

**Submission
No 13**

**INQUIRY INTO PROPOSED AMENDMENTS TO THE
INDEPENDENT COMMISSION AGAINST CORRUPTION ACT
1988**

Organisation: Australian Commission for Law Enforcement Integrity
Name: Mr Nick Sellars
Position: Senior Policy Adviser
Telephone:
Date received: 20/04/2009



Australian Government

**Australian Commission for
Law Enforcement Integrity**

**Submission by the
Australian Commission for
Law Enforcement Integrity**

**Parliament of New South Wales
Committee on the Independent
Commission Against Corruption**

~

**Inquiry into
proposed amendments to the
*Independent Commission Against
Corruption Act 1988***

April 2009

1. Introduction

The Australian Commission for Law Enforcement Integrity (ACLEI) welcomes the opportunity to make a submission to the Committee on the Independent Commission Against Corruption (ICAC).

The Committee's invitation to make a submission asked ACLEI to focus on the operation of comparative legislative provisions to that of section 37 of the ICAC Act, which deals with questions of privilege against self-incrimination or self-exposure to penalty in respect of the use of ICAC's coercive powers.

Accordingly, this submission is designed to assist the Committee by providing:

- general information about ACLEI's integrity role in Australian Government administration (Section 2);
- commentary about 'use indemnity' arrangements, and exceptions, that are available under the *Law Enforcement Integrity Commissioner Act 2006* concerning information gathered by using coercive powers (Section 3); and
- information about ACLEI's experience with the provision of evidence using the exceptions to the 'use indemnity' arrangements (Section 4).

2. Responsibilities and powers of ACLEI

The Role of the Integrity Commissioner

The *Law Enforcement Integrity Commissioner Act 2006* (the LEIC Act) commenced on 30 December 2006. The LEIC Act establishes the statutory office of Integrity Commissioner, who is supported by an independent agency, the Australian Commission for Law Enforcement Integrity (ACLEI).

The Integrity Commissioner's role is to:

- detect, investigate and prevent corruption in law enforcement agencies;
- maintain and improve the integrity of staff members of law enforcement agencies; and
- collect and process intelligence on corruption in law enforcement.

The law enforcement agencies, of which the members are subject to the scrutiny of the Integrity Commissioner under the LEIC Act, are the Australian Federal Police (AFP), the Australian Crime Commission (ACC) and the former National Crime Authority (NCA).

Other agencies with a law enforcement function may be added by regulation (s 5, LEIC Act, definition of *law enforcement agency*).

Receiving information about corruption

An important feature of the LEIC Act is that it requires a relevant law enforcement agency head to notify the Integrity Commissioner of any information or allegation that raises a corruption issue, irrespective of the source of that information (s 19).

The LEIC Act establishes a framework whereby the Integrity Commissioner and the agency heads can prevent and deal with corruption jointly and cooperatively. The arrangement recognises both the considerable work of the ACC and AFP to introduce internal corruption controls (including detection and deterrence-focussed mechanisms) and the continuing responsibility that the law enforcement agency heads have for the integrity of their staffs.

Also, the LEIC Act enables the Minister to refer corruption issues to the Integrity Commissioner (s 18), as well as for any other person, including members of the public or other government agencies (s 23). The Integrity Commissioner may also deal with corruption issues on his or her own initiative (s 38).

Further, ACLEI is authorised under the *Telecommunications (Interception and Access) Act 1979* to receive information about any corruption issues involving the AFP or the ACC that may be identified by other integrity agencies or police forces as a result of their telecommunications interception activities.

What are ACLEI's investigative powers?

A challenge facing ACLEI is that law enforcement officers subject to investigation by the Integrity Commissioner are likely to be well-versed in law enforcement methods, and may be skilled at countering them in order to avoid scrutiny. As a consequence, ACLEI has access to a range of special law enforcement powers.

The key investigative powers available to the Integrity Commissioner and ACLEI are:

- coercive information-gathering, including notices to produce information, documents or things, and summonses to attend a hearing, answer questions and give sworn evidence;
- telecommunications interception;
- electronic and physical surveillance;
- controlled operations;
- assumed identities;
- search warrants;
- right of entry to law enforcement premises and associated seizure powers;
- arrest;
- scrutiny of financial transactions; and
- access to specialised information databases for law enforcement purposes.

ACLEI may also collect intelligence about corruption in support of its functions.

What are the Integrity Commissioner's other functions?

The Integrity Commissioner must consider the nature and scope of corruption revealed by investigations, and report annually on any patterns and trends in corruption in law enforcement agencies.

Where laws of the Commonwealth or the administrative practices of government agencies might contribute to corrupt practices or prevent their early detection, the Integrity Commissioner may make recommendations for these laws or practices to be changed.

3. Protections against self-incrimination and exposure to civil penalty

Development of the privilege against self-incrimination

The privilege against self-incrimination is established under the common law. The significance of this privilege was recognised by Gibbs CJ in *Sorby v The Commonwealth* (1983) 152 CLR 281 at 294:

'The traditional objection that exists to allowing the executive to compel a man to convict himself out of his own mouth applies even when the words of the witness may not be used as an admission. It is a cardinal principle of our system of justice that the Crown must prove the guilt of an accused person, and the protection which that principle affords to the liberty of the individual will be weakened if power exists to compel a suspected person to confess his guilt. Moreover the existence of such a power tends to lead to abuse and to "the concomitant moral deterioration in methods of obtaining evidence and in the general administration of justice".'

In our system of criminal justice, the prosecution bears the onus of proving, beyond a reasonable doubt, that the accused person is guilty of an offence with which he or she has been charged. This principle extends to the gathering of evidence and/or material by bodies which have a statutory power to require the provision of information.

In *Pyneboard Pty Ltd v Trade Practices Commission* (1983) 152 CLR 328 per Mason ACJ, Wilson and Dawson JJ at 341, the Court recognised that the privilege was acknowledged to apply also to non-judicial proceedings.

Abrogation of the privilege

It was accepted in *Reid v Howard* (1995)¹ 184 CLR 1 and *Sorby v The Commonwealth* (1983) 152 CLR 281² that the privilege against self-incrimination may be abrogated or waived by statute.³

Coercive information-gathering power

For the purpose of investigating a corruption issue, the Integrity Commissioner may conduct a coercive information hearing and issue a notice to require a person to give information and produce documents or things. A coercive hearing may also be held for the purpose of conducting a public inquiry.

