copy of the report.
- 29 (6) In deciding under subsection (5) whether to exclude information
30 from a copy of a report, the Inspector-General must seek to achieve
31 an appropriate balance between:
- 32 (a) the public interest that would be served by including the
33 information in the copy of the report; and

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

3 **242 Follow-up action on report**

- 4 (1) The Inspector-General may request the Integrity Commissioner to
5 give the Inspector-General, within a specified time, details of any
6 action that the Integrity Commissioner proposes to take with
7 respect to a recommendation included in a copy of either of the
8 following given to the Integrity Commissioner under section 241:
9 (a) a report prepared under subsection 239(1);
10 (b) a supplementary report prepared under subsection 239(5).
- 11 (2) The Integrity Commissioner must comply with the request.
- 12 (3) If the Inspector-General is not satisfied with the response of the
13 Integrity Commissioner to the request, the Inspector-General may
14 refer to the Minister:
15 (a) the Inspector-General's recommendation and the reasons for
16 that recommendation; and
17 (b) the response of Integrity Commissioner to the
18 recommendation; and
19 (c) the Inspector-General's reasons for not being satisfied with
20 that response.
- 21 (4) If the Inspector-General refers material to the Minister under
22 subsection (3), the Inspector-General may also send a copy of that
23 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 (5) The Inspector-General must exclude section 270 certified
28 information from the copy of the material sent under
29 subsection (4).
- 30 (6) The Inspector-General may exclude information from the copy of
31 the material sent under subsection (4) if the Inspector-General is
32 satisfied that:
33 (a) the information is sensitive information; and
-

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

14 **243 Public release of reports**

15 *Release of report to the Parliament*

- 16 (1) If the Inspector-General gives the Minister a report prepared under
17 subsection 239(1), the Minister must cause a copy of the report to
18 be laid before each House of the Parliament as soon as practicable
19 after its receipt by the Minister.
- 20 (2) Before the copy of the report is laid before each House of the
21 Parliament, the Minister must remove information from the copy of
22 the report if the Minister is of the view that its inclusion may:
- 23 (a) endanger a person's life or physical safety; or
24 (b) prejudice proceedings brought as a result of:
- 25 (i) a corruption investigation, a corruption inquiry or an
26 inquiry under this Part; or
27 (ii) an investigation of a corruption issue that the Integrity
28 Commissioner manages or oversees; or
29 (c) unfairly prejudice a person's reputation; or
30 (d) compromise operational activities, or methodologies, of the
31 CIC, a law enforcement agency or an intelligence agency.
- 32 (3) Before the copy of the report is laid before each House of the
33 Parliament, the Minister must remove information from the copy of
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1 the report if the Minister is of the view that it consists of an opinion
2 or finding that is critical (either expressly or impliedly) of, or a
3 recommendation about:

- 4 (a) a parliamentarian; or
5 (b) the office of a parliamentarian; or
6 (c) a staff member of the office of a parliamentarian.

7 *Publishing report on the internet*

8 (4) As soon as practicable after the copy of the report has been laid
9 before each House of the Parliament as required by subsection (1),
10 the Inspector-General must cause a copy of the report to be
11 published on the internet.

12 (5) The Inspector-General must ensure that any information removed
13 from the copy of the report under subsection (2) or (3) is also
14 removed from the copy of the report published as required by
15 subsection (4).

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Part 12 Inspector-General of the Commonwealth Integrity Commission

Division 4 Administrative provisions for the Inspector-General

Section 244

1 **Division 4—Administrative provisions for the**
2 **Inspector-General**

3 **Subdivision A—Appointment, terms and conditions etc.**

4 **244 Appointment of the Inspector-General**

5 *Appointment by Minister*

- 6 (1) The Inspector-General is to be appointed by the Minister by written
7 instrument.

8 Note: The Inspector-General may be reappointed: see section 33AA of the
9 *Acts Interpretation Act 1901.*

- 10 (2) A person must not be appointed as the Inspector-General if the
11 person has, at any time in the previous 2 years, been a staff
12 member of the CIC.

13 Note: CIC office holders are staff members of the CIC: see
14 subsection 225(1).

15 *Period of appointment*

- 16 (3) The Inspector-General holds office for the period specified in the
17 instrument of appointment. The period must not exceed 5 years.

- 18 (4) The sum of the periods for which a person holds office as the
19 Inspector-General must not exceed 10 years.

20 *Basis of appointment*

- 21 (5) The Inspector-General may be appointed on a full-time or
22 part-time basis.

23 **245 Acting appointment**

- 24 (1) The Minister may, by written instrument, appoint a person to act as
25 the Inspector-General:

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- 1 (a) during a vacancy in the office of the Inspector-General
2 (whether or not an appointment has previously been made to
3 the office); or
4 (b) during any period, or during all periods, when the
5 Inspector-General:
6 (i) is absent from duty or from Australia; or
7 (ii) is, for any reason, unable to perform the duties of the
8 office.

9 Note: For rules that apply to acting appointments, see sections 33AB and
10 33A of the *Acts Interpretation Act 1901*.

- 11 (2) A person must not be appointed to act as the Inspector-General if
12 the person has, at any time in the previous 2 years, been a staff
13 member of the CIC.

14 Note: CIC office holders are staff members of the CIC: see
15 subsection 225(1).

16 **246 Remuneration**

- 17 (1) The Inspector-General is to be paid the remuneration that is
18 determined by the Remuneration Tribunal. If no determination of
19 that remuneration by the Tribunal is in operation, the
20 Inspector-General is to be paid the remuneration that is prescribed
21 by the rules.
22 (2) The Inspector-General is to be paid the allowances that are
23 prescribed by the rules.
24 (3) Subsections (1) and (2) have effect subject to the *Remuneration*
25 *Tribunal Act 1973*.

26 **247 Leave**

- 27 (1) If the Inspector-General is appointed on a full-time basis, the
28 Inspector-General has the recreation leave entitlements that are
29 determined by the Remuneration Tribunal.
30 (2) If the Inspector-General is appointed on a full-time basis, the
31 Minister may grant the Inspector-General leave of absence, other

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Part 12 Inspector-General of the Commonwealth Integrity Commission

Division 4 Administrative provisions for the Inspector-General

Section 248

1 than recreation leave, on the terms and conditions as to
2 remuneration or otherwise that the Minister determines.

3 (3) If the Inspector-General is appointed on a part-time basis, the
4 Minister may grant leave of absence to the Inspector-General on
5 the terms and conditions that the Minister determines.

6 **248 Other paid work**

7 *Full-time Inspector-General*

8 (1) If the Inspector-General is appointed on a full-time basis, the
9 Inspector-General must not engage in paid work outside the duties
10 of the Inspector-General's office without the Minister's approval.

11 *Part-time Inspector-General*

12 (2) If the Inspector-General is appointed on a part-time basis, the
13 Inspector-General must not engage in any paid work that conflicts
14 or may conflict with the proper performance of the
15 Inspector-General's duties.

16 **249 Disclosure of interests**

17 The Inspector-General must give written notice to the Minister of
18 all interests, pecuniary or otherwise, that the Inspector-General has
19 or acquires and that conflict or could conflict with the proper
20 performance of the Inspector-General's functions.

21 **250 Other terms and conditions**

22 The Inspector-General holds office on the terms and conditions (if
23 any) in relation to matters not covered by this Act that are
24 determined by the Minister.

25 **251 Resignation**

26 (1) The Inspector-General may resign the Inspector-General's
27 appointment by giving the Minister a written resignation.

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- 1 (2) The resignation takes effect on the day it is received by the
2 Minister or, if a later day is specified in the resignation, on that
3 later day.

4 **252 Termination of appointment**

- 5 (1) The Minister may terminate the appointment of the
6 Inspector-General:
7 (a) for misbehaviour; or
8 (b) if the Inspector-General is unable to perform the duties of the
9 Inspector-General's office because of physical or mental
10 incapacity.
- 11 (2) The Minister must terminate the appointment of the
12 Inspector-General if:
13 (a) the Inspector-General:
14 (i) becomes bankrupt; or
15 (ii) applies to take the benefit of any law for the relief of
16 bankrupt or insolvent debtors; or
17 (iii) compounds with the Inspector-General's creditors; or
18 (iv) makes an assignment of the Inspector-General's
19 remuneration for the benefit of the Inspector-General's
20 creditors; or
21 (b) if the Inspector-General is appointed on a full-time basis—
22 the Inspector-General is absent, except on leave of absence,
23 for 14 consecutive days or for 28 days in any 12 months; or
24 (c) if the Inspector-General is appointed on a full-time basis—
25 the Inspector-General engages, except with the Minister's
26 approval, in paid work outside the duties of the
27 Inspector-General's office (see subsection 248(1)); or
28 (d) if the Inspector-General is appointed on a part-time basis—
29 the Inspector-General engages in paid work that conflicts or
30 may conflict with the proper performance of the
31 Inspector-General's duties (see subsection 248(2)); or
32 (e) in any case—the Inspector-General fails, without reasonable
33 excuse, to comply with section 249 (which deals with
34 disclosure of interests).

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Part 12 Inspector-General of the Commonwealth Integrity Commission

Division 4 Administrative provisions for the Inspector-General

Section 253

1 **Subdivision B—Persons assisting the Inspector-General**

2 **253 Persons assisting the Inspector-General**

3 *Staff made available by Department*

4 (1) The staff necessary to assist the Inspector-General are to be
5 persons engaged under the *Public Service Act 1999* and made
6 available for the purpose by the Secretary of the Department.

7 *Secondees made available by other entities*

8 (2) The Inspector-General may make an arrangement with:

9 (a) the AFP Commissioner; or

10 (b) the head (however described) of the police force of:

11 (i) a State or Territory; or

12 (ii) a foreign country;

13 under which the AFP or the police force may make its members or
14 employees available to the Inspector-General to perform services
15 in connection with the performance or exercise of any of the
16 Inspector-General's functions or powers.

17 (3) The Inspector-General may make an arrangement with the head of
18 any of the following (the *home agency*):

19 (a) a law enforcement agency (other than the AFP) or a public
20 sector agency;

21 (b) a State or Territory integrity agency;

22 (c) a government body or authority of a foreign country that has
23 similar functions to a State or Territory integrity agency;

24 under which the home agency may make its officers or employees
25 available to the Inspector-General to perform services in
26 connection with the performance or exercise of any of the
27 Inspector-General's functions or powers.

28 (4) An arrangement under subsection (2) or (3) may provide for the
29 Commonwealth to reimburse a State or Territory, or the
30 government of a foreign country, with respect to the services of a
31 person or persons to whom the arrangement relates.

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1

Consultants

2

(5) The Inspector-General may, on behalf of the Commonwealth, engage as consultants persons having suitable qualifications and experience to assist in the performance of the Inspector-General's functions.

3

4

5

6

(6) The engagement of a consultant must be by written agreement.

7

8

(7) The terms and conditions of engagement are those that the Inspector-General determines in writing.

9

Meaning of person assisting the Inspector-General

10

(8) For the purposes of this Act, each of the following is a **person assisting** the Inspector-General:

11

12

(a) a person made available to assist the Inspector-General as mentioned in subsection (1);

13

14

(b) a person made available to the Inspector-General to perform services in connection with the performance or exercise of any of the Inspector-General's functions or powers, as mentioned in subsection (2) or (3);

15

16

17

18

(c) a person engaged as a consultant under subsection (5);

19

20

21

(d) a person appointed under section 196 to assist the Inspector-General as counsel in relation to a special investigation conducted by the Inspector-General.

22

Persons assisting taken not to be staff members of regulated entities

23

24

(9) While a person is a person assisting the Inspector-General, the person is taken not to be, and never to have been, a staff member of a regulated entity for the purposes of this Act.

25

26

27

Subdivision C—Public reporting

28

254 Annual report by Inspector-General

29

(1) As soon as practicable after the end of each financial year, the Inspector-General must prepare and give to the Minister, for

30

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Part 12 Inspector-General of the Commonwealth Integrity Commission

Division 4 Administrative provisions for the Inspector-General

Section 255

1 presentation to the Parliament, a report on the operations of the
2 Inspector-General during the financial year.

3 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
4 contains extra rules about periodic reports.

5 (2) An annual report prepared under subsection (1) must include such
6 information as is prescribed by the rules.

7 **255 Special reports by Inspector-General**

8 *Inspector-General may give Minister special reports*

9 (1) The Inspector-General may, from time to time, give the Minister,
10 for presentation to the Parliament, a special report on:

11 (a) the operations of the Inspector-General for a part of a
12 financial year; or

13 (b) any matter relating to, or arising in connection with, the
14 performance of the Inspector-General's functions, or the
15 exercise of the Inspector-General's powers, under this Act.

16 (2) If the Inspector-General gives a special report to the Minister under
17 subsection (1), the Minister must cause the report to be laid before
18 each House of the Parliament as soon as practicable after its receipt
19 by the Minister.

20 *Critical opinions and findings*

21 (3) The Inspector-General must not disclose information in a special
22 report prepared under subsection (1) that includes an opinion or
23 finding that is critical (either expressly or impliedly) of a regulated
24 entity, a State or Territory government entity or any other person
25 unless the Inspector-General has taken the action required by
26 subsection (4) or (5) before giving the special report to the
27 Minister.

28 Note: A special report must not include certain opinions, findings or
29 recommendations: see subsections 256(4) and (5).

30 (4) If the opinion or finding is critical of a regulated entity or a State or
31 Territory government entity, the Inspector-General must give the
32 head of the entity:

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- 1 (a) a statement setting out the opinion or finding; and
2 (b) a reasonable opportunity to appear before the
3 Inspector-General and to make submissions in relation to the
4 opinion or finding.
- 5 (5) If the opinion or finding is critical of a person (other than a
6 regulated entity or a State or Territory government entity), the
7 Inspector-General must give the person:
8 (a) a statement setting out the opinion or finding; and
9 (b) a reasonable opportunity to appear before the
10 Inspector-General and to make submissions in relation to the
11 opinion or finding.
- 12 (6) Submissions under subsection (4) or (5) may be made orally or in
13 writing.
- 14 (7) The head of a regulated entity or a State or Territory government
15 entity may:
16 (a) appear before the Inspector-General personally; or
17 (b) authorise another person to appear before the
18 Inspector-General on behalf of the entity head.
- 19 (8) A person referred to in subsection (5):
20 (a) may appear before the Inspector-General personally; or
21 (b) may, with the Inspector-General's approval, be represented
22 by another person.
- 23 *Disclosures relating to the CIC*
- 24 (9) For the purposes of this section:
25 (a) a reference to a regulated entity is taken to include a
26 reference to the CIC; and
27 (b) the Integrity Commissioner is taken to be the head of that
28 entity.

EXPOSURE DRAFT

Part 12 Inspector-General of the Commonwealth Integrity Commission

Division 4 Administrative provisions for the Inspector-General

Section 256

1 **256 Contents of annual or special report by Inspector-General**

2 *Section 270 certified information*

- 3 (1) An annual report under section 254, or a special report under
4 section 255, must not include section 270 certified information.

5 *Sensitive information*

- 6 (2) The Inspector-General may exclude information from an annual
7 report under section 254, or a special report under section 255, if
8 the Inspector-General is satisfied that:
9 (a) the information is sensitive information; and
10 (b) it is desirable in the circumstances to exclude the information
11 from the report.
- 12 (3) In deciding whether to exclude information under subsection (2),
13 the Inspector-General must seek to achieve an appropriate balance
14 between:
15 (a) the public interest that would be served by including the
16 information in the report; and
17 (b) the prejudicial consequences that might result from including
18 the information in the report.

19 *Certain opinions, findings and recommendations not to be*
20 *disclosed*

- 21 (4) The Inspector-General must not disclose information in an annual
22 report under section 254, or a special report under section 255, that
23 includes an opinion or finding:
24 (a) about whether a person engaged in corrupt conduct; or
25 (b) about corruption by, or the integrity of, a particular person.
- 26 (5) The Inspector-General must not disclose information in an annual
27 report under section 254, or a special report under section 255, that
28 includes an opinion or finding that is critical (either expressly or
29 impliedly) of, or a recommendation about:
30 (a) a parliamentarian; or
31 (b) the office of a parliamentarian; or
32 (c) a staff member of the office of a parliamentarian.
-

EXPOSURE DRAFT

EXPOSURE DRAFT

1 **Part 13—Parliamentary Joint Committee on the**
2 **Commonwealth Integrity Commission**
3

4 **257 Parliamentary Joint Committee on the Commonwealth**
5 **Integrity Commission**

- 6 (1) A joint committee of members of the Parliament, to be known as
7 the Parliamentary Joint Committee on the Commonwealth Integrity
8 Commission, is to be appointed according to the practice of the
9 Parliament as soon as practicable after the commencement of the
10 first session of each Parliament.
- 11 (2) The Committee is to consist of 11 members:
12 (a) 5 members of the Senate appointed by the Senate; and
13 (b) 6 members of the House of Representatives appointed by that
14 House.
- 15 (3) A majority of the Committee's members must be Government
16 members.

17 **258 Appointment of members of the Committee**

18 *Senators*

- 19 (1) The members who are Senators must be appointed by resolution of
20 the Senate on the nomination of the Leader of the Government in
21 the Senate.
- 22 (2) Before nominating the members, the Leader of the Government in
23 the Senate must consult with the Leader of each recognised
24 political party that is represented in the Senate and does not form
25 part of the Government.

26 *Members of the House of Representatives*

- 27 (3) The members who are members of the House of Representatives
28 must be appointed by resolution of the House on the nomination of
29 the Prime Minister.

EXPOSURE DRAFT

Section 258

- 1 (4) Before nominating the members, the Prime Minister must consult
2 with the Leader of each recognised political party that is
3 represented in the House and does not form part of the
4 Government.

5 *Composition of Committee to reflect representation of recognised*
6 *political parties*

- 7 (5) In nominating the members, the Prime Minister and the Leader of
8 the Government in the Senate must have regard to the desirability
9 of ensuring that the composition of the Committee reflects the
10 representation of recognised political parties in the Parliament.

11 *Eligibility for appointment*

- 12 (6) A member of the Parliament is not eligible for appointment as a
13 member of the Committee if the member is:
14 (a) a Minister; or
15 (b) the President of the Senate; or
16 (c) the Speaker of the House of Representatives.

17 *Term of office*

- 18 (7) A member holds office during the pleasure of the House of the
19 Parliament by which the member was appointed.
- 20 (8) A person ceases to hold office as a member of the Committee if:
21 (a) the House of Representatives expires by the passing of time
22 or is dissolved; or
23 (b) the person becomes the holder of an office specified in any of
24 the paragraphs of subsection (6); or
25 (c) the person ceases to be a member of the House of the
26 Parliament by which the person was appointed; or
27 (d) the person resigns the person's office as provided by
28 subsection (9).
- 29 (9) A member of the Committee appointed by a House of the
30 Parliament may resign the member's office by giving the Presiding
31 Officer of that House a written resignation.

EXPOSURE DRAFT

- 1 (10) Either House of the Parliament may appoint one of its members to
2 fill a vacancy amongst the members of the Committee appointed
3 by that House.

4 **259 Powers and proceedings of the Committee**

5 All matters relating to the powers and proceedings of the
6 Committee are to be determined by resolution of both Houses of
7 the Parliament.

8 **260 Functions of the Committee**

- 9 (1) The Committee has the following functions:
- 10 (a) to monitor and review the performance by the Integrity
11 Commissioner and the Inspector-General of their functions;
- 12 (b) to report to both Houses of the Parliament, with such
13 comments as it thinks fit, on any matter:
- 14 (i) connected with the performance of the functions of the
15 Integrity Commissioner or the Inspector-General; or
16 (ii) relating to the CIC or the Inspector-General;
17 that the Committee considers should be directed to the
18 attention of the Parliament;
- 19 (c) to examine:
- 20 (i) each annual report referred to in section 226 that is
21 prepared by the Integrity Commissioner; and
22 (ii) any special report prepared by the Integrity
23 Commissioner under section 227; and
24 (iii) each copy of a report on a corruption inquiry that is laid
25 before the Houses of the Parliament under section 188;
26 and
27 (iv) each copy of a report on an inquiry by the
28 Inspector-General under Part 12 that is laid before the
29 Houses of the Parliament under section 243; and
30 (v) each annual report prepared by the Inspector-General
31 under section 254; and
32 (vi) any special report prepared by the Inspector-General
33 under section 255;

EXPOSURE DRAFT

Section 261

- 1 and report to the Parliament on any matter appearing in, or
2 arising out of, any such report;
- 3 (d) to examine trends and changes in corruption among those
4 who are subject to this Act and report to both Houses of the
5 Parliament on any change that the Committee thinks
6 desirable:
- 7 (i) to the functions or powers of the Integrity
8 Commissioner or the Inspector-General; or
9 (ii) to the procedures followed by the Integrity
10 Commissioner or the Inspector-General; or
11 (iii) to the CIC's structure; or
12 (iv) to the staffing arrangements for the Inspector-General;
- 13 (e) to inquire into any question in connection with the
14 Committee's functions that is referred to it by either House of
15 the Parliament, and to report to that House upon that
16 question.
- 17 (2) Subsection (1) does not authorise the Committee:
- 18 (a) to investigate a corruption issue or a CIC corruption issue; or
19 (b) to review a decision made, or an operational activity carried
20 out, by an entrusted person in relation to a corruption
21 investigation, a corruption inquiry, or an inquiry under
22 Part 12, that is still being conducted; or
23 (c) to review sensitive operational information, or operational
24 methods, available to a law enforcement agency or a public
25 sector agency.

261 Disclosure of information to Committee

27 *Requests for Integrity Commissioner, Inspector-General or*
28 *Minister to give information to Committee*

- 29 (1) Subject to subsections (4) to (6), the Integrity Commissioner:
30 (a) must comply with a request by the Committee to give the
31 Committee information in relation to a corruption
32 investigation, or a corruption inquiry, that the Integrity
33 Commissioner has conducted or is conducting; and

EXPOSURE DRAFT

1 (b) must when requested by the Committee, and may at such
2 other times as the Integrity Commissioner thinks appropriate,
3 inform the Committee about the general performance of the
4 Integrity Commissioner's functions.

5 (2) Subject to subsections (4) to (6), the Inspector-General:

6 (a) must comply with a request by the Committee to give the
7 Committee information in relation to a special investigation,
8 or an inquiry under Part 12, that the Inspector-General has
9 conducted or is conducting; and

10 (b) must when requested by the Committee, and may at such
11 other times as the Inspector-General thinks appropriate,
12 inform the Committee about the general performance of the
13 Inspector-General's functions.

14 (3) Subject to subsections (4) to (6), the Minister must comply with a
15 request by the Committee to give the Committee information in
16 relation to an investigation of a CIC corruption issue that a special
17 investigator other than the Inspector-General has conducted or is
18 conducting.

19 *Prohibition on disclosure—information about operations or*
20 *methods of law enforcement agencies and public sector agencies*

21 (4) A person must not give, and must not be required to give, the
22 following information to the Committee:

23 (a) sensitive operational information, or information about
24 operational methods, available to a law enforcement agency
25 or a public sector agency;

26 (b) information about particular operations that are being, or are
27 proposed to be, undertaken by the Integrity Commissioner,
28 the Inspector-General or a special investigator.

29 *Prohibition on disclosure—section 270 certified information*

30 (5) A person must not give, and must not be required to give,
31 information to the Committee if:

32 (a) the information is section 270 certified information; and

33 (b) the disclosure of the information to the Committee would
34 contravene the certificate issued under section 270.

EXPOSURE DRAFT

Section 262

- 1 *Sensitive information*
- 2 (6) A person may decide not to give information to the Committee
3 (whether in response to a request under this section or otherwise) if
4 the person is satisfied that:
- 5 (a) the information is sensitive information; and
6 (b) the public interest that would be served by giving the
7 information to the Committee is outweighed by the
8 prejudicial consequences that might result from giving the
9 information to the Committee.
- 10 (7) If the Integrity Commissioner or Inspector-General does not give
11 information to the Committee because of subsection (6), the
12 Committee may refer the request to the Minister.
- 13 (8) If the Committee refers the request to the Minister, the Minister:
- 14 (a) must determine in writing whether:
- 15 (i) the information is sensitive information; and
16 (ii) if it is, whether the public interest that would be served
17 by giving the information to the Committee is
18 outweighed by the prejudicial consequences that might
19 result from giving the information to the Committee;
20 and
- 21 (b) must provide copies of that determination to:
- 22 (i) the Integrity Commissioner or the Inspector-General (as
23 the case requires); and
24 (ii) the Committee; and
- 25 (c) must not disclose the Minister's reasons for determining the
26 question referred to in subparagraph (a)(ii) in the way stated
27 in the determination.
- 28 (9) A determination made by the Minister under subsection (8) is not a
29 legislative instrument.

262 Ombudsman to brief Committee about controlled operations

- 30
- 31 (1) At least once in each year the Ombudsman must provide a briefing
32 to the Committee about the Integrity Commissioner's involvement

EXPOSURE DRAFT

- 1 in controlled operations under Part IAB of the *Crimes Act 1914*
2 during the preceding 12 months.
- 3 (2) For the purposes of receiving a briefing from the Ombudsman
4 under subsection (1), the Committee must meet in private.

EXPOSURE DRAFT

Part 14 Confidentiality requirements

Section 263

1 **Part 14—Confidentiality requirements**
2

3 **263 Key concepts for this Part**

4 *Authorised disclosers*

- 5 (1) Each of the following is an *authorised discloser*:
6 (a) the Integrity Commissioner;
7 (b) the Inspector-General.

8 *Entrusted persons*

- 9 (2) A person is an *entrusted person* if the person is:
10 (a) a staff member of the CIC; or
11 (b) a special investigator; or
12 (c) the Inspector-General; or
13 (d) a person assisting the Inspector-General (see
14 subsection 253(8)).

15 **264 Confidentiality requirements for entrusted persons**

- 16 (1) A person who is, or has been, an entrusted person commits an
17 offence if:
18 (a) the person (whether directly or indirectly and whether while
19 or after ceasing to be an entrusted person):
20 (i) makes a record of any information; or
21 (ii) divulges or communicates any information; and
22 (b) the person acquired the information:
23 (i) because of the person being an entrusted person; or
24 (ii) in the course of carrying out the person's duties as an
25 entrusted person; and
26 (c) the information was disclosed or obtained under the
27 provisions of, or for the purposes of, this Act.

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

EXPOSURE DRAFT

- 1 (2) Subsection (1) has effect subject to sections 265 and 266.
- 2 (3) To avoid doubt, if a corruption issue is investigated jointly by the
3 Integrity Commissioner and either a regulated entity or a State or
4 Territory government entity, any information that a staff member
5 of the CIC acquires in the course of participating in the joint
6 investigation is taken:
- 7 (a) to have been acquired by the staff member because of the
8 staff member being a staff member of the CIC; and
- 9 (b) to have been disclosed or obtained under the provisions of, or
10 for the purposes of, this Act.

11 **265 Exceptions to confidentiality requirements**

12 *Purposes connected with functions and powers of Integrity* 13 *Commissioner, Inspector-General or special investigator*

- 14 (1) Subsection 264(1) does not prevent a person from making a record
15 of information, or divulging or communicating information, if the
16 person:
- 17 (a) acquired the information in the performance of the person's
18 duties as an entrusted person; and
- 19 (b) makes the record, or divulges or communicates the
20 information:
- 21 (i) for the purposes of a corruption investigation; or
22 (ii) for the purposes of an inquiry by the Inspector-General
23 under Part 12; or
24 (iii) for purposes otherwise connected with the exercise of
25 the powers, or the performance of the functions, of the
26 Integrity Commissioner, the Inspector-General or a
27 special investigator, under this Act; and
- 28 (c) to the extent that the information is hearing material or
29 derivative material—divulges or communicates the material
30 in accordance with:
- 31 (i) any direction given under subsection 107(1) (about
32 confidentiality for hearings); and
33 (ii) Subdivision F of Division 2 of Part 8.

EXPOSURE DRAFT

Part 14 Confidentiality requirements

Section 265

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

3 (2) Without limiting subsection (1), subsection 264(1) does not
4 prevent a person from communicating information to another
5 person if:

6 (a) the person acquired the information in the performance of the
7 person's duties as a staff member of the CIC; and

8 (b) a provision of this Act, or a legislative instrument made
9 under it, requires or permits the Integrity Commissioner to
10 communicate that information to the other person; and

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

14 (i) any direction given under subsection 107(1) (about
15 confidentiality for hearings); and

16 (ii) Subdivision F of Division 2 of Part 8.

17 Note 1: Various provisions in this Act require information sharing in relation
18 to a corruption issue: see, for example, sections 65 and 74.

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

21 (3) Without limiting subsection (1), subsection 264(1) does not
22 prevent a person from communicating information to another
23 person if:

24 (a) the person acquired the information in the performance of the
25 person's duties as the Inspector-General or a person assisting
26 the Inspector-General (see subsection 253(8)); and

27 (b) a provision of this Act, or a legislative instrument made
28 under it, requires or permits the Inspector-General to
29 communicate that information to the other person; and

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

33 (i) any direction given under subsection 107(1) (about
34 confidentiality for hearings); and

35 (ii) Subdivision F of Division 2 of Part 8.

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

EXPOSURE DRAFT

- 1 (4) Without limiting subsection (1), subsection 264(1) does not
2 prevent a person from communicating information to another
3 person if:
4 (a) the person acquired the information in the performance of the
5 person's duties as a special investigator; and
6 (b) a provision of this Act, or a legislative instrument made
7 under it, requires or permits the special investigator to
8 communicate that information to the other person; and
9 (c) to the extent that the information is hearing material or
10 derivative material—the person communicates the material in
11 accordance with:
12 (i) any direction given under subsection 107(1) (about
13 confidentiality for hearings); and
14 (ii) Subdivision F of Division 2 of Part 8.

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

17 *Disclosure to a relevant entity*

- 18 (5) Subsection 264(1) does not prevent an authorised discloser from
19 disclosing information to the following:
20 (a) a Commonwealth integrity office holder;
21 (b) an Ombudsman of a State or Territory;
22 (c) the head of a regulated entity;
23 (d) the head of a police force of a State or Territory;
24 (e) the head of a State or Territory integrity agency;
25 (f) the head of another State or Territory government entity;
26 if:
27 (g) the authorised discloser is satisfied that, having regard to the
28 functions of the person or entity concerned, it is appropriate
29 to do so; and
30 (h) to the extent that the information is hearing material or
31 derivative material—the authorised discloser discloses the
32 material in accordance with:
33 (i) any direction given under subsection 107(1) (about
34 confidentiality for hearings); and
35 (ii) Subdivision F of Division 2 of Part 8.

EXPOSURE DRAFT

Part 14 Confidentiality requirements

Section 265

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

3 (6) Before an authorised discloser discloses information to a person
4 under subsection (5), the authorised discloser must be satisfied that
5 a law of the Commonwealth, a State or a Territory makes provision
6 corresponding to the provision made by section 264 and this
7 section with respect to the confidentiality of information acquired
8 by that person.

9 *Disclosure required by another Commonwealth law*

10 (7) Subsection 264(1) does not prevent a person from disclosing
11 information if the disclosure is required under another law of the
12 Commonwealth.

13 Note: A defendant bears an evidential burden in relation to the matter in
14 subsection (7): see subsection 13.3(3) of the *Criminal Code*.

15 *Disclosure to particular person*

16 (8) An authorised discloser may disclose information to a particular
17 person if the authorised discloser is satisfied that it is necessary to
18 do so in order to protect that or another person's life or physical
19 safety.

20 *Section 270 certified information*

21 (9) An authorised discloser must not disclose information to a person
22 under subsection (5) or (8) if:
23 (a) the information is section 270 certified information; and
24 (b) the disclosure of the information to the person would
25 contravene the certificate issued under section 270.

26 *This section not limited by other provisions*

27 (10) This section is not limited by any other provision of this Act.

1 **266 Disclosure by authorised discloser in public interest etc.**

2 (1) If the Integrity Commissioner is satisfied that it is in the public
3 interest to do so, the Integrity Commissioner may disclose
4 information to the public, or a section of the public, about:

5 (a) the performance of the Integrity Commissioner's functions;
6 or

7 (b) the exercise of the Integrity Commissioner's powers; or

8 (c) an investigation of a corruption issue conducted by the
9 Integrity Commissioner; or

10 (d) a corruption inquiry conducted by the Integrity
11 Commissioner.

12 (2) If the Inspector-General is satisfied that it is in the public interest to
13 do so, the Inspector-General may disclose information to the
14 public, or a section of the public, about:

15 (a) the performance of the Inspector-General's functions; or

16 (b) the exercise of the Inspector-General's powers; or

17 (c) an inquiry under Part 12 conducted by the Inspector-General.

18 (3) Subsections (1) and (2) have effect:

19 (a) subject to subsections (4) to (8) and section 267; and

20 (b) despite any other provision of this Act.

21 (4) An authorised discloser must not disclose under subsection (1) or
22 (2) information that includes an opinion or finding:

23 (a) about whether a particular person engaged in corrupt
24 conduct; or

25 (b) about corruption by, or the integrity of, a particular person.

26 (5) However, subsection (4) does not prevent an authorised discloser
27 from disclosing under subsection (1) or (2) information that
28 includes an opinion or finding about whether a person engaged in
29 corrupt conduct while a staff member of a law enforcement
30 agency.

31 (6) An authorised discloser must not disclose under subsection (1) or
32 (2) information that is section 270 certified information.

EXPOSURE DRAFT

Part 14 Confidentiality requirements

Section 267

- 1 (7) In deciding whether to disclose under subsection (1) or (2)
2 information that the authorised discloser is satisfied is sensitive
3 information, the authorised discloser must seek to achieve an
4 appropriate balance between:
- 5 (a) the public interest that would be served by disclosing the
6 information; and
 - 7 (b) the prejudicial consequences that might result from
8 disclosing the information.
- 9 (8) An authorised discloser must not disclose under subsection (1) or
10 (2) information that relates to a corruption investigation, a
11 corruption inquiry or an inquiry under Part 12, that is still being
12 conducted, unless the authorised discloser is satisfied that:
- 13 (a) both:
 - 14 (i) the disclosure is necessary to correct a mistake of fact in
15 relation to the administration of this Act; and
 - 16 (ii) the integrity of that administration will be at risk if the
17 mistake of fact is not corrected; or
 - 18 (b) exceptional circumstances exist that justify the disclosure.

19 **267 Opportunity to be heard**

20 *Critical opinions and findings*

- 21 (1) An authorised discloser must take the action required by
22 subsection (2) or (3) of this section before disclosing information
23 under section 266 if:
- 24 (a) the information includes an opinion or finding that is critical
25 (either expressly or impliedly) of a regulated entity, a State or
26 Territory government entity or any other person; and
 - 27 (b) for a disclosure by the Integrity Commissioner—the
28 information relates to an investigation of a corruption issue
29 under this Act; and
 - 30 (c) for a disclosure by the Inspector-General—the information
31 relates to an inquiry by the Inspector-General under Part 12.

EXPOSURE DRAFT

1

Opportunity to appear and make submissions

2

(2) If the opinion or finding is critical of a regulated entity or a State or Territory government entity, the authorised discloser must give the head of the entity:

3

4

5

(a) a statement setting out the opinion or finding; and

6

(b) a reasonable opportunity to appear before the authorised discloser and to make submissions in relation to the opinion or finding.

8

9

(3) If the opinion or finding is critical of a person (other than a regulated entity or a State or Territory government entity), the authorised discloser must give the person:

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11

12

(a) a statement setting out the opinion or finding; and

13

(b) a reasonable opportunity to appear before the authorised discloser and to make submissions in relation to the opinion or finding.

14

15

16

(4) Submissions under subsection (3) or (4) may be made orally or in writing.

17

18

(5) The head of a regulated entity or of a State or Territory government entity may:

19

20

(a) appear before the authorised discloser personally; or

21

(b) authorise another person to appear before the authorised discloser on behalf of the entity head.

22

23

(6) A person referred to in subsection (3):

24

(a) may appear before the authorised discloser personally; or

25

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

26

27

Disclosures by Inspector-General relating to the CIC

28

(7) For the purposes of this section:

29

(a) a reference to a regulated entity is taken to include, in relation to a disclosure of information by the Inspector-General, a reference to the CIC; and

30

31

(b) the Integrity Commissioner is taken to be the head of that entity.

32

33

EXPOSURE DRAFT

Part 14 Confidentiality requirements

Section 268

268 Entrusted persons generally not compellable in court proceedings

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- (1) This section applies to:
 - (a) proceedings before a court (whether exercising federal jurisdiction or not); and
 - (b) proceedings before any tribunal, authority or person having power to require the production of documents or the answering of questions.
- (2) A person who is, or has been, an entrusted person is not compellable in any proceedings to which this section applies:
 - (a) to disclose any information that:
 - (i) the person acquired because the person is or was an entrusted person; and
 - (ii) was disclosed or obtained under the provisions of, or for the purposes of, this Act; or
 - (b) to produce any document that:
 - (i) has come into the person's custody or control in the course of, or because of, the performance of the person's duties under this Act; and
 - (ii) was produced under the provisions of, or for the purposes of, this Act.
- (3) Subsection (1) does not apply to a proceeding if:
 - (a) any of the following persons is a party to the proceeding in the person's official capacity:
 - (i) a CIC office holder;
 - (ii) a delegate of the Integrity Commissioner;
 - (iii) a person appointed or authorised by the Integrity Commissioner to exercise a power or perform a function under this Act;
 - (iv) a special investigator;
 - (v) the Inspector-General; or
 - (b) the proceeding is brought for the purposes of carrying into effect a provision of this Act; or
 - (c) the proceeding is a prosecution, civil penalty proceeding or confiscation proceeding brought as a result of:

EXPOSURE DRAFT

- 1 (i) a corruption investigation, a corruption inquiry, or an
2 inquiry by the Inspector-General under Part 12; or
3 (ii) an investigation of a corruption issue that the Integrity
4 Commissioner manages or oversees.

5 (4) In this section:

6 *produce* includes permit access to, and *production* has a
7 corresponding meaning.

8 **269 Confidentiality requirements for persons who receive**
9 **information about certain corruption investigations and**
10 **corruption inquiries**

11 (1) This section applies if:

- 12 (a) the Integrity Commissioner or another staff member of the
13 CIC discloses, communicates or divulges information to
14 another person (the *recipient*) who is not an entrusted person;
15 and
16 (b) the information relates to the investigation of a corruption
17 issue or to a corruption inquiry; and
18 (c) the investigation or inquiry is still being conducted at the
19 time the information is disclosed, communicated or divulged.

20 (2) The Integrity Commissioner must, by written notice given to the
21 recipient, impose such conditions on:

- 22 (a) the making of a record of the information by the recipient or
23 other persons; and
24 (b) the disclosure, communication or divulging of the
25 information by the recipient or other persons;

26 as the Integrity Commissioner considers appropriate to:

27 (c) prevent prejudice to the investigation or inquiry, or any
28 action taken as a result of the investigation or inquiry; and

29 (d) protect the identity of:

30 (i) any person of interest to the investigation or inquiry;
31 and

32 (ii) any person who has given, or who the Integrity
33 Commissioner reasonably believes may give,
34 information to the Integrity Commissioner in connection

EXPOSURE DRAFT

1 **Part 15—Attorney-General's certificates about**
2 **release of information**
3

4 **270 Attorney-General's certificate in relation to particular**
5 **information**

- 6 (1) The Attorney-General may certify that disclosure of:
7 (a) information that is about a matter specified in the certificate;
8 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:

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Part 15 Attorney-General's certificates about release of information

Section 270

- 1 (i) the criminal law of the Commonwealth, a State or
2 Territory or a foreign country; or
3 (ii) a civil penalty provision; or
4 (f) prejudice the effectiveness of the operational methods, or
5 investigative practices or techniques, of agencies responsible
6 for the enforcement of:
7 (i) the criminal law of the Commonwealth, a State or
8 Territory or a foreign country; or
9 (ii) a civil penalty provision; or
10 (g) prejudice the proper performance of the functions of ACIC or
11 the IGIS; or
12 (h) endanger a person's life or physical safety.
- 13 (3) The certificate must specify the kind of disclosure that would be
14 contrary to the public interest.
- 15 (4) Without limiting subsection (3), the kind of disclosure that may be
16 specified in the certificate includes:
17 (a) disclosure generally; or
18 (b) disclosure to a specified person or group of persons; or
19 (c) disclosure otherwise than to a specified person or group of
20 persons.
- 21 (5) Without limiting subsection (1), a certificate under that subsection
22 may provide that the disclosure of information about the existence
23 or non-existence of:
24 (a) information about a specified matter; or
25 (b) a document or thing;
26 would be contrary to the public interest because it would:
27 (c) prejudice the security, defence or international relations of
28 the Commonwealth; or
29 (d) prejudice the proper performance of the functions of ACIC or
30 the IGIS.
- 31 (6) The Attorney-General must give a copy of the certificate to:
32 (a) the Integrity Commissioner; and
33 (b) the Inspector-General; and
34 (c) either or both of the following:

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- 1 (i) if the information or the document referred to in
2 subsection (1) is in the possession of a regulated
3 entity—the head of the regulated entity;
4 (ii) if the information or the document referred to in
5 subsection (1) is in the possession of a person—the
6 person.

7 (7) For the purposes of this Act, a disclosure *contravenes* a certificate
8 issued under this section if the disclosure would be contrary to the
9 public interest according to the terms of the certificate.

10 **271 Integrity Commissioner's access to section 270 certified** 11 **information**

- 12 (1) If:
13 (a) a person who is a parliamentarian, the head of a regulated
14 entity or a Commonwealth integrity office holder would, but
15 for this subsection, be required under section 36, 38, 43, 47,
16 48 or 66 to give the Integrity Commissioner information or a
17 document; and
18 (b) the information is, or the document contains, section 270
19 certified information;
20 the person must not give the Integrity Commissioner the
21 information or document if doing so would contravene the
22 certificate issued under section 270.
- 23 (2) If:
24 (a) a person is served with a notice under Division 1 of Part 8:
25 (i) to give information; or
26 (ii) to produce a document or thing; and
27 (b) the information is, or the document or thing contains,
28 section 270 certified information;
29 the person must not comply with the notice if doing so would
30 contravene the certificate issued under section 270.
- 31 (3) If:
32 (a) a person is served with a summons to attend a hearing under
33 Division 2 of Part 8; and
34 (b) at the hearing the person is required:
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- 1 (i) to give information; or
2 (ii) to produce a document or thing; and
3 (c) the information is, or the document or thing contains,
4 section 270 certified information;
5 the person must not comply with the requirement if doing so would
6 contravene the certificate issued under section 270.

7 **272 Inspector-General's access to section 270 certified information**

- 8 (1) If:
9 (a) either:
10 (i) the Minister or the Integrity Commissioner would, but
11 for this subsection, be required under section 232 to
12 give the Inspector-General information or a document;
13 or
14 (ii) the Integrity Commissioner or the head of a regulated
15 entity would, but for this subsection, be required under
16 section 233 to give the Inspector-General information or
17 a document; and
18 (b) the information is, or the document contains, section 270
19 certified information;
20 the person in relation to whom subparagraph (a)(i) or (ii) applies
21 must not give the Inspector-General the information or document if
22 doing so would contravene the certificate issued under section 270.
- 23 (2) If:
24 (a) a person is served with a notice under section 237:
25 (i) to give information; or
26 (ii) to produce a document or thing; and
27 (b) the information is, or the document or thing contains,
28 section 270 certified information;
29 the person must not comply with the notice if doing so would
30 contravene the certificate issued under section 270.

31 **273 Giving another agency section 270 certified information**

- 32 (1) If:
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EXPOSURE DRAFT

- 1 (a) the Integrity Commissioner would, but for this section, be
2 required under section 54 to give a Commonwealth integrity
3 office holder information or a document; and
4 (b) the information is, or the document contains, section 270
5 certified information;
6 the Integrity Commissioner must not give the information or
7 document to the Commonwealth integrity office holder if doing so
8 would contravene the certificate issued under section 270.

- 9 (2) If:
10 (a) the head of a regulated entity (the *first entity*) would, but for
11 this section, be required under section 66 to give information
12 or a document to the head of either of the following (the
13 *second entity*):
14 (i) another regulated entity;
15 (ii) a State or Territory government entity; and
16 (b) the information is, or the document contains, section 270
17 certified information;
18 the head of the first entity must not give the information or
19 document to the head of the second entity if doing so would
20 contravene the certificate issued under section 270.

21 **274 Integrity Commissioner giving section 270 certified information** 22 **to entity head or special investigator**

- 23 If:
24 (a) either of the following applies:
25 (i) the Integrity Commissioner would, but for this section,
26 be required or allowed under subsection 52(2) or
27 section 65 or 74 to give information or a document to
28 the head of a regulated entity or a State or Territory
29 government entity;
30 (ii) the Integrity Commissioner would, but for this section,
31 be required under subsection 194(7) or (8) to give
32 information or a document to a special investigator; and
33 (b) the information is, or the document contains, section 270
34 certified information;

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Part 15 Attorney-General's certificates about release of information

Section 275

1 the Integrity Commissioner must not give the information or
2 document to the entity head or to the special investigator, if doing
3 so would contravene the certificate issued under section 270.

4 **275 Inspector-General giving section 270 certified information to** 5 **Integrity Commissioner or special investigator**

6 If:

7 (a) the Inspector-General would, but for this section, be required
8 under subsection 194(10) or (11) to give information or a
9 document to the Integrity Commissioner or a special
10 investigator; and

11 (b) the information is, or the document contains, section 270
12 certified information;

13 the Inspector-General must not give the information or document
14 to the Integrity Commissioner, or to the special investigator, if
15 doing so would contravene the certificate issued under section 270.

1 **Part 16—Miscellaneous**
2

3 **276 Victimisation**

- 4 (1) A person commits an offence if the person causes, or threatens to
5 cause, detriment to another person (the *victim*) on the ground that
6 the victim, or any other person:
7 (a) has referred or notified, or may refer or notify, a corruption
8 issue to the Integrity Commissioner; or
9 (b) has notified, or may notify, an allegation, or information, that
10 raises a corruption issue to another person who is required or
11 permitted by this Act to refer or notify corruption issues to
12 the Integrity Commissioner; or
13 (c) has referred or notified, or may refer or notify, a CIC
14 corruption issue to the Minister; or
15 (d) has notified, or may notify, an allegation, or information, that
16 raises a CIC corruption issue to another person who is
17 required or permitted by this Act to refer or notify CIC
18 corruption issues to the Minister; or
19 (e) has given, or may give, information to the Integrity
20 Commissioner, a special investigator or the
21 Inspector-General; or
22 (f) has produced, or may produce, a document or thing to the
23 Integrity Commissioner, a special investigator or the
24 Inspector-General.

25 Penalty: Imprisonment for 2 years.

- 26 (2) For the purposes of subsection (1), a threat may be:
27 (a) express or implied; or
28 (b) conditional or unconditional.
- 29 (3) In a prosecution for an offence against subsection (1), it is not
30 necessary to prove that the person threatened actually feared that
31 the threat would be carried out.
- 32 (4) Subsection (1) does not apply if the detriment consists of:

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Section 277

- 1 (a) making a vexatious complainant declaration; or
2 (b) doing, or refusing to do, a thing in accordance with a
3 vexatious complainant declaration.

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

6 **277 Concealing corrupt conduct**

7 *Offence*

- 8 (1) A person commits an offence if:
9 (a) the person is the head of any of the following regulated
10 entities:
11 (i) a law enforcement agency;
12 (ii) a public sector agency;
13 (iii) a higher education provider;
14 (iv) a research body; and
15 (b) the entity head knows of information that would lead a
16 reasonable person to believe that another person has engaged
17 in conduct; and
18 (c) the other person is or was a staff member of the entity; and
19 (d) if the other person had engaged in the conduct mentioned in
20 paragraph (b), the conduct would have amounted to the other
21 person engaging in corrupt conduct while a staff member of
22 the entity; and
23 (e) the entity head conceals the information from an
24 investigating or prosecuting authority (see subsection (7));
25 and
26 (f) the entity head conceals the information with the intention of
27 ensuring that the matter is not subject to:
28 (i) a criminal investigation; or
29 (ii) a prosecution; or
30 (iii) a corruption investigation or corruption inquiry.

31 Penalty: Imprisonment for 7 years.

- 32 (2) Absolute liability applies to paragraph (1)(a).

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Exception

- (3) Subsection (1) does not apply if:
 - (a) the investigating or prosecuting authority is the Integrity Commissioner; and
 - (b) the entity head is not required under this Act to notify any of the following of a corruption issue in relation to the information:
 - (i) the Integrity Commissioner;
 - (ii) if the entity is an intelligence agency—the IGIS.

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

Certain matters not required to be proved

- (4) Subsection (1) applies:
 - (a) whether or not any person actually believes the matter mentioned in paragraph (1)(b); and
 - (b) whether or not the other person mentioned in paragraph (1)(b) can be identified as a specific person; and
 - (c) whether or not the other person mentioned in paragraph (1)(b) actually engaged in corrupt conduct.

Geographical jurisdiction

- (5) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

Interpretation

- (6) For the purposes of this section:
 - (a) the CIC is taken to be a **law enforcement agency**; and
 - (b) the Integrity Commissioner is taken to be the **head** of that agency; and
 - (c) a staff member of the CIC is taken to be a **staff member** of that agency.
- (7) In this section:

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Section 278

- 1 *investigating or prosecuting authority* means:
- 2 (a) any of the following:
- 3 (i) the Integrity Commissioner;
- 4 (ii) the AFP;
- 5 (iii) ACIC;
- 6 (iv) AUSTRAC;
- 7 (v) the ACCC;
- 8 (vi) APRA;
- 9 (vii) ASIC;
- 10 (viii) the ATO;
- 11 (ix) the Director of Public Prosecutions; or
- 12 (b) if the regulated entity is an intelligence agency—the IGIS; or
- 13 (c) if the regulated entity is the CIC—a special investigator; or
- 14 (d) in any case—any other person or authority who is authorised
- 15 by or under a law of the Commonwealth, a State or a
- 16 Territory to investigate or prosecute the matter.

278 Making an allegation or giving information to the CIC that is false or misleading

- 19 (1) A person commits an offence if:
- 20 (a) the person makes an allegation or gives information to the
- 21 Integrity Commissioner or another staff member of the CIC;
- 22 and
- 23 (b) the person does so knowing that the allegation or
- 24 information:
- 25 (i) is false or misleading; or
- 26 (ii) omits any matter or thing without which the allegation
- 27 or information is misleading.
- 28 Penalty: Imprisonment for 2 years.
- 29 (2) Subsection (1) does not apply if:
- 30 (a) both:
- 31 (i) the allegation or information is evidence of a corruption
- 32 issue or a CIC corruption issue; and

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- 1 (ii) the person is required by this Act to give the evidence to
2 the Integrity Commissioner; or
3 (b) the person engages in the conduct referred to in paragraph (a)
4 in the proper performance of the person's duties as a staff
5 member of the CIC.

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

- 8 (3) Subsection (1) does not apply as a result of subparagraph (1)(b)(i)
9 if the allegation or information is not false or misleading in a
10 material particular.

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

- 13 (4) Subsection (1) does not apply as a result of subparagraph (1)(b)(ii)
14 if the allegation or information did not omit any matter or thing
15 without which the allegation or information is misleading in a
16 material particular.

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

19 **279 Protecting staff members who notify corruption issues**

20 *Individuals protected*

- 21 (1) This section applies if:
22 (a) an individual who is or was a staff member of a regulated
23 entity:
24 (i) notifies the head or another staff member of that entity
25 of an allegation, or information, that raises a corruption
26 issue that relates to that entity; and
27 (ii) does so with the intention that the corruption issue be
28 referred or notified to the Integrity Commissioner under
29 this Act; or
30 (b) an individual notifies another person of a CIC corruption
31 issue as required by section 190 or 191.

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Part 16 Miscellaneous

Section 279

1

Protection from liability and enforcement of remedies

2

(2) The individual is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the notification.

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(3) No contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the individual on the basis of the notification.

5

6

7

(4) Without limiting subsections (2) and (3):

8

(a) the individual has absolute privilege in proceedings for defamation in respect of the notification; and

9

10

(b) a contract to which the individual is a party must not be terminated on the basis that the notification constitutes a breach of the contract.

11

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13

Liability for false or misleading statements etc. unaffected

14

(5) Subsections (2) to (4) do not apply to civil, criminal or administrative liability (including disciplinary action) for knowingly making a statement that is false or misleading.

15

16

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(6) Without limiting subsection (5), subsections (2) to (4) do not apply to liability for an offence against section 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code*.

18

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Designated publication restrictions

21

(7) Subsections (2) to (4) do not apply to civil, criminal or administrative liability (including disciplinary action) for making a disclosure that contravenes a designated publication restriction if the person making the disclosure:

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24

25

(a) knows that the disclosure contravenes the designated publication restriction; and

26

27

(b) does not have a reasonable excuse for that contravention.

28

(8) For the purposes of this Act, each of the following is a **designated publication restriction**:

29

30

(a) section 121 of the *Family Law Act 1975*;

31

(b) section 91X of the *Migration Act 1958*;

- 1 (c) section 110X of the *Child Support (Registration and*
2 *Collection) Act 1988*;
- 3 (d) a non-publication order (within the meaning of Part XAA of
4 the *Judiciary Act 1903*) of any court;
- 5 (e) a suppression order (within the meaning of Part XAA of the
6 *Judiciary Act 1903*) of any court;
- 7 (f) an order under section 31, 38J or 38L of the *National*
8 *Security Information (Criminal and Civil Proceedings) Act*
9 *2004*;
- 10 (g) an order under section 28 of the *Witness Protection Act 1994*;
- 11 (h) an order under subsection 35(3) or (4) of the *Administrative*
12 *Appeals Tribunal Act 1975*;
- 13 (i) a direction under subsection 35AA(2) of the *Administrative*
14 *Appeals Tribunal Act 1975*;
- 15 (j) section 21C of the *Australian Crime Commission Act 2002*;
- 16 (k) a direction under subsection 25A(9) of the *Australian Crime*
17 *Commission Act 2002*;
- 18 (l) section 29B of the *Australian Crime Commission Act 2002*;
- 19 (m) a direction under section 107 of this Act;
- 20 (n) section 109 of this Act.

21 *Individual's liability for own conduct not affected*

- 22 (9) To avoid doubt, subsections (2) to (4) do not affect an individual's
23 liability for corrupt conduct engaged in by the individual.

24 **280 Legal and financial assistance in relation to applications for**
25 **administrative review**

- 26 (1) A person may apply to the Attorney-General for assistance in
27 respect of the person's application, or proposed application, to the
28 Federal Court or the Federal Circuit Court under the *Administrative*
29 *Decisions (Judicial Review) Act 1977* for an order of review in
30 respect of a matter arising under this Act.
- 31 (2) The Attorney-General may, if satisfied that:
32 (a) it would involve substantial hardship to the person to refuse
33 the application made to the Attorney-General; or

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Section 281

- 1 (b) the circumstances of the case are of such a special nature that
2 the application should be granted;
3 authorise the Commonwealth to provide the person with legal or
4 financial assistance, determined by the Attorney-General, in
5 respect of the person's application to the Federal Court or the
6 Federal Circuit Court, as the case may be.
- 7 (3) Legal or financial assistance may be given:
8 (a) unconditionally; or
9 (b) subject to such conditions as the Attorney-General
10 determines.
- 11 (4) An instrument that determines the conditions on which legal or
12 financial assistance may be given is not a legislative instrument.

281 Immunity from civil proceedings for entrusted persons and other persons assisting

- 13
14
- 15 (1) An entrusted person is not liable to civil proceedings in relation to
16 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 entrusted person's functions, powers or duties
19 under, or in relation to, this Act.
- 20 (2) A person whom the Integrity Commissioner requests, in writing, to
21 assist a staff member of the CIC is not liable to civil proceedings in
22 relation to an act done, or omitted to be done, in good faith for the
23 purpose of assisting the staff member.
- 24 (3) A person whom a special investigator requests, in writing, to assist
25 the special investigator is not liable to civil proceedings in relation
26 to an act done, or omitted to be done, in good faith for the purpose
27 of assisting the special investigator.
- 28 (4) A person whom the Inspector-General requests, in writing, to assist
29 the Inspector-General is not liable to civil proceedings in relation
30 to an act done, or omitted to be done, in good faith for the purpose
31 of assisting the Inspector-General.
- 32 (5) If:

- 1 (a) information or evidence has been given to the Integrity
2 Commissioner, a special investigator or the
3 Inspector-General; or
4 (b) a document or thing has been produced to the Integrity
5 Commissioner, a special investigator or the
6 Inspector-General;
7 a person is not liable to an action, suit or proceeding in respect of
8 loss, damage or injury of any kind suffered by another person by
9 reason only that the information or evidence was given or the
10 document or thing was produced.

11 **282 Immunities from certain State and Territory laws**

- 12 An entrusted person is not required under, or by reason of, a law of
13 a State or Territory:
14 (a) to obtain or have a licence or permission for doing any act or
15 thing in the exercise of powers or the performance of duties
16 as an entrusted person; or
17 (b) to register any vehicle, vessel, animal or article belonging to
18 the Commonwealth.

19 **283 Relationship of this Act to parliamentary privileges and 20 immunities**

- 21 To avoid doubt, this Act does not affect the law relating to the
22 powers, privileges and immunities of any of the following:
23 (a) each House of the Parliament;
24 (b) the members of each House of the Parliament;
25 (c) the committees of each House of the Parliament and joint
26 committees of both Houses of the Parliament.

27 **284 Protecting journalists' informants**

- 28 (1) If a journalist has promised an informant not to disclose the
29 informant's identity, neither the journalist nor the journalist's
30 employer is required in connection with:
31 (a) the referral or notification of a corruption issue or a CIC
32 corruption issue under this Act; or

EXPOSURE DRAFT

Part 16 Miscellaneous

Section 285

- 1 (b) a corruption investigation or corruption inquiry; or
2 (c) an inquiry by the Inspector-General under Part 12;
3 to answer any question, give any information or produce any
4 document that would disclose the identity of the informant or
5 enable that identity to be ascertained.
- 6 (2) If the journalist is a staff member of a regulated entity, then the
7 reference in subsection (1) to the journalist's employer is taken to
8 include a reference to the head of the entity.
- 9 (3) In this Act:
- 10 ***informant*** means a person who gives information:
11 (a) to another person who is working in a professional capacity
12 as journalist; and
13 (b) in the expectation that the information may be disseminated
14 in the form of:
15 (i) news, current affairs, a documentary or other content in
16 news media; or
17 (ii) commentary or opinion on, or analysis of, news, current
18 affairs, a documentary or other content in news media.
- 19 ***journalist*** means any person who is engaged, in a professional
20 capacity, in the business of reporting news, presenting current
21 affairs or expressing editorial or other content in news media.

285 Delegation by CIC office holders

Delegation by the Integrity Commissioner

- 24 (1) The Integrity Commissioner may delegate all or any of the
25 Integrity Commissioner's functions or powers to:
26 (a) the Law Enforcement Integrity Commissioner or the Public
27 Sector Integrity Commissioner; or
28 (b) an Assistant Integrity Commissioner; or
29 (c) a staff member of the CIC who is an SES employee or acting
30 SES employee.

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1 *Subdelegation by Law Enforcement Integrity Commissioner or*
2 *Public Sector Integrity Commissioner*

3 (2) The Law Enforcement Integrity Commissioner may subdelegate to
4 a staff member of the CIC who is an SES employee or acting SES
5 employee all or any of the Integrity Commissioner's functions or
6 powers that the Law Enforcement Integrity Commissioner may
7 perform or exercise under a delegation under paragraph (1)(a).

8 (3) The Public Sector Integrity Commissioner may subdelegate to a
9 staff member of the CIC who is an SES employee or acting SES
10 employee all or any of the Integrity Commissioner's functions or
11 powers that the Public Sector Integrity Commissioner may perform
12 or exercise under a delegation under paragraph (1)(a).

13 (4) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901*
14 apply in relation to a subdelegation under subsection (2) or (3) of
15 this section in a corresponding way to the way in which they apply
16 to a delegation.

17 *Limits on delegations and subdelegations*

18 (5) Paragraphs (1)(a) and (b) do not apply to a function or power
19 under:

- 20 (a) section 67 (vexatious complainant declarations); or
- 21 (b) Part 10 (dealing with CIC corruption issues); or
- 22 (c) Division 1 of Part 11 (administrative provisions for CIC
23 office holders); or
- 24 (d) section 290 (CIC determinations); or
- 25 (e) this section.

26 (6) Paragraph (1)(c) and subsections (2) and (3) do not apply to:

- 27 (a) a function or power referred to in subsection (5); or
- 28 (b) a power under Division 1, 2 or 3 of Part 8 (other than
29 section 127).

EXPOSURE DRAFT

Part 16 Miscellaneous

Section 286

1

Form of delegation or subdelegation

2

- (7) A delegation or subdelegation under this section must be in writing and signed by the person delegating or subdelegating the relevant function or power.

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Complying with directions

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- (8) In performing a function or exercising a power under subsection (1), the delegate must comply with any directions of the Integrity Commissioner.

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- (9) In performing a function or exercising a power subdelegated by:

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- (a) the Law Enforcement Integrity Commissioner (the *subdelegator*) under subsection (2); or

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- (b) the Public Sector Integrity Commissioner (the *subdelegator*) under subsection (3);

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14

the subdelegate must comply with:

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- (c) any directions of the Integrity Commissioner that the subdelegator would need to comply with in performing the function or exercising the power; and

16

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- (d) any directions of the subdelegator (subject to paragraph (c)).

19

- (10) If a CIC office holder gives a direction under subsection (8) or (9) in writing, the direction is not a legislative instrument.

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286 Delegation by heads of law enforcement agencies and public sector agencies

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- (1) The head of a law enforcement agency or public sector agency may delegate all or any of the head's functions or powers under this Act to a staff member of that agency who:

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- (a) is an SES employee or acting SES employee; or

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- (b) holds or performs the duties of an office or position in the agency that is at a level equivalent to or higher than that of an SES employee.

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- (2) In performing a function or exercising a power under subsection (1), the delegate must comply with any directions of the head of the agency.

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1 **287 Delegation by heads of higher education providers and research**
2 **bodies**

- 3 (1) The head of a regulated entity that is a higher education provider or
4 a research body may delegate all or any of the head's functions or
5 powers under this Act to a staff member of that entity.
- 6 (2) Before delegating a function or power under subsection (1), the
7 head of the regulated entity must have regard to:
- 8 (a) if the function or power is delegated to a staff member
9 holding, occupying, or performing the duties of, a specified
10 office or position—whether the office or position is
11 sufficiently senior for the staff member to perform the
12 function or exercise the power; or
- 13 (b) otherwise—whether the staff member has appropriate
14 qualifications or expertise to perform the function or exercise
15 the power.
- 16 (3) In performing a function or exercising a power under
17 subsection (1), the delegate must comply with any directions of the
18 head of the regulated entity.

19 **288 Review of operation of Act**

20 *Undertaking the review*

- 21 (1) The Minister must cause a review to be undertaken of the first 3
22 years of the operation of this Act.
- 23 (2) The review must be undertaken by one or more persons who, in the
24 Minister's opinion, possess appropriate qualifications to undertake
25 the review.

26 *Report to Minister*

- 27 (3) The person or persons undertaking the review must give the
28 Minister a written report of the review within 12 months after the
29 end of the 3-year period.

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1 *Submissions*

- 2 (4) The review must include an opportunity for the following to make
3 written submissions on the operation of this Act:
4 (a) persons who are or have been:
5 (i) staff members of regulated entities; or
6 (ii) parliamentarians;
7 (b) members of the public.

8 *Assistance*

- 9 (5) An entrusted person must, if requested to do so by the persons
10 undertaking the review, assist them in:
11 (a) conducting the review; and
12 (b) preparing the written report.

13 *Tabling of report*

- 14 (6) The Minister must cause a copy of the report of the review to be
15 laid before each House of the Parliament as soon as practicable
16 after its receipt by the Minister.

17 *Section not to apply if review conducted by Parliamentary*
18 *committee*

- 19 (7) However, this section does not apply if a committee of one or both
20 Houses of the Parliament (including the Parliamentary Joint
21 Committee on the Commonwealth Integrity Commission) has
22 reviewed the operation of this Act, or started such a review, before
23 the end of the 3-year period.

24 **289 Guidelines**

- 25 (1) The Integrity Commissioner may make written guidelines to assist
26 any or all of the following in connection with the operation of this
27 Act:
28 (a) regulated entities, including heads and staff members of those
29 entities;
30 (b) responsible Ministers for regulated entities;

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- 1 (c) Commonwealth integrity office holders and Commonwealth
2 integrity agencies;
3 (d) parliamentarians.
- 4 (2) Guidelines made under subsection (1) are not a legislative
5 instrument.

6 **290 CIC determinations**

- 7 (1) The Integrity Commissioner may, by legislative instrument,
8 determine the following:
- 9 (a) matters to which a person must have regard in forming a
10 reasonable suspicion about the commission of an offence, to
11 which a public sector corruption issue relates, for the
12 purposes of subsection 37(2), 40(2), 42(2), 46(2) or 48(3);
- 13 (b) matters to which the head of a law enforcement agency,
14 public sector agency (other than an intelligence agency),
15 higher education provider or research body must have regard
16 in deciding whether to notify a corruption issue to the
17 Integrity Commissioner under section 37;
- 18 (c) matters to which the head of an intelligence agency must
19 have regard in deciding whether to notify a corruption issue
20 to the IGIS under section 40;
- 21 (d) matters to which the IGIS must have regard in deciding
22 whether to notify a corruption issue relating to an intelligence
23 agency to the Integrity Commissioner under section 42;
- 24 (e) matters to which a Commonwealth integrity office holder
25 must have regard in deciding whether to notify a corruption
26 issue to the Integrity Commissioner under section 46.
- 27 (2) The Integrity Commissioner may also, by legislative instrument,
28 determine the following:
- 29 (a) in relation to the notification to the Integrity Commissioner
30 of corruption issues relating to law enforcement agencies,
31 public sector agencies (other than intelligence agencies),
32 higher education providers or research bodies by an entity
33 head under section 37:
- 34 (i) kinds of corruption issues that must not, or need not, be
35 notified; and

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- 1 (ii) circumstances in which corruption issues must not, or
2 need not, be notified;
- 3 (b) in relation to the notification to the IGIS of corruption issues
4 relating to intelligence agencies by the heads of those
5 agencies under section 40:
- 6 (i) kinds of corruption issues that must not, or need not, be
7 notified; and
- 8 (ii) circumstances in which corruption issues must not, or
9 need not, be notified;
- 10 (c) in relation to the notification to the Integrity Commissioner
11 of corruption issues relating to intelligence agencies by the
12 IGIS under section 42:
- 13 (i) kinds of corruption issues that must, must not, or need
14 not, be notified; and
- 15 (ii) circumstances in which corruption issues must, must
16 not, or need not, be notified.

17 **291 Rules**

- 18 (1) The Minister may, by legislative instrument, make rules
19 prescribing matters:
- 20 (a) required or permitted by this Act to be prescribed by the
21 rules; or
- 22 (b) necessary or convenient to be prescribed for carrying out or
23 giving effect to this Act.
- 24 (2) The rules may require that information or reports that are required
25 to be given under prescribed provisions are also to be given to
26 prescribed persons in specified circumstances.
- 27 (3) To avoid doubt, the rules may not do the following:
- 28 (a) create an offence or civil penalty;
- 29 (b) provide powers of:
- 30 (i) arrest or detention; or
- 31 (ii) entry, search or seizure;
- 32 (c) impose a tax;
- 33 (d) set an amount to be appropriated from the Consolidated
34 Revenue Fund under an appropriation in this Act;

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- 1 (e) directly amend the text of this Act.
- 2 (4) Rules that are inconsistent with the regulations have no effect to
3 the extent of the inconsistency, but rules are taken to be consistent
4 with the regulations to the extent that the rules are capable of
5 operating concurrently with the regulations.

6 **292 Regulations**

- 7 (1) The Governor-General may make regulations prescribing matters:
8 (a) required or permitted by this Act to be prescribed by the
9 regulations; or
10 (b) necessary or convenient to be prescribed for carrying out or
11 giving effect to this Act.
- 12 (2) Regulations made for the purposes of subsection 198(3) or 205(3),
13 or paragraph 237(5)(b), may do the following:
14 (a) create an offence or civil penalty;
15 (b) provide powers of:
16 (i) arrest or detention; or
17 (ii) entry, search or seizure.
- 18 Note: Those regulations may modify provisions in Part 8 (which sets out
19 powers of the Integrity Commissioner in investigating corruption
20 issues and conducting corruption inquiries), as the provisions are
21 applied by other provisions of this Act for the purposes of:
22 (a) investigating CIC corruption issues; and
23 (b) the Inspector-General conducting inquiries under Part 12.
- 24 (3) However, to avoid doubt, the regulations may not:
25 (a) do any of the things mentioned in paragraph (2)(a) or (b),
26 except if made for the purposes of a provision mentioned in
27 subsection (2); or
28 (b) impose a tax; or
29 (c) set an amount to be appropriated from the Consolidated
30 Revenue Fund under an appropriation in this Act; or
31 (d) directly amend the text of this Act.