



Australian Capital Territory

Integrity Commission Act 2018

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amendments by [A2019-18](#))

About this republication

The republished law

This is a republication of the *Integrity Commission Act 2018* (including any amendment made under the [Legislation Act 2001](#), part 11.3 (Editorial changes)) as in force on 1 December 2019. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 December 2019.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the [Legislation Act 2001](#) applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The [Legislation Act 2001](#), part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see [Legislation Act 2001](#), s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the [Legislation Act 2001](#), section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$160 for an individual and \$810 for a corporation (see [Legislation Act 2001](#), s 133).



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Australian Capital Territory

Integrity Commission Act 2018

An Act to establish the ACT Integrity Commission, and for other purposes

Chapter 1 Preliminary

Part 1.1 Preliminary

1 Name of Act

This Act is the *Integrity Commission Act 2018*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (**signpost definitions**) to other terms defined elsewhere.

For example, the signpost definition ‘**registered party**—see the [Electoral Act 1992](#), dictionary.’ means that the term ‘registered party’ is defined in that dictionary and the definition applies to this Act.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg **conduct**, **intention**, **recklessness** and **strict liability**).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Objects of Act

The objects of this Act include—

- (a) providing for the identification, investigation and exposure of corrupt conduct; and
- (b) providing for the commission to prioritise the investigation and exposure of serious corrupt conduct and systemic corrupt conduct; and
- (c) achieving a balance between the public interest in exposing corruption in public administration and the public interest in avoiding undue prejudice to a person's reputation; and
- (d) assisting in the prevention of corrupt conduct; and
- (e) cooperating with other integrity bodies; and
- (f) educating public officials and the community about the detrimental effects of corrupt conduct on public administration and the community and the ways in which corrupt conduct can be prevented; and
- (g) assisting in improving the capacity of the public sector to prevent corrupt conduct.

7 Application of Act—Parliamentary privilege

- (1) This Act does not affect the law relating to the privileges of—
 - (a) the Legislative Assembly; or
 - (b) any Australian Parliament; or
 - (c) any house of any Australian Parliament.
- (2) This section is subject to section 178 (Parliamentary privilege—taken to be waived for MLAs’ declarations of interests etc).

8 Application of Act—conduct that happened before the commencement of this Act

- (1) This Act applies in relation to conduct that happened after self-government day and before the commencement of this section if the conduct—
 - (a) is conduct by an entity (whether or not still in existence) that would have been a public official or public sector entity under this Act had this Act been in force at the time the conduct happened; and
 - (b) would have been corrupt conduct under this Act had this Act been in force at the time the conduct happened.
- (2) However, the commission must not conduct an investigation under chapter 3 (Commission—investigating corrupt conduct) in relation to conduct of a judicial officer that happened after self-government day and entirely before the commencement of this section if the matter directly relates to—
 - (a) the merits of a decision made by the judicial officer; or
 - (b) an order made by the judicial officer; or
 - (c) a judgment given by the judicial officer.

- (3) Also, the commission need not conduct an investigation under chapter 3 (Commission—investigating corrupt conduct) in relation to conduct that happened after self-government day and entirely before the commencement of this section if satisfied on reasonable grounds that the matter does not justify investigation because—
- (a) the conduct is trivial; or
 - (b) the conduct is unrelated to the functions of the commission; or
 - (c) the corruption report is frivolous or vexatious or not made in good faith; or
 - (d) the corruption report lacks substance or credibility; or
 - (e) the corruption report was not made genuinely or was made primarily for a mischievous purpose; or
 - (f) another investigatory body has already appropriately investigated, or decided not to investigate, the conduct; or
 - (g) the conduct happened too long ago to justify investigation.
- (4) In addition, the commission may conduct an investigation under chapter 3 in relation to conduct that happened after self-government day and entirely before the commencement of this section only if satisfied on reasonable grounds that—
- (a) it is in the public interest for the commission to investigate the conduct; and
 - (b) in all the circumstances, it is appropriate for the commission to investigate the conduct, having regard to the commission's function of investigating conduct that is alleged to be corrupt conduct.

(5) In this section:

investigatory body means—

- (a) an integrity body; or
- (b) another entity (whether or not still in existence) with power to require the production of documents or the answering of questions.

Part 1.2 Important concepts

9 Meaning of *corrupt conduct*

- (1) For this Act, ***corrupt conduct*** is conduct—
- (a) that could—
 - (i) constitute a criminal offence; or
 - (ii) constitute a serious disciplinary offence; or
 - (iii) constitute reasonable grounds for dismissing, dispensing with the services of, or otherwise terminating the services of, a public official; and
 - (b) that is any of the following:
 - (i) conduct by a public official that constitutes the exercise of the public official's functions as a public official in a way that is not honest or is not impartial;
 - (ii) conduct by a public official or former public official that—
 - (A) constitutes a breach of public trust; or
 - (B) constitutes the misuse of information or material acquired by the official in the course of performing their official functions, whether or not the misuse is for the benefit of the official or another person;
 - (iii) conduct that adversely affects, either directly or indirectly the honest or impartial exercise of functions by a public official or a public sector entity;
 - (iv) conduct that—
 - (A) adversely affects, either directly or indirectly the exercise of official functions by a public official or public sector entity; and