These powers are set out in Divisions 1 and 2 of Part 9 of the LEIC Act (see Attachment 1).

Protections against self-incrimination

For a person subject to a coercive power under the LEIC Act, the privilege against self-incrimination and exposure to civil penalty is abrogated, with some exceptions that are noted below.

A person must answer a question or produce information or a document or thing, even though to do so, may incriminate the person or expose the person to a penalty. However, if the person, before answering the question or producing the information, document or thing, objects to doing so on this ground, the person is entitled to a 'use indemnity' in respect of the answer, information, document or thing.

In respect of a 'Notice to Produce', section 80 sets out the scope of the indemnity. Section 96 sets out the scope of the indemnity in relation to a coercive hearing.

¹ per their Honours Toohey, Gaudron, McHugh and Gummow JJ at p.12

² per Gibbs CJ at p.289

³ at 12 (per Toohey J Gaudron J McHugh J and Gummow J)

In both cases, the use indemnity prohibits the use of the coerced material in evidence in criminal proceedings or any other proceedings for the imposition or recovery of a penalty, subject to the exceptions listed below. There is no other restriction on the use of material gathered through coercive means. That is, the material can be used as evidence in any proceedings against another person.

The 'use indemnity' available under the LEIC Act does not close off any investigative avenues that would otherwise be available to the Integrity Commissioner. For instance, it does not prevent the 'indirect use' of the answer, information, document or thing to identify other evidence which may then be used to prove the witness's culpability.

Exceptions

Sub-sections 80(4) and 96(4) of the LEIC Act set out the exceptions, or limits, to the indemnity. These exceptions are:

- criminal proceedings for an offence of failure to comply with a coercive Notice (see section 80(4)(c)) or failure to attend a hearing, failure to swear an oath or affirmation or answer a question, or failure to produce a document or thing (see section 96(4)(c) of the LEIC Act);
- confiscation proceedings, for example, proceedings under the *Proceeds of Crime Act 2002* (Cth) (see sections 80(4)(d) and 96(4)(d) of the LEIC Act);
- proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to the LEIC Act (see sections 80(4)(e) and 96(4)(e) of the LEIC Act);
- proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to the LEIC Act (see sections 80(4)(f) and 96(4)(f) of the LEIC Act); and
- disciplinary proceedings against the person if the person were a staff member of a law enforcement agency (see sections 80(4)(g) and 96(4)(g) of the LEIC Act).

Amongst other issues, Part 10 of the LEIC Act (see Attachment 2) deals with what may be done with evidence, including evidence that is self-incriminatory. Relevant options are discussed below.

Evidence of offence or liability to civil penalty

Section 142 of the LEIC Act sets out the Integrity Commissioner's obligations relating to evidence of an offence against, or contravention of, the laws of the Commonwealth, a State, or a Territory. In these circumstances, the Integrity Commissioner must assemble the evidence and give it to a relevant police force, or to an agency that is authorised by law to prosecute offences or bring civil penalty proceedings.

This provision is moderated by the 'use indemnity', which makes some material that is evidence of an offence inadmissible, as noted above.

Passing evidence to the head of a law enforcement agency

Section 146 of the LEIC Act sets out the Integrity Commissioner's obligation to bring evidence of a breach of duty or misconduct by a staff member of (or a seconded to) a law enforcement agency to the attention of the head of the relevant law enforcement agency. The provision relates to evidence that may justify the termination of the employee (or seconded), or the commencement of disciplinary proceedings. In addition, the Integrity Commissioner must be satisfied that evidence is, in all the circumstances, of sufficient force to justify him or her bringing the evidence forward.

Because of the exemptions relating to the 'use indemnity' in sections 80(4)(g) and 96(4)(g) of the LEIC Act, self-incriminatory evidence can be transmitted in these circumstances.

4. ACLEI's experience with the exceptions to the 'use indemnity'

General approach

The purpose of an investigatory agency like ACLEI is to:

- find the truth of a matter;
- establish accountability and responsibility;
- allow stakeholders to learn from what happened;
- provide catharsis or reconciliation;
- provide reassurance; and
- rebuild public confidence.⁴

Accordingly, punishing the criminal culpability of an individual is just one aspect of maintaining and improving public sector integrity. The availability of options for the direct use of self-incriminating evidence can enable a balance between establishing the truth, and the expectation that public sector employees should be held to account for their actions.

Community expectations

The prospect that proceeds of crime could be restrained or confiscated, or that the employment of a staff member of a law enforcement agency could be terminated or that some other disciplinary outcome may result, satisfies a community expectation that wrongdoers should be held accountable for their misconduct and not be permitted to benefit from it.

The dismissal option, one of a range of disciplinary outcomes, also draws on the idea that there is a public benefit to be gained from removing corrupt officials from employment, not just as punishment, but to protect public institutions from further abuse by the same individual, or to break up corrupt networks. There may also be a 'restorative' effect to the reputations of agencies where corrupt employees are purged from service.

Accordingly, in cases where it is unlikely that admissible evidence of criminal conduct could be obtained in other ways, these alternative avenues of redress can play a significant role in penalising and discouraging corrupt conduct.

A practical response

ACLEI's experience is that it is of practical value for an integrity agency to have a framework that includes a range of options concerning how evidence can be used.

For instance, not all coercive hearings yield admissions of guilt to criminal acts. Where only less-serious misconduct is self-disclosed by a witness, disciplinary action offers an option for accountability that may be more proportionate and efficient, and better matched to the circumstances, than are criminal proceedings.

Strategic decisions in investigation

ACLEI does not view investigation outcomes as a hierarchy, with criminal prosecutions at its peak. At the same time, ACLEI is mindful of the need to hold individuals to account for their actions.

⁴ see Australian Law Reform Commission (2009) Review of the Royal Commissions Act, Issues Paper 35, paragraph 2.24. See also section 3 of the LEIC Act, relating to the objects of the Act.

Accordingly, because it may restrict the admissibility of evidence that prosecutors would be able to present to a court in a criminal matter, the 'use indemnity' affects ACLEI's strategic decision-making in investigations as to which witnesses to summon, if any, and in what order.

This strategic approach to investigations ensures that any evidence that may be used in a criminal trial is not compromised inadvertently through poor operational decision-making, and that options for initiating proceedings against a person are not prematurely precluded.

Appendix 1: Coercive powers available to the Integrity Commissioner

Part 9—Integrity Commissioner’s powers in conducting investigations and public inquiries

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

Subdivision A—Requests by Integrity Commissioner

75 Request to staff member of law enforcement agency

- (1) For the purposes of investigating a corruption issue, the Integrity Commissioner may request a staff member of a law enforcement agency:
 - (a) to give the Integrity Commissioner the information specified in the request; or
 - (b) to produce to the Integrity Commissioner the documents or things specified in the request.

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

- (2) The Integrity Commissioner’s request must be:
 - (a) served on the staff member of the law enforcement agency; and
 - (b) in writing and signed by the Integrity Commissioner.
- (3) The Integrity Commissioner may make the request without holding a hearing.
- (4) The staff member must comply with the request as soon as is reasonably practicable.

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

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

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

- (1) For the purposes of investigating a corruption issue, the Integrity Commissioner may request a person (other than a staff member of a law enforcement agency):
 - (a) to give the Integrity Commissioner the information specified in the request; or
 - (b) to produce to the Integrity Commissioner the documents or things specified in the request.
- (2) The Integrity Commissioner’s request must:
 - (a) be served on the person; and
 - (b) be in writing and signed by the Integrity Commissioner; and
 - (c) specify the period within which the person must comply with the request.The period specified under paragraph (c) must be at least 14 days starting on the day on which the request is served on the person.
- (3) The Integrity Commissioner may make the request without holding a hearing.
- (4) The person must:

- (a) give the information in writing; or
 - (b) produce the documents or things;
- within the time specified in the request, or within such further time as the Integrity Commissioner allows.

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

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

77 Integrity Commissioner may retain documents and things

- (1) If a document or thing is produced to the Integrity Commissioner in accordance with a request under section 75 or 76, the Integrity Commissioner:
 - (a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and
 - (b) may retain possession of the document or thing for such period as is necessary for the purposes of the investigation to which the document or thing relates.
- (2) While the Integrity Commissioner retains the document or thing, he or she must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

Subdivision B—Offence and related provisions

78 Failure to comply with Integrity Commissioner's request

A person commits an offence if:

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

Penalty: Imprisonment for 2 years.

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

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

79 Legal practitioner not required to disclose privileged communications

- (1) A legal practitioner may refuse:
 - (a) to give information to the Integrity Commissioner; or
 - (b) to produce a document or thing to the Integrity Commissioner;when requested to do so under section 76 if the information would disclose, or the document contains, a privileged communication made by the legal practitioner (or to the legal practitioner) in his or her capacity as a legal practitioner.
- (2) Subsection (1) has effect subject to paragraph 80(5)(c).
- (3) Subsection (1) does not apply if the person to whom the communication was made (or by whom the communication was made) agrees to the legal practitioner:
 - (a) giving the information; or
 - (b) producing the document or thing.
- (4) If the legal practitioner refuses:
 - (a) to give the information; or

(b) to produce the document or thing;
he or she must, if required by the Integrity Commissioner, give the Integrity Commissioner the name and address of the person to whom the communication was made (or by whom the communication was made).

(5) This section does not affect the law relating to legal professional privilege.

80 Self-incrimination etc.

Self-incrimination

(1) A person is not excused from:

- (a) giving information; or
- (b) producing a document or thing;

when requested to do so under section 75 or 76 on the ground that doing so would tend to incriminate the person or expose the person to a penalty.

Use indemnity

(2) Subsection (4) applies if:

(a) the person:

- (i) gives the information (whether orally or in writing); or
- (ii) produces the document or thing;

and, before doing so, claims that giving the information or producing the document or thing, might tend to incriminate the person or expose the person to a penalty; or

- (b) the person gives the information in writing and claims, in a written statement accompanying the information, that giving the information might tend to incriminate the person or expose the person to a penalty; or
- (c) the person produces the document or thing and claims, in a written statement accompanying the document or thing, that producing the document or thing might tend to incriminate the person or expose the person to a penalty.

(3) Subsection (4) does not apply to the production of a document that is, or forms part of, a record of an existing or past business.

(4) None of the following:

- (a) the information given;
- (b) the document or thing produced;

is admissible in evidence against the person in criminal proceedings, or any other proceedings for the imposition or recovery of a penalty, other than:

- (c) proceedings for an offence against section 78; or
- (d) confiscation proceedings; or
- (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
- (f) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act; or
- (g) disciplinary proceedings against the person if the person is a staff member of a law enforcement agency.

Public interest grounds

(5) A person is not excused from:

- (a) giving information; or
 - (b) producing a document or thing;
- when requested to do so under section 75 or 76 on the ground that doing so:
- (c) would disclose one of the following:
 - (i) legal advice given to a Minister or a Commonwealth government agency;
 - (ii) a communication between an officer of a Commonwealth government agency and another person or body, being a communication protected against disclosure by legal professional privilege; or
 - (d) would breach a secrecy provision other than:
 - (i) a taxation secrecy provision; or
 - (ii) a law enforcement secrecy provision; or
 - (e) would be otherwise contrary to the public interest.

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

- (6) The fact that a person is not excused under subsection (5) from:
 - (a) giving information; or
 - (b) producing a document or thing;does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or thing.
- (7) A person does not commit an offence, and is not liable to any penalty, under the provisions of any other enactment (other than a taxation secrecy provision or a law enforcement secrecy provision) because the person gives information, or produces a document or thing, when required to do so under section 75 or 76.

81 Protection of person required to give information and produce documents

- (1) A person who gives information, or produces a document or thing, to the Integrity Commissioner in response to a request under section 75 or 76 has the same protection as a witness in proceedings in the High Court.
- (2) Subsection (3) applies if it appears to the Integrity Commissioner that, because a person:
 - (a) is to give information, or produce a document or thing; or
 - (b) has given information, or produced a document or thing;to the Integrity Commissioner in response to a request under section 75 or 76, either:
 - (c) the safety of the person or any other person may be prejudiced; or
 - (d) the person or any other person may be subjected to intimidation or harassment.
- (3) The Integrity Commissioner may make such arrangements as are necessary:
 - (a) to protect the safety of any person mentioned in paragraph (2)(c); or
 - (b) to protect any person mentioned in paragraph (2)(d) from intimidation or harassment.
- (4) For the purpose of subsection (3), the arrangements that the Integrity Commissioner may make include arrangements with:
 - (a) the Minister; or
 - (b) members of the AFP; or
 - (c) members of the police force of a State or Territory.

- (5) This section does not affect the *Witness Protection Act 1994*.

Division 2—Conducting hearings

Subdivision A—General provisions

82 Integrity Commissioner may hold hearings

Commissioner may hold hearings for investigations or public inquiries

- (1) The Integrity Commissioner may hold a hearing for the purpose of:
 - (a) investigating a corruption issue; or
 - (b) conducting a public inquiry.
- (2) Subject to subsections (3), (4) and (5), a hearing may be conducted in such manner as the Integrity Commissioner thinks fit.

Hearing in relation to an investigation of a corruption issue

- (3) The Integrity Commissioner may decide to hold the whole (or a part) of a hearing in relation to an investigation of corruption issue either in public or in private.
- (4) In deciding under subsection (3) whether a hearing (or a part of a hearing) is to be held in public or in private, the Integrity Commissioner must have regard to the following:
 - (a) whether evidence that may be given, or a matter that may arise, during the hearing (or that part of the hearing) is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence;
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused if the hearing (or that part of the hearing) took place in public;
 - (c) whether it is in the public interest that the hearing (or that part of the hearing) take place in public;
 - (d) any other relevant matter.

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

Hearing in relation to a public inquiry

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

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

Record of hearing

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

Direction is not a legislative instrument

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

83 Integrity Commissioner may summon person

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

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

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

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

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

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

84 Integrity Commissioner may take evidence outside Australia

If arrangements have been made between Australia and another country in relation to the taking of evidence in that country by the Integrity Commissioner for a hearing held under this Division, the Integrity Commissioner may:

- (a) take evidence on oath or by affirmation; and
- (b) use any evidence taken in that country in accordance with those arrangements;

for the purpose of performing any function, or exercising any power, under this Act.

Subdivision B—Procedure at hearing

85 Who may be represented at a hearing

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

86 Who may be present at a hearing

Who may be present

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

Opportunity to comment on a person's presence

- (3) If:
 - (a) a person (the **witness**) is giving evidence at a hearing; and
 - (b) another person is present at the hearing at that time; and
 - (c) the other person is not:
 - (i) a staff member of ACLEI; or
 - (ii) a legal practitioner representing a person at the hearing;the Integrity Commissioner must:
 - (d) inform the witness that the person is present; and
 - (e) give the witness an opportunity to comment on the person's presence.
- (4) To avoid doubt, a person is still entitled to be present during all or part of the hearing even if:
 - (a) the Integrity Commissioner fails to comply with subsection (3); or
 - (b) a witness comments adversely on the person's presence under paragraph (3)(e).

Offence

- (5) A person commits an offence if:
 - (a) the person is present while evidence is being given in private at a hearing; and
 - (b) the person is none of the following:
 - (i) the person giving evidence;
 - (ii) a person whom the Integrity Commissioner must, under subsection (2), allow to be present while the evidence is being given;

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

Penalty: Imprisonment for 12 months.

Determination of who may be present not a legislative instrument

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

Subdivision C—Taking evidence at hearing

87 Evidence on oath or by affirmation

- (1) At a hearing, the Integrity Commissioner may:
 - (a) require a witness to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to the witness.
- Note 1: Failure to take an oath or make an affirmation is an offence: see section 93.
- Note 2: This means that a hearing is a **judicial proceeding** for the purposes of Part III of the *Crimes Act 1914*, which creates various offences in relation to judicial proceedings.
- (2) The Integrity Commissioner may administer an oath or affirmation to a person appearing as a witness in another country, but must do so in accordance with:
 - (a) any provision of the arrangements made between Australia and that other country, as referred to in section 84; and
 - (b) the laws of that other country.
 - (3) The oath or affirmation is an oath or affirmation that the evidence the person will give will be true.
 - (4) The Integrity Commissioner may allow a person attending a hearing who has been sworn, or who has made an affirmation, to give evidence by tendering a written statement and verifying it by oath or affirmation.

88 Examination and cross-examination of witnesses

At a hearing, the following persons may, so far as the Integrity Commissioner thinks appropriate, examine or cross-examine any witness on any matter that the Integrity Commissioner considers relevant:

- (a) counsel assisting the Integrity Commissioner generally or in relation to the investigation or public inquiry to which the hearing relates;
- (b) a person summoned, or otherwise authorised, to appear before the Integrity Commissioner;
- (c) any legal practitioner representing a person at the hearing.

89 Giving evidence in private

Certain evidence must be given in private

- (1) A person giving evidence at a hearing held in public must give particular evidence in private if the evidence:
 - (a) would disclose one of the following:
 - (i) legal advice given to a Minister or a Commonwealth government agency;
 - (ii) a communication between an officer of a Commonwealth government agency and another person or body, being a

communication protected against disclosure by legal professional privilege; or

- (b) would breach a secrecy provision other than:
 - (i) a taxation secrecy provision; or
 - (ii) a law enforcement secrecy provision.

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

Person may request that certain evidence be given in private

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

90 Directions in relation to confidentiality

Prohibition or limitation on publication

- (1) The Integrity Commissioner may direct that:
 - (a) particular evidence given at a hearing; or
 - (b) the contents of a particular document, or a description of any thing, produced to the Integrity Commissioner at the hearing; or
 - (c) particular information that might enable a person who has given evidence at the hearing to be identified; or
 - (d) the fact that a particular person has given or may be about to give evidence at the hearing;must not be published, or must not be published except in such manner, and to such persons, as the Integrity Commissioner specifies.

Note: Failure to comply with a direction is an offence: see subsection (6).
- (2) If the hearing is held in private, the Integrity Commissioner must give a direction under subsection (1) if the Commissioner is satisfied that the failure to give a such a direction:
 - (a) might prejudice:
 - (i) a person's safety or reputation; or
 - (ii) the fair trial of a person who has been, or may be, charged with an offence; or
 - (b) might lead to the publication of section 149 certified information.
- (3) The Integrity Commissioner may vary or revoke a direction in writing. However, the Integrity Commissioner must not vary or revoke a direction if the Integrity Commissioner is satisfied that doing so:
 - (a) might prejudice:
 - (i) a person's safety or reputation; or
 - (ii) the fair trial of a person who has been, or may be, charged with an offence; or
 - (b) might lead to the publication of section 149 certified information.

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

- (4) If:
- (a) a person has been charged with an offence before a federal court or a court of a State or Territory; and
 - (b) the court considers that it may be desirable in the interests of justice that particular evidence given at a hearing, in respect of which the Integrity Commissioner has given a direction under subsection (1), be made available to the person or to a legal practitioner representing the person;
- the court may give to the Integrity Commissioner a certificate to that effect. If the court does so, the Integrity Commissioner must make the evidence available to the court.

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

Offence

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

Penalty: Imprisonment for 12 months.

Direction is not a legislative instrument

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

Subdivision D—Prohibitions against disclosing information about a summons

91 Disclosure of summons may be prohibited

Application

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

Notation prohibiting disclosure of information about summons

- (2) The Integrity Commissioner may include a notation in the summons to the effect that disclosure of information about:
- (a) the summons; or
 - (b) any official matter connected with the summons;
- is prohibited except in the circumstances (if any) specified in the notation.

- (3) The Integrity Commissioner must include a notation in the summons if the Integrity Commissioner is satisfied that failure to do so would reasonably be expected to prejudice:
- (a) a person's safety or reputation; or
 - (b) the fair trial of a person who has been, or may be, charged with an offence; or
 - (c) the investigation to which the hearing relates or another corruption investigation; or
 - (d) any action taken as a result of an investigation referred to in paragraph (c).
- (4) The Integrity Commissioner may include a notation in the summons if the Integrity Commissioner is satisfied that:
- (a) failure to do so might prejudice:
 - (i) a person's safety or reputation; or
 - (ii) the fair trial of a person who has been, or may be, charged with an offence; or
 - (iii) the investigation to which the hearing relates or another corruption investigation; or
 - (iv) any action taken as a result of an investigation referred to in subparagraph (iii); or
 - (b) failure to do so might otherwise be contrary to the public interest.
- (5) The Integrity Commissioner must not include a notation in the summons in any other case.

Written statement to accompany notation

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

Cancellation of notation

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

Relationship of notation with Privacy Act 1988

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

92 Offences of disclosure

- (1) A person commits an offence if:
- (a) the person is served with a summons under section 83; and
 - (b) the summons includes a notation under section 91; and
 - (c) the person discloses the existence of, or any information about:
 - (i) the summons; or
 - (ii) any official matter connected with the summons; and
 - (d) when the disclosure is made:
 - (i) the notation has not been cancelled by subsection 91(7); and
 - (ii) the period of 5 years after the summons is served under section 83 has not ended.

Penalty: Imprisonment for 12 months.

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

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

- (3) A person commits an offence if:
- (a) a disclosure is made to a person about:
 - (i) a summons under section 83 that includes a notation under section 91; or
 - (ii) any official matter connected with a summons under section 83 that includes a notation under section 91; and
 - (b) the disclosure is permitted under subsection (2) or (4) because the person is a person of a particular kind; and
 - (c) while the person is a person of that kind, the person discloses the existence of, or any information about:
 - (i) the summons; or
 - (ii) any official matter connected with the summons; and
 - (d) when the disclosure by the person is made:
 - (i) the notation has not been cancelled by subsection 91(7); and
 - (ii) the period of 5 years after the summons is served under section 83 has not ended.

Penalty: Imprisonment for 12 months.

- (4) In proceedings for an offence against subsection (3), it is a defence if the person discloses the information:
- (a) if the person is an officer or agent of a body corporate referred to in paragraph (2)(d):

- (i) to another officer or agent of the body corporate for the purpose of ensuring compliance with the summons; or
- (ii) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the summons; or
- (iii) to a legal aid officer for the purpose of obtaining assistance under section 103 in relation to the summons; or
- (b) if the person is a legal practitioner—for the purpose of giving legal advice, making representations, or obtaining assistance under section 103, in relation to the summons; or
- (c) if the person is a legal aid officer—for the purpose of obtaining legal advice or representation in relation to the summons.

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

- (5) A person commits an offence if:
- (a) a disclosure is made to a person about:
 - (i) a summons under section 83 that includes a notation under section 91; or
 - (ii) any official matter connected with a summons under section 83 that includes a notation under section 91; and
 - (b) the disclosure is permitted under subsection (2) or (4) because the person is a person of a particular kind; and
 - (c) when the person is no longer a person of that kind, the person:
 - (i) makes a record of the summons; or
 - (ii) discloses the existence of the summons; or
 - (iii) discloses any information about the summons or the existence of it; and
 - (d) when the record, or disclosure, is made by the person:
 - (i) the notation has not been cancelled by subsection 91(7); and
 - (ii) the period of 5 years after the summons is served under section 83 has not ended.

Penalty: Imprisonment for 12 months.

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

Subdivision E—Offences in relation to hearings

93 Offences

Failure to attend hearing

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

Penalty: Imprisonment for 12 months.

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

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

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

Penalty: Imprisonment for 2 years.

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

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

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

Failure to produce a document or thing

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

Penalty: Imprisonment for 2 years.

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

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

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

94 Contempt

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

Penalty: Imprisonment for 6 months.

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

Penalty: Imprisonment for 6 months.

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

Penalty: Imprisonment for 6 months.

95 Legal practitioner not required to disclose privileged communications

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

96 Self-incrimination etc.

Self-incrimination

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

Use indemnity

- (2) Subsection (4) applies if:
- (a) the person:
 - (i) answers the question (whether orally or in writing); or
 - (ii) produces the document or thing;
- and, before doing so, claims that answering the question, or producing the document or thing, might tend to incriminate the person or expose the person to a penalty; or

- (b) the person answers the question in writing and claims, in a written statement accompanying the answer, that answering the question might tend to incriminate the person or expose the person to a penalty; or
 - (c) the person produces the document or thing and claims, in a written statement accompanying the document or thing, that producing the document or thing might tend to incriminate the person or expose the person to a penalty.
- (3) Subsection (4) does not apply to the production of a document that is, or forms part of, a record of an existing or past business.
- (4) Neither of the following:
- (a) the answer given;
 - (b) the document or thing produced;
- is admissible in evidence against the person in criminal proceedings, or any other proceedings for the imposition or recovery of a penalty, other than:
- (c) proceedings for an offence against section 93; or
 - (d) confiscation proceedings; or
 - (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deals with false or misleading information or documents) that relates to this Act; or
 - (f) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act; or
 - (g) disciplinary proceedings against the person if the person is a staff member of a law enforcement agency.

Public interest grounds

- (5) A person is not excused from:
- (a) answering a question; or
 - (b) producing a document or thing;
- when summoned, under section 83, to attend a hearing to do so on the ground that doing so:
- (c) would disclose one of the following:
 - (i) legal advice given to a Minister or a Commonwealth government agency;
 - (ii) a communication between an officer of a Commonwealth government agency and another person or body, being a communication protected against disclosure by legal professional privilege; or
 - (d) would breach a secrecy provision other than:
 - (i) a taxation secrecy provision; or
 - (ii) a law enforcement secrecy provision; or
 - (e) would be otherwise contrary to the public interest.

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

- (6) The fact that a person is not excused under subsection (5) from:
- (a) answering a question; or
 - (b) producing a document or thing;
- does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that answer, document or thing.
- (7) A person who is served with a summons under section 83 does not commit an offence, and is not liable to any penalty, under the provisions of any other

enactment (other than a taxation secrecy provision or a law enforcement secrecy provision) because the person:

- (a) answers a question at a hearing that the Integrity Commissioner requires the person to answer; or
- (b) produces a document or thing that the person is required to produce in accordance with the summons.

Subdivision F—Court orders for delivery of witness’s passport and witness’s arrest

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

- (1) The Integrity Commissioner may apply to a Judge of the Federal Court for an order that a person deliver his or her passport to the Integrity Commissioner if:
 - (a) either of the following apply:
 - (i) a summons under section 83 has been issued requiring the person to attend a hearing (whether or not the summons has been served) in relation to a corruption investigation or public inquiry; or
 - (ii) the person has appeared at a hearing in relation to a corruption investigation or public inquiry to give evidence or to produce documents or things; and
 - (b) there are reasonable grounds for believing that the person may be able:
 - (i) to give evidence, or further evidence, that is relevant to the investigation or public inquiry; or
 - (ii) to produce documents or things, or further documents or things, that are relevant to the investigation or public inquiry; and
 - (c) there are reasonable grounds for suspecting that the person:
 - (i) intends to leave Australia; and
 - (ii) has in his or her possession, custody or control a passport issued to him or her.
- (2) The Integrity Commissioner must give the Judge information on oath, or by affirmation, in support of the grounds for the application.

98 Court orders

Court order for witness to appear before the Court

- (1) If a Judge of the Federal Court, sitting in Chambers, is satisfied, on the evidence, that the requirements of paragraphs 97(1)(a), (b) and (c) are met, the Judge may make an order:
 - (a) requiring the person to appear before the Federal Court on a date, and at a time and place, specified in the order; and
 - (b) requesting the person to show cause why he or she should not be ordered to deliver the passport to the Integrity Commissioner.

Offence

- (2) A person commits an offence if:
 - (a) the person leaves Australia; and
 - (b) an order has been made in relation to the person under subsection (1); and
 - (c) a copy of the order has been served on the person.

Penalty: Imprisonment for 2 years.

- (3) In proceedings for an offence against subsection (2), it is a defence if:
- (a) the person has appeared before the Federal Court as required by the order referred to in paragraph (2)(b); and
 - (b) if the Court makes an order in relation to the person under paragraph (4)(a)—the person has complied with the terms of the order and any passport delivered to the Integrity Commissioner in accordance with the order has been returned to the person.

Court order that witness deliver passport to Integrity Commissioner

- (4) If the person appears before the Federal Court as required by the order made under subsection (1), the Court may, if it thinks fit, make an order:
- (a) requiring the person to deliver to the Integrity Commissioner any passport:
 - (i) issued to him or her; and
 - (ii) in his or her possession, custody or control; and
 - (b) authorising the Integrity Commissioner to retain the passport until the end of the period (not exceeding one month) that is specified in the order.

Extension of period that Integrity Commissioner may retain passport

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

Revocation of court order

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

Jurisdiction of the Federal Court

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

Definition

- (9) In this section:

Australia includes the external Territories.

99 Applying for a warrant to arrest witness

- (1) An authorised officer may apply to a Judge of the Federal Court of Australia, or of the Supreme Court of a State or Territory, for a warrant to arrest a person if the authorised officer has reasonable grounds to believe that:
- (a) the person:

- (i) has been ordered to deliver his or her passport to the Integrity Commissioner (whether or not the person has complied with the order); and
 - (ii) is likely to leave Australia for the purpose of avoiding giving evidence at a hearing before the Integrity Commissioner; or
 - (b) the person has been served with a summons under section 83 and:
 - (i) has absconded or is likely to abscond; or
 - (ii) is otherwise attempting, or likely to attempt, to evade service of the summons; or
 - (c) the person has committed an offence under subsection 93(1) or is likely to do so.
- (2) An authorised officer must give the Judge information on oath, or by affirmation, in support of the grounds for the application.

100 Warrant for arrest

Issue of warrant

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

Execution of warrant

- (2) For the purpose of executing a warrant, if the authorised officer executing the warrant (or an assisting officer) believes on reasonable grounds that the person is on any premises, the authorised officer (or the assisting officer) may break into and enter those premises.
- (3) However, the authorised officer executing the warrant (or an assisting officer) must not enter a dwelling house at any time during the period commencing at 9 pm on a day and ending at 6 am on the following day unless the authorised officer (or the assisting officer) believes on reasonable grounds that it would not be practicable to arrest the person, either at the dwelling house or elsewhere, at another time.
- (4) The authorised officer executing the warrant (or an assisting officer) must not, in the course of arresting the person, use more force, or subject the other person to greater indignity, than is necessary and reasonable:
 - (a) to make the arrest; or
 - (b) to prevent the escape of the person after the arrest.
- (5) The warrant may be executed even if the authorised officer does not have a copy of the warrant in his or her possession at the time it is executed.
- (6) The authorised officer executing the warrant (or an assisting officer who arrests the person) must inform the person, at the time of the arrest, of the reason for which he or she is being arrested.
- (7) It is sufficient if the person is informed of the substance of the reason and it is not necessary that this be done in language of a precise or technical nature.
- (8) Subsection (6) does not apply to the arrest of the person if:
 - (a) the person should, in the circumstances, know the substance of the reason for which he or she is being arrested; or

- (b) the person's actions make it impracticable for the authorised officer executing the warrant (or an assisting officer making the arrest) to inform the person of the reason for which he or she is being arrested.
- (9) Nothing in this section prevents the arrest of a person in accordance with any other law.

Definitions

- (10) In this section:

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

Judge means:

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

101 Powers of Judge in relation to person arrested

- (1) A person arrested under a warrant issued under section 100 must be brought, as soon as practicable, before a Judge.
- (2) The Judge may:
 - (a) grant the person bail:
 - (i) on such security as the Judge thinks fit; and
 - (ii) on such conditions as the Judge thinks are necessary to ensure that the person appears as a witness at a hearing before the Integrity Commissioner; or
 - (b) order that the person continue to be detained for the purpose of ensuring that the person appears as a witness at a hearing before the Integrity Commissioner; or
 - (c) order that the person be released.
- (3) A person who is detained under paragraph (2)(b) must be brought before a Judge:
 - (a) within 14 days after he or she was brought, or last brought, before a Judge; or
 - (b) within such shorter or longer time as a Judge fixed on the person's last previous appearance before a Judge;and the Judge may exercise any of the powers under subsection (2).
- (4) In this section:

Judge means:

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

Subdivision G—Miscellaneous

102 Integrity Commissioner may retain documents or things

- (1) If a document or thing is produced to the Integrity Commissioner in accordance with a summons under section 83, the Integrity Commissioner:
 - (a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and

- (b) may retain possession of the document or thing for such period as is necessary for the purposes of the investigation or public inquiry to which the document or thing relates.
- (2) While the Integrity Commissioner retains the document or thing, he or she must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

103 Person may apply for legal and financial assistance

- (1) A person who is summoned under section 83 to attend a hearing before the Integrity Commissioner may apply to the Attorney-General for assistance in respect of:
 - (a) his or her attendance at the hearing; or
 - (b) his or her 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 regulations: see subsection 83(5).

Note 2: A person may also apply for assistance in respect of an application to the Federal Court or the Federal Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act: see section 221.
- (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 Magistrates Court under the *Administrative Decisions (Judicial Review) Act 1977* for an order of review in respect of a matter arising under this Act: see section 221.
- (3) If a person applies under subsection (1) or (2), the Attorney-General may, if he or she is 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.
- (4) Legal or financial assistance may be given:
 - (a) unconditionally; or
 - (b) subject to such conditions as the Attorney-General determines.
- (5) An instrument that determines the conditions on which legal or financial assistance may be given is not a legislative instrument.

104 Protection of Integrity Commissioner etc.

- (1) The Integrity Commissioner has, in exercising his or her power to hold a hearing, the same protection and immunity as a Justice of the High Court.

- (2) A legal practitioner assisting the Integrity Commissioner, or representing a person at a hearing, has the same protection and immunity as a barrister appearing for a party in proceedings in the High Court.
- (4) To avoid doubt, this section does not limit the powers of the Ombudsman under the *Ombudsman Act 1976* to investigate issues of administrative practice in relation to a hearing that been held under this Division.
- (5) A reference in this section to the Integrity Commissioner includes a reference to an Assistant Integrity Commissioner who exercises the power to hold a hearing under an authorisation under section 219.

104A Protection of witnesses etc.

- (1) A person who:
 - (a) gives evidence at a hearing conducted under this Act; or
 - (b) produces a document or thing at a hearing conducted under this Act; or
 - (c) makes a submission to the Integrity Commissioner in relation to a public inquiry;has the same protection as a witness in proceedings in the High Court.
- (2) Subsection (3) applies if it appears to the Integrity Commissioner that, because a person:
 - (a) is to give evidence, or produce a document or thing, at a hearing under this Act; or
 - (b) has given evidence, or produced a document or thing, at a hearing under this Act; or
 - (c) is to make, or has made, a submission to the Integrity Commissioner in relation to a public inquiry;either:
 - (d) the safety of the person or any other person may be prejudiced; or
 - (e) the person or any other person may be subjected to intimidation or harassment.
- (3) The Integrity Commissioner may make such arrangements as are necessary:
 - (a) to protect the safety of any person mentioned in paragraph (2)(d); or
 - (b) to protect any person mentioned in paragraph (2)(e) from intimidation or harassment.
- (4) For the purpose of subsection (3), the arrangements that the Integrity Commissioner may make include arrangements with:
 - (a) the Minister; or
 - (b) members of the AFP; or
 - (c) members of the police force of a State or Territory.
- (5) This section does not affect the *Witness Protection Act 1994*.

Appendix 2: Coercive powers available to the Integrity Commissioner

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

142 Evidence of offence or liability to civil penalty

Commonwealth offence or civil penalty

- (1) If, in investigating a corruption issue or conducting a public inquiry, the Integrity Commissioner obtains:
 - (a) evidence of an offence against a law of the Commonwealth that would be admissible in a prosecution for the offence; or
 - (b) evidence of the contravention of a law of the Commonwealth:
 - (i) in relation to which civil penalty proceedings may be brought; and
 - (ii) that would be admissible in civil penalty proceedings for the contravention;the Integrity Commissioner must:
 - (c) assemble the evidence; and
 - (d) give the evidence to:
 - (i) the Commissioner of the AFP; or
 - (ii) another person or authority who is authorised by or under a law of the Commonwealth to prosecute the offence or bring the civil penalty proceedings.

State or Territory offence or civil penalty

- (2) If, in investigating a corruption issue or conducting a public inquiry, the Integrity Commissioner obtains:
 - (a) evidence of an offence against a law of a State or Territory that would be admissible in a prosecution for the offence; or
 - (b) evidence of the contravention of a law of a State or Territory:
 - (i) in relation to which civil penalty proceedings may be brought; and
 - (ii) that would be admissible in civil penalty proceedings for the contravention;the Integrity Commissioner must:
 - (c) assemble the evidence; and
 - (d) give the evidence to:
 - (i) the head (however described) of the police force of the State or Territory; or
 - (ii) another person or authority who is authorised by or under a law of the State or Territory to prosecute the offence or bring the civil penalty proceedings.

143 Evidence that could be used in confiscation proceedings

Commonwealth proceedings

- (1) If, in investigating a corruption issue or conducting a public inquiry, the Integrity Commissioner obtains evidence that would be admissible in a proceeding

under the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002* (other than a criminal prosecution for an offence under that Act), the Integrity Commissioner must:

- (a) assemble the evidence; and
- (b) give the evidence to:
 - (i) the Commissioner of the AFP; or
 - (ii) another person or authority who is authorised by or under a law of the Commonwealth to bring the proceeding.

State or Territory proceedings

- (2) If, in investigating a corruption issue or conducting a public inquiry, the Integrity Commissioner obtains evidence that would be admissible in a proceeding under a corresponding law within the meaning of the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act 2002* (other than a criminal prosecution for an offence under the corresponding law), the Integrity Commissioner must:
 - (a) assemble the evidence; and
 - (b) give the evidence to:
 - (i) the head (however described) of the police force of the State or Territory; or
 - (ii) another person or authority who is authorised by or under a law of the State or Territory to bring the proceeding.

144 Consultation with law enforcement agency head before taking action under section 142 or 143

- (1) This section applies if the Integrity Commissioner proposes to take action under section 142 or 143 in relation to an investigation of a corruption issue that relates to a law enforcement agency.
- (2) The Integrity Commissioner must take reasonable steps to consult the head of the law enforcement agency before taking the action.
- (3) If:
 - (a) the corruption issue relates to the conduct of a secondee to the law enforcement agency; and
 - (b) the secondee is an employee of a government agency (the **home agency**);the Integrity Commissioner must also take reasonable steps to consult the head of the home agency before taking the action.
- (4) If:
 - (a) the corruption issue relates to the conduct of a secondee to the law enforcement agency; and
 - (b) the secondee is an employee of a State or Territory government agency;the Integrity Commissioner must also take reasonable steps to consult the head of the integrity agency (if any) for that State or Territory before taking the action.
- (5) However, the Integrity Commissioner need not consult a person under subsection (2), (3) or (4) if doing so is likely to prejudice:
 - (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).

- (6) If the Integrity Commissioner does not consult a person because of subsection (5), the Integrity Commissioner must:
 - (a) inform the Minister that the person has not been consulted; and
 - (b) give the Minister the Integrity Commissioner's reasons for not consulting the person.

145 Notification of action taken under section 142 or 143

- (1) This section applies if the Integrity Commissioner takes action under section 142 or 143 in relation to the investigation of a corruption issue that relates to a law enforcement agency.
- (2) The Integrity Commissioner must inform the head of the law enforcement agency that the action has been taken.
- (3) If:
 - (a) the corruption issue relates to the conduct of a secondee to the law enforcement agency; and
 - (b) the secondee is an employee of a government agency (the **home agency**);the Integrity Commissioner must inform the head of the home agency that the action has been taken.
- (4) If:
 - (a) the corruption issue relates to the conduct of a secondee to the law enforcement agency; and
 - (b) the secondee is an employee of a State or Territory government agency;the Integrity Commissioner must also inform the head of the integrity agency (if any) for that State or Territory that the action has been taken.
- (5) However, the Integrity Commissioner need not inform a person under subsection (2), (3) or (4) if doing so is likely to prejudice:
 - (a) the investigation of the corruption issue or another corruption investigation; or
 - (b) any action taken as a result of an investigation referred to in paragraph (a).
- (6) If the Integrity Commissioner does not inform a person because of subsection (5), the Integrity Commissioner must:
 - (a) inform the Minister that the person has not been informed; and
 - (b) give the Minister the Integrity Commissioner's reasons for not informing the person.

146 Evidence of breach of duty or misconduct by staff member

Passing evidence on to head of law enforcement agency

- (1) If:
 - (a) the Integrity Commissioner, in investigating a corruption issue or conducting a public inquiry, obtains evidence of a breach of duty or misconduct by a staff member of a law enforcement agency; and
 - (b) the Integrity Commissioner is satisfied that the evidence may justify:
 - (i) terminating the staff member's employment or, if the staff member is a secondee to the law enforcement agency, the staff member's secondment; or
 - (ii) initiating disciplinary proceedings against the staff member; and

(c) the Integrity Commissioner is satisfied that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so;
the Integrity Commissioner must bring the evidence to the notice of the head of the law enforcement agency.

Passing evidence on to head of secondee's home agency

- (2) If:
- (a) the Integrity Commissioner, in investigating a corruption issue or conducting a public inquiry, obtains evidence of a breach of duty or misconduct by a staff member of a law enforcement agency; and
 - (b) the staff member is a secondee to the law enforcement agency; and
 - (c) the secondee is an employee of a government agency (the **home agency**); and
 - (d) the Integrity Commissioner is satisfied that the evidence may justify:
 - (i) terminating the secondee's employment; or
 - (ii) initiating disciplinary proceedings against the secondee; and
 - (e) the Integrity Commissioner is satisfied that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so;
- the Integrity Commissioner must bring the evidence to the notice of:
- (f) the head of the home agency; and
 - (g) if the home agency is a State or Territory government agency—the integrity agency (if any) for that State or Territory.

147 Evidence of, or information suggesting, wrongful conviction

Commonwealth offence

- (1) If the Integrity Commissioner:
- (a) in investigating a corruption issue or conducting a public inquiry, obtains evidence that a person was wrongly convicted of an offence against a law of the Commonwealth; and
 - (b) is satisfied that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so;
- the Integrity Commissioner must:
- (c) bring the evidence to the notice of the Minister; and
 - (d) advise the person that the Integrity Commissioner has must brought the evidence to the notice of the Minister.

State or Territory offence

- (2) If the Integrity Commissioner:
- (a) in investigating a corruption issue or conducting a public inquiry, obtains evidence that a person was wrongly convicted of an offence against a law of a State or Territory; and
 - (b) is satisfied that the evidence is, in all the circumstances, of sufficient force to justify his or her doing so;
- the Integrity Commissioner must:
- (c) bring the evidence to the notice of the Minister; and
 - (d) advise the person that the Integrity Commissioner has brought the evidence to the notice of the Minister.