- (B) would constitute, if proved, an offence against a provision of the [Criminal Code](#), chapter 3 (Theft, fraud, bribery and related offences);
 - (v) conduct that involves any of the following:
 - (A) collusive tendering;
 - (B) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety, protect the environment or facilitate the management and commercial exploitation of resources;
 - (C) dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from, the payment or application of public funds for private advantage or the disposition of public assets for private advantage;
 - (D) defrauding the public revenue;
 - (E) fraudulently obtaining or retaining employment or appointment as a public official;
 - (vi) conduct engaged in by a person in relation to conduct mentioned in subparagraphs (i) to (iv) (the **primary conduct**), that would constitute an offence against the [Criminal Code](#), part 2.4 (Extensions of criminal responsibility) on the basis that the primary conduct is an offence, whether or not the primary conduct is in fact an offence.
- (2) For subsection (1) (a) it does not matter if—
- (a) proceedings or action in relation to the conduct can no longer be taken; or

(b) the conduct happened outside the Territory.

Example—par (a)

Action for a disciplinary offence may no longer be taken as the person who engaged in the conduct has resigned.

(3) In this section:

criminal offence means a criminal offence under the law of the Territory or under any other law relevant to the conduct in question.

Examples—criminal offences

offences in the [Criminal Code](#), ch 3 (Theft, fraud, bribery and related offences), including:

- pt 3.2 (Theft and related offences)
- pt 3.3 (Fraudulent conduct)
- pt 3.4 (False or misleading statements, information and documents)
- pt 3.5 (Blackmail)
- pt 3.6 (Forgery and related offences)
- pt 3.7 (Bribery and related offences)
- pt 3.8 (Impersonation or obstruction of territory public officials)
- pt 3.8A (Cheating at gambling).

serious disciplinary offence includes—

- (a) any serious misconduct; or
- (b) any other matter that constitutes or may constitute grounds for—
 - (i) termination action under any law; or
 - (ii) a significant employment penalty.

serious misconduct—see the [Fair Work Regulations 2009](#) (Cwlth), section 1.07 (Meaning of ***serious misconduct***).

10 *Meaning of serious corrupt conduct*

In this Act:

serious corrupt conduct means corrupt conduct that is likely to threaten public confidence in the integrity of government or public administration.

11 *Meaning of systemic corrupt conduct*

In this Act:

systemic corrupt conduct means instances of corrupt conduct that reveal a pattern of corrupt conduct in 1 or more public sector entities.

12 *Meaning of public official*

(1) In this Act:

public official—

(a) means a person who—

- (i) has public official functions for the Territory; or
- (ii) is acting in a public official capacity for the Territory; and

(b) includes the following:

- (i) a member of the Legislative Assembly;
- (ii) a member of staff of an MLA;
- (iii) a judicial officer;
- (iv) a presidential member, non-presidential member, assessor or registrar of the ACAT;
- (v) an officer of the Assembly;
- (vi) a statutory office-holder;
- (vii) a public servant;

(viii) any other person who is—

(A) an employee of a public sector entity; or

(B) a contractor, employee of a contractor, or volunteer exercising a function of, a public sector entity.

(2) In this section:

assessor, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

non-presidential member, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

presidential member, of the ACAT—see the [ACT Civil and Administrative Tribunal Act 2008](#), dictionary.

13 **Meaning of *judicial officer***

In this Act:

judicial officer means any of the following:

- (a) the Chief Justice, a judge or associate judge;
- (b) the Chief Magistrate, a magistrate or any office that must be occupied by a magistrate;
- (c) a registrar of the Supreme Court or the Magistrates Court.

14 **Meaning of *public sector entity***

In this Act:

public sector entity means any of the following:

- (a) an ACT public service entity;

Note ***ACT public service entity***—see s 16.

- (b) a Legislative Assembly entity;

Note **Legislative Assembly entity**—see s 17.

- (c) an entity of a public nature.

Note **Entity of a public nature**—see s 18.

15 Meaning of *head* of a public sector entity

- (1) In this Act:

head, of a public sector entity, means—

- (a) for an ACT public service entity—

Note **ACT public service entity**—see s 16.

- (i) for the public service—the head of service; and
- (ii) for an administrative unit—the director-general of the administrative unit; and
- (iii) for a statutory office-holder—the statutory office-holder; and
- (iv) for a territory authority—the person who has responsibility for managing the affairs of the territory authority; and
- (v) for a territory-owned corporation or a subsidiary of a territory-owned corporation—the person who has responsibility for managing the affairs of the territory-owned corporation; and
- (vi) for a territory instrumentality—the person who has responsibility for managing the affairs of the territory instrumentality; and

- (b) for a Legislative Assembly entity—

Note **Legislative Assembly entity**—see s 17.

- (i) for a member of the Legislative Assembly—the Speaker; and

- (ii) for a member of staff of an MLA—the Speaker; and
- (iii) for the Office of the Legislative Assembly—the clerk of the Legislative Assembly; and
- (iv) for an officer of the Assembly—the officer of the Assembly; and
- (v) for a member of staff of an officer of the Assembly—the officer of the Assembly; and
- (c) for an entity of a public nature—the person who has responsibility for managing the affairs of the entity.

Note **Entity of a public nature**—see s 18.

(2) In this section:

Speaker includes, if the Speaker is unavailable, the Deputy Speaker.

unavailable—the Speaker is **unavailable** if—

- (a) the Speaker is absent from duty; or
- (b) there is a vacancy in the office of Speaker; or
- (c) the Speaker has an actual or perceived conflict of interest that would prevent the Speaker from properly carrying out the functions of Speaker under this Act; or
- (d) the Speaker cannot for any reason exercise the functions of the Speaker.

16 **Meaning of ACT public service entity**

In this Act:

ACT public service entity—

- (a) means any of the following:
 - (i) the public service;
 - (ii) a statutory office-holder;

- (iii) a territory authority;
- (iv) a territory-owned corporation;
- (v) a subsidiary of a territory-owned corporation;
- (vi) a territory instrumentality; but
- (b) does not include the following:
 - (i) the commission;
 - (ii) the commissioner;
 - (iii) staff of the commission;
 - (iv) the inspector;
 - (v) staff of the inspector.

17 *Meaning of Legislative Assembly entity*

In this Act:

Legislative Assembly entity means any of the following:

- (a) a member of the Legislative Assembly;
- (b) a member of staff of an MLA;
- (c) the Office of the Legislative Assembly;
- (d) an officer of the Assembly;
- (e) a member of staff of an officer of the Assembly.

18 Meaning of *entity of a public nature*

(1) In this Act:

entity of a public nature means an entity whose functions are, or include, functions of a public nature, when it is exercising those functions (whether under contract or otherwise) for—

- (a) the Territory; or
- (b) an ACT public service entity; or
- (c) a Legislative Assembly entity.

Note A reference to an entity includes a reference to a person exercising a function of the entity, whether under a delegation, subdelegation or otherwise (see [Legislation Act](#), s 184A (1)).

(2) In deciding whether a function of an entity is a ***function of a public nature***, the following matters may be considered:

- (a) whether the function is conferred on the entity under a territory law;
- (b) whether the function is connected to or generally identified with functions of government;
- (c) whether the function is of a regulatory nature;
- (d) whether the entity is publicly funded to perform the function;
- (e) whether the entity exercising the function is a company (within the meaning of the [Corporations Act](#)) the majority of the shares in which are held by or for the Territory.

(3) Subsection (2) does not limit the matters that may be considered in deciding whether a function is of a public nature.

(4) Without limiting subsection (2) or (3), the following functions are taken to be of a public nature:

- (a) the operation of detention places and correctional centres;

- (b) the provision of any of the following services:
 - (i) gas, electricity and water supply;
 - (ii) emergency services;
 - (iii) public health services;
 - (iv) public education;
 - (v) public transport;
 - (vi) public housing.

Chapter 2 Integrity commission

Part 2.1 Commission—establishment, independence and functions

19 Establishment of commission

The ACT Integrity Commission is established.

20 Constitution of commission

The commission consists of the commissioner.

21 Commissioner—officer of the Legislative Assembly

- (1) The commissioner is an independent officer of the Legislative Assembly.
- (2) The functions, powers, rights, immunities and obligations of the commissioner are as stated in this Act and any other law in force in the Territory.

Note A law in force in the Territory includes a territory law and a Commonwealth law.

- (3) There are no implied functions, powers, rights, immunities or obligations arising from the commissioner being an independent officer of the Legislative Assembly.
- (4) The powers of the Legislative Assembly to act in relation to the commissioner are as stated in this Act and any other law in force in the Territory.
- (5) In subsection (4):

Legislative Assembly includes—

- (a) the members of the Legislative Assembly; and
- (b) the committees of the Legislative Assembly.

- (6) There are no implied powers of the Legislative Assembly arising from the commissioner being an independent officer of the Legislative Assembly.

22 Independence of commission

Subject to this Act and to other territory laws, the commission has complete discretion in the exercise of the commission's functions.

23 Functions of commission

- (1) The functions of the commission are to—
- (a) investigate conduct that is alleged to be corrupt conduct; and
 - (b) refer suspected instances of criminality or wrongdoing to the appropriate authority for further investigation and action; and
 - (c) prevent corruption, including by—
 - (i) researching corrupt practices; and
 - (ii) mitigating the risks of corruption; and
 - (d) publish information about investigations conducted by the commission, including lessons learned; and
 - (e) provide education programs about the operation of this Act and the commission, including providing advice, training and education services to—
 - (i) the Legislative Assembly and the public sector to increase capacity to prevent corrupt conduct; and
 - (ii) people who are required to report corrupt conduct under this Act; and
 - (iii) the community about the detrimental effects of corruption on public administration and ways in which to assist in preventing corrupt conduct; and

- (f) foster public confidence in the Legislative Assembly and public sector.
- (2) In exercising its functions, the commission must prioritise the investigation and exposure of corrupt conduct which the commission considers may constitute serious corrupt conduct or systemic corrupt conduct.
- (3) Subsection (2) does not restrict the commission's discretion to decide to investigate any matter that the commission considers may constitute corrupt conduct.
- (4) In exercising its functions, the commission must take into account the responsibility and role other public sector entities have in the prevention of corrupt conduct.
- (5) In this section:
public sector—see the [Public Sector Management Act 1994](#), dictionary.

24 Functions of commissioner

The commissioner has the functions given to the commissioner under this Act or another territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def **entity**).

Part 2.2 Commissioner—appointment

25 Commissioner—appointment

- (1) The Speaker must, on behalf of the Territory, appoint a person as the ACT Integrity Commissioner.
- (2) The appointment must be made—
 - (a) in consultation with—
 - (i) the Chief Minister; and
 - (ii) the Leader of the Opposition; and
 - (iii) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
 - (iv) the relevant Assembly committee; and
 - (b) in accordance with the commissioner selection criteria and process determination.

Note **Commissioner selection criteria and process determination—**
see s 27.

- (3) The Speaker must not appoint a person as commissioner unless—
 - (a) satisfied that the person has extensive knowledge of, and experience in—
 - (i) criminal investigation or criminal adjudication; or
 - (ii) law enforcement or the conduct of investigations; or
 - (iii) public administration, governance or government; and
 - (b) the Legislative Assembly has approved the appointment, by resolution passed by a majority of at least $\frac{2}{3}$ of the members.

- (4) The commissioner is appointed on the terms (if any) in relation to matters not provided for by this part or a determination under the [Remuneration Tribunal Act 1995](#) that are prescribed by the management standards under the [Public Sector Management Act 1994](#).

- (5) The appointment is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Note 2 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

26 Commissioner—eligibility for appointment

- (1) The Speaker may appoint a person as the commissioner only if the person has been—
- (a) a judge of the Supreme Court; or
 - (b) a judge of the Supreme Court of a State or another territory; or
 - (c) a judge of the Federal Court; or
 - (d) a justice of the High Court; or
 - (e) a lawyer for at least 10 years.
- (2) However, in appointing a person as commissioner, the Speaker must consider applicants mentioned in subsection (1) (a) to (d) first then, only if there is no suitable applicant, consider applicants mentioned in subsection (1) (e).
- (3) In addition, the Speaker must not appoint a person as the commissioner if the person—
- (a) is or has been the inspector of the commission; or
 - (b) is or has been a member of—
 - (i) the Legislative Assembly; or

- (ii) the Parliament of the Commonwealth; or
 - (iii) the legislature of a State or another territory; or
- (c) is or has, in the 5 years immediately before the day of the proposed appointment, been a public servant; or
- (d) is or has, in the 5 years immediately before the day of the proposed appointment, been a member of—
 - (i) a registered party; or
 - (ii) a political party registered under a law of the Commonwealth, a State or another territory; or
 - (iii) a political party; or
- (e) has been convicted—
 - (i) in the ACT, of an offence punishable by imprisonment for at least 1 year; or
 - (ii) outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

27 Commissioner—selection criteria and process

- (1) The Speaker must make a determination (a ***commissioner selection criteria and process determination***) about—
 - (a) the criteria that apply to the selection of a person for appointment as commissioner; and
 - (b) the process for selecting the person.
- (2) In making a commissioner selection criteria and process determination, the Speaker must—
 - (a) consult—
 - (i) the Chief Minister; and

- (ii) the Leader of the Opposition; and
 - (iii) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
 - (iv) the relevant Assembly committee; and
- (b) ensure the selection process is open, accountable and competitive; and
 - (c) have regard to any selection criteria determined under the [Supreme Court Act 1933](#), section 4AA (Requirements of appointment—resident judges).
- (3) A commissioner selection criteria and process determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

28 Commissioner—term of appointment

- (1) The commissioner must not be appointed for longer than 7 years.
- (2) However, the appointment term must not end within 12 months before or after the end of the CEO's appointment.
- (3) A person who has been the commissioner for 7 years is not eligible for reappointment.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

29 Commissioner—oath or affirmation of office

Before a person is appointed as commissioner, the person must take an oath of office, or make an affirmation of office, before the Speaker.

Note For the form of the oath and affirmation of office, see the [Oaths and Affirmations Act 1984](#), s 6 and sch 1.

30 Commissioner—disclosure of interests

The commissioner must give a written statement of the commissioner's personal and financial interests to the Speaker within 7 days after—

- (a) the day the commissioner is appointed; and
- (b) the first day of each financial year; and
- (c) the day there is a change in the interest.

31 Commissioner—must avoid conflict of interest

- (1) The commissioner must not—
 - (a) have paid employment that is inconsistent with the commissioner's functions; or
 - (b) engage in any unpaid activity that is inconsistent with the commissioner's functions.
- (2) If the commissioner has a financial or other personal interest that conflicts or may conflict, or may be perceived to conflict with the commissioner's functions (a **conflict of interest**), the commissioner must disclose, in writing, the nature of the interest and the conflict or potential conflict to—
 - (a) the Speaker; and
 - (b) the inspector.

Note The commissioner must disclose a conflict of interest as soon as possible and as often as needed (see [Legislation Act](#), s 151B).

- (3) The commissioner must not take any part in considering a matter in relation to which the conflict of interest has arisen except—
 - (a) with the written approval of the Speaker; and
 - (b) in accordance with any conditions included in the Speaker's approval.

- (4) This section does not apply in relation to a conflict of interest while the commissioner remains unaware of the conflict of interest, but in any proceeding against the commissioner, the commissioner has the burden of proving that the commissioner was not, at the material time, aware of the conflict of interest.

32 Commissioner—conflicts of interest register

- (1) The commission must keep a conflicts of interest register.
- (2) The conflicts of interest register must contain the following:
- (a) a copy of each disclosure made under section 31 (2);
 - (b) if the commissioner takes part in considering a matter with the Speaker's approval under section 31 (3)—
 - (i) a copy of the Speaker's approval; and
 - (ii) details of how the commissioner complied with the conditions on the speaker's approval (if any);
 - (c) if a proceeding is taken against the commissioner that relates to a conflict of interest—
 - (i) details of the nature of the conflict of interest; and
 - (ii) if the commissioner claimed to be unaware of the conflict of interest—details of how the commissioner proved, or attempted to prove, that the commissioner was not, at the material time, aware of the conflict of interest.
- (3) The commissioner must make the conflicts of interest register available for inspection by the inspector at any time.

33 Commissioner—resignation

The commissioner may resign by giving a signed notice of resignation to the Speaker.

34 Commissioner—retirement

- (1) The Speaker may retire the commissioner on the ground of physical or mental incapacity if—
 - (a) the incapacity substantially affects the exercise of the commissioner’s functions; and
 - (b) the commissioner consents to the retirement.
- (2) However, the commissioner must not be retired on the ground of invalidity unless—
 - (a) if the commissioner is an eligible employee for the [Superannuation Act 1976](#) (Cwlth)—
 - (i) the commissioner is under the commissioner’s maximum retiring age within the meaning of that Act; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under that [Act](#), section 54C for the commissioner; or
 - (b) if the commissioner is a member of the superannuation scheme established under the [Superannuation Act 1990](#) (Cwlth)—
 - (i) the commissioner is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under that [Act](#), section 13 for the commissioner; or
 - (c) if the commissioner is an ordinary employer-sponsored member of PSSAP within the meaning of the [Superannuation Act 2005](#) (Cwlth)—
 - (i) the commissioner is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under that [Act](#), section 43 for the commissioner.

(3) In this section:

invalidity means—

- (a) for an eligible employee for the [Superannuation Act 1976](#) (Cwlth)—invalidity under that Act; or
- (b) for a member of the superannuation scheme established under the [Superannuation Act 1990](#) (Cwlth)—invalidity under that Act; or
- (c) for an ordinary employer-sponsored member of PSSAP within the meaning of the [Superannuation Act 2005](#) (Cwlth)—invalidity under that Act.

physical or mental incapacity includes invalidity.

35 Commissioner—suspension—generally

(1) The Speaker may suspend the commissioner—

- (a) for misbehaviour; or
- (b) for failure to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the commissioner's functions; or
- (c) for physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner's functions; or
- (d) if the commissioner becomes bankrupt or personally insolvent.

Note Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see [Legislation Act](#), s 180).

- (2) If the Speaker is considering suspending the commissioner, the Speaker—
- (a) must consult the following people about the proposed suspension:
 - (i) the Chief Minister;
 - (ii) the Leader of the Opposition;
 - (iii) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party;
 - (iv) the relevant Assembly committee; and
 - (b) may ask 1 or more of the following for advice about the proposed suspension:
 - (i) the public sector standards commissioner;
 - (ii) anyone else the Speaker considers appropriate.
- (3) If the Speaker suspends the commissioner, the Speaker must give the commissioner written notice of the suspension and a copy of a statement of the reasons for the suspension.
- Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.
- (4) The suspension takes effect when the notice and statement are given to the commissioner under subsection (3).
- (5) The commissioner may be suspended only under this section.
- (6) The commissioner is entitled to be paid salary and allowances while suspended.

36 Commissioner—suspension—relevant Assembly committee notice and meetings

- (1) If the Speaker suspends the commissioner, the Speaker must give written notice of the suspension and a copy of the statement of the reasons for the suspension to each member of the relevant Assembly committee not later than the next business day, or if the committee has not been established, the next business day after the day the committee is established.
- (2) The relevant Assembly committee must meet in relation to the commissioner's suspension—
 - (a) not later than 3 business days after the day the committee is given written notice of the suspension (the **notice day**); and
 - (b) at subsequent intervals of not longer than 30 days while the commissioner is suspended (a **regular meeting**).
- (3) The relevant Assembly committee must give the commissioner written notice that a regular meeting will be held at least 3 business days before the day the meeting is to be held.
- (4) The commissioner may make an oral or written submission (or both) to the committee about the commissioner's suspension.
- (5) At each regular meeting, the relevant Assembly committee must review the commissioner's suspension and may, at any time, pass a resolution about the suspension, including a resolution—
 - (a) recommending to the Speaker that the Speaker end the suspension; or
 - (b) to make a statement to the Legislative Assembly recommending that the Speaker end the commissioner's appointment.

37 Commissioner—ending suspension

- (1) If the Speaker does not comply with section 36 (1), the suspension ends at the end of the notice day.
- (2) If the relevant Assembly committee fails to hold a meeting as required under section 36 (2), the suspension ends on the day after the last day when the meeting could have been held.
- (3) If the relevant Assembly committee makes a recommendation mentioned in section 36 (5) (a) and the Speaker does not end the suspension within 1 business day after the day the recommendation is made—
 - (a) the committee may, at any time, resolve to make a statement to the Legislative Assembly recommending that the suspension be ended; and
 - (b) if the committee makes a statement mentioned in paragraph (a) and—
 - (i) the Legislative Assembly resolves to end the suspension—the suspension ends on the passing of the resolution; or
 - (ii) the Legislative Assembly does not deal with the statement within 3 sitting days—the suspension ends at the end of the 3rd sitting day.
- (4) If the relevant Assembly committee makes a statement mentioned in section 36 (5) (b)—
 - (a) the Legislative Assembly may resolve to require the Speaker to end the commissioner’s appointment; but
 - (b) if the Legislative Assembly does not, within 3 sitting days, pass a resolution mentioned in paragraph (a)—the suspension ends at the end of the 3rd sitting day.

- (5) If the Speaker ends the commissioner's suspension, the Speaker must give written notice of the ending of the suspension and a copy of a statement of the reasons for ending the suspension to the commissioner and the relevant Assembly committee.

Note For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (6) In this section:

notice day—see section 36 (2) (a).

38 Commissioner—ending appointment

- (1) The Speaker must end the commissioner's appointment if the Legislative Assembly—
- (a) passes a resolution under section 37 (4) (a); or
 - (b) otherwise resolves to require the Speaker to end the commissioner's appointment—
 - (i) for misbehaviour; or
 - (ii) for failure to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the commissioner's functions; or
 - (iii) for physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner's functions; or
 - (iv) if the commissioner becomes bankrupt or personally insolvent.
- (2) For a resolution mentioned in subsection (1) (b)—
- (a) at least 7 days before the day the motion to which the resolution relates is first debated in the Legislative Assembly—
 - (i) the Assembly must be given the notice of the motion and a statement of reasons for the motion; and

(ii) the Speaker must—

- (A) give the commissioner a copy of the notice and the statement of reasons; and
- (B) tell the commissioner that a written submission about the motion may be made to the Speaker not later than 3 days after the day the commissioner is given the notice; and

(b) the Speaker must give any written submission to the Legislative Assembly before the day the motion is first debated in the Legislative Assembly.

Note For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (3) The Speaker may end the commissioner's appointment if the commissioner is absent from duty, except on leave granted by the Speaker, for 14 consecutive days or for 28 days in any 12 months.
- (4) The commissioner's appointment may be ended by the Speaker only under this section or section 34 (Commissioner—retirement).

39 Commissioner—leave of absence

The Speaker may approve leave of absence for the commissioner on the terms the Speaker decides.

40 Commissioner—acting appointment

- (1) The requirements in section 25 (2) (a) (i), (ii) and (iii), (2) (b) and (3) (b) do not apply to the appointment of an acting commissioner.
- (2) If the Speaker approves a period of leave under section 39—
 - (a) an acting appointment may also be made by the commissioner after consulting the Speaker; and
 - (b) the requirements in section 25 (2) (a) (iv) also do not apply to the appointment of an acting commissioner.

- (3) The appointment of a person to act as commissioner must not be for a term longer than 6 months.

Note For other provisions relevant to acting appointments, see the [Legislation Act](#), pt 19.3.2.

Part 2.3 Commission—CEO

41 CEO—appointment

- (1) The commissioner must appoint a person as the Chief Executive Officer of the commission (the **CEO**).
- (2) However, the commissioner must not appoint a person as the CEO if the person—
 - (a) is or has been—
 - (i) the commissioner; or
 - (ii) the inspector of the commission; or
 - (b) is or has been a member of—
 - (i) the Legislative Assembly; or
 - (ii) the Parliament of the Commonwealth; or
 - (iii) the legislature of a State or another territory; or
 - (c) is or has, in the 5 years immediately before the day of the proposed appointment, been a public servant; or
 - (d) has been convicted—
 - (i) in the ACT, of an offence punishable by imprisonment for at least 1 year; or
 - (ii) outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

Note The commissioner may appoint a person as a member of staff of the commission only if the person is suitable to be a member of staff of the commission (see s 50).

- (3) The appointment must be made in accordance with an open, accountable and competitive selection process.

- (4) The CEO is appointed on the terms (if any) in relation to matters not provided for by this part or a determination under the [Remuneration Tribunal Act 1995](#) that are prescribed by the management standards under the [Public Sector Management Act 1994](#).

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3. The power to appoint a person to a position includes power to appoint a person to act in the position, and is exercisable in the same way, and subject to the same conditions, as the power to make the appointment (see [Legislation Act](#), s 209).

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

Note 3 The appointer's power to make the appointment includes the power to suspend the appointee. The power to suspend the appointee is exercisable in the same way, and subject to the same conditions, as the power to make the appointment (see [Legislation Act](#), s 208).

42 CEO—term of appointment

- (1) The CEO must not be appointed for longer than 7 years.
- (2) However, the appointment term must not end within 12 months before or after the end of the commissioner's appointment.
- (3) A person who has been CEO for 7 years is not eligible for reappointment.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

43 CEO—ending appointment

The commissioner must end the CEO's appointment—

- (a) for misbehaviour; or
- (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the CEO's functions; or
- (c) if the CEO becomes bankrupt or personally insolvent; or

- (d) if the CEO is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
- (e) if the CEO is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

44 CEO—functions

- (1) The CEO has the following functions:
 - (a) managing the day-to-day operations of the commission;
 - (b) advising the commission about the commission’s operations and financial performance.
- (2) The CEO is not subject to direction from anyone other than the commissioner in relation to the exercise of the CEO’s functions.

45 CEO—delegation

- (1) The CEO may delegate the CEO’s functions under this Act or another territory law to—
 - (a) another member of staff of the commission; or
 - (b) another person.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) However, the CEO must not delegate a function to a person who is not a member of staff of the commission without first being satisfied that the function needs to be exercised by a person who is not a member of staff of the commission.

46 CEO—leave of absence

The commissioner may approve leave of absence for the CEO on the terms the commissioner decides.

Part 2.4 Commission—staff

47 Meaning of *staff of the commission*

In this Act:

staff of the commission means—

- (a) the CEO; and
- (b) staff employed under section 48; and
- (c) consultants and contractors engaged under section 49.

48 Commission employed staff

- (1) The commission may employ staff on behalf of the Territory.
- (2) The staff must be employed under the [Public Sector Management Act 1994](#).

Note The [Public Sector Management Act 1994](#), div 8.2 applies to the commissioner in relation to the employment of staff (see [Public Sector Management Act 1994](#), s 152).

49 Commission consultants and contractors

- (1) The commission may, on behalf of the Territory, engage consultants and contractors to assist the commission in exercising its functions.
- (2) Consultants and contractors may be engaged on terms and conditions decided by the commission.
- (3) However, the commission must not enter into a contract of employment under this section.

50 Staff of the commission—eligibility for appointment

- (1) The commissioner may appoint a person as a member of staff of the commission only if satisfied the person is suitable to be a member of staff of the commission.

Note **Staff of the commission**—see s 47.

- (2) However, the commissioner must not appoint a person as a member of staff of the commission if the person is or has, in the 5 years immediately before the day of the proposed appointment, been a public servant.
- (3) In deciding whether a person is suitable to be a member of staff of the commission, the commission may ask the person to do 1 or more of the following:

- (a) provide a police certificate for the person, dated not earlier than 6 months before the date of the request;
- (b) declare personal interests the commission considers relevant;
- (c) undergo a medical or psychological assessment;
- (d) make a statement about a matter determined by the commission to be relevant to the person's suitability;
- (e) anything else the commissioner considers is necessary to decide whether a person is suitable to be a member of staff of the commission.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

- (4) The commission must make guidelines (the **personal interest guidelines**) about the personal interests the commission considers relevant to declare under subsection (3) (b).

- (5) The personal interest guidelines are a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

- (6) The commission must publish the personal interest guidelines on the commission's website.

51 Staff of the commission—not subject to direction from others

The staff of the commission are not subject to direction from anyone other than the following people in relation to the exercise of the commission's or commissioner's functions:

- (a) the commissioner;
- (b) another member of staff of the commission authorised by the commissioner to give directions.

52 Delegation by commission

- (1) The commission may delegate the commission's functions under this Act or another territory law to—

- (a) the commissioner; or
- (b) a member of staff of the commission; or
- (c) another person.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) However, the commission must not delegate a function to a person who is not the commissioner or a member of staff of the commission without first being satisfied that the function needs to be exercised by a person who is not the commissioner or a member of staff of the commission.

53 Delegation by commissioner

- (1) The commissioner may delegate the commissioner's functions under this Act or another territory law to—
 - (a) a member of staff of the commission; or
 - (b) another person.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) However, the commissioner must not delegate the commissioner's function under section 141 (Commissioner to preside) of presiding at a public examination.
- (3) Also, the commissioner must not delegate a function to a person who is not a member of staff of the commission without first being satisfied that the function needs to be exercised by a person who is not a member of staff of the commission.

54 Commission—other arrangements for staff and facilities

- (1) The commissioner may arrange with the head of service to use—
 - (a) the services of a public servant; or
 - (b) territory facilities.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see [Public Sector Management Act 1994](#), s 18).

- (2) The commissioner may arrange with the Speaker to use territory facilities within the Assembly precincts.

Part 2.5 Commission—cooperation with other entities

55 Commission—cooperation with other entities

- (1) The commission and public sector entities are to work cooperatively.
- (2) In exercising its functions, the commission must—
 - (a) liaise with public sector entities, and coordinate its activities with the activities of public sector entities, to avoid unnecessary duplication of work; and
 - (b) have regard to the activities, findings and recommendations of entities outside the Territory, including outside Australia, that have functions similar to the commission—
 - (i) to relate and adapt the activities, findings and recommendations of the entities to the needs of the Territory; and
 - (ii) to avoid unnecessary duplication of work.

Note 1 The commission may enter into a memorandum of understanding or agreement with another entity (see s 56).

Note 2 The commission may conduct an investigation as a joint investigation with an integrity body or law enforcement agency (see s 104).

Note 3 The commission may disclose information to certain entities if it is relevant to the exercise of the entity's functions and the commission considers it appropriate (see s 196).

56 Commission—arrangements with other entities

- (1) The commission may, at any time, enter into a memorandum of understanding or agreement with another entity to assist in—
 - (a) avoiding delay and unnecessary duplication of statutory functions; or

- (b) efficiently managing the interaction of the statutory functions of the parties to the memorandum of understanding or agreement.
- (2) In particular, the commission may enter into a memorandum of understanding or agreement with another entity for—
 - (a) the entity to assist the commission in relation to investigations or the exercise of other functions of the commission; or
 - (b) the commission to assist the entity by providing services within the commission's field of expertise and relevant to its functions.
- (3) In entering into a memorandum of understanding or agreement to assist an entity, the commission must ensure that the provision of the assistance does not interfere with the ability of the commission to exercise its functions.
- (4) The commission may charge an entity for the provision of assistance by the commission.

Note The commission may disclose information to certain entities if it is relevant to the exercise of the entity's functions and the commission considers it appropriate (see s 196).

Chapter 3 Commission—investigating corrupt conduct

Part 3.1 Commission—reporting corrupt conduct

Division 3.1.1 Corruption complaints

57 Anyone may make corruption complaint

Any person (a **complainant**) may make a complaint to the commission about conduct that may be corrupt conduct (a **corruption complaint**).

58 How to make a corruption complaint

- (1) A corruption complaint may be made to the commission as follows:
 - (a) orally or in writing;
 - (b) using any form of electronic communication;
 - (c) anonymously.
- (2) However, if a corruption complaint is made orally, the commission may—
 - (a) put the complaint in writing; or
 - (b) require the complainant to put the complaint in writing and, until the complainant complies with the requirement, decline to investigate the corruption complaint.

Note 1 A complaint made by a young detainee is protected under the [Children and Young People Act 2008](#), s 201 and s 280.

Note 2 A complaint made by a detainee is protected under the [Corrections Management Act 2007](#), s 105.

Note 3 A complaint made by a person admitted to or receiving treatment, care or support at a mental health facility or community care facility is protected under the [Mental Health Act 2015](#), s 17.

Note 4 A complaint made by a patient in a secure mental health facility is protected under the [Mental Health \(Secure Facilities\) Act 2016](#), s 23 and s 25.

(3) In this section:

electronic communication means communication by telephone, email, fax or any other electronic means.

59 Other entities may refer corruption complaints

(1) This section applies if a person makes a complaint to a relevant entity about conduct that may be corrupt conduct.

(2) The relevant entity may—

(a) refer the complaint to the commission; and

(b) if the complaint is referred to the commission—

(i) give the commissioner any information the entity has in relation to the complaint; and

(ii) tell the complainant about the referral.

Note However, the complainant must not be told in some circumstances (see s 75).

(3) If a complaint is referred to the commission under this section, the complaint is taken to have been made to the commission under section 57 (Anyone may make corruption complaint).

(4) In this section:

relevant entity means any of the following:

(a) the Speaker;

(b) the auditor-general;

(c) the ombudsman;

- (d) the judicial council;
- (e) a judicial commission;
- (f) a statutory office-holder;
- (g) an entity having functions that correspond to the functions of the commissioner, under a State or Commonwealth law that corresponds to this Act.

Speaker includes, if the Speaker is unavailable, the Deputy Speaker.

unavailable—the Speaker is **unavailable** if—

- (a) the Speaker is absent from duty; or
- (b) there is a vacancy in the office of Speaker; or
- (c) the Speaker has an actual or perceived conflict of interest that would prevent the Speaker from properly carrying out the functions of Speaker under this Act; or
- (d) the Speaker cannot for any reason exercise the functions of the Speaker.

60 Withdrawal of corruption complaints

- (1) A complainant may withdraw a corruption complaint at any time.
- (2) If a corruption complaint is withdrawn, the commission may continue to investigate the subject matter of the complaint.

Note The commission may conduct an investigation about a matter on its own initiative (see s 101).

Division 3.1.2 Mandatory corruption notifications by public sector entities

61 Meaning of *mandatory corruption notification*

In this Act:

mandatory corruption notification means a notification required under section 62 or section 63.

62 Mandatory corruption notifications—heads of public sector entities and senior executives

- (1) The following people must notify the commission about any matter the person suspects on reasonable grounds involves serious corrupt conduct or systemic corrupt conduct:
 - (a) the head of a public sector entity;
 - (b) an SES member.
- (2) However, the following heads of public sector entities need only notify the commission under subsection (1) if the matter involves the conduct of a public official for the public sector entity for which they are the head, and the conduct relates to the public official's duties for the public sector entity:
 - (a) the auditor-general;
 - (b) the ombudsman;
 - (c) the electoral commissioner;
 - (d) the clerk of the Legislative Assembly.

63 Mandatory corruption notifications—MLAs and chiefs of staff

- (1) A member of the Legislative Assembly must notify the commission about any matter the member suspects on reasonable grounds involves serious corrupt conduct or systemic corrupt conduct by—
 - (a) another member of the Legislative Assembly; or
 - (b) a member of staff of an MLA.
- (2) A chief of staff of a Minister or the Leader of the Opposition must notify the commission about any matter the chief of staff suspects on reasonable grounds involves serious corrupt conduct or systemic corrupt conduct by—
 - (a) a member of the Legislative Assembly; or
 - (b) another member of staff of an MLA.

64 Directions about mandatory corruption notifications

- (1) The commission may make directions about mandatory corruption notifications (the ***mandatory corruption notification directions***).
- (2) Before making a mandatory corruption notification direction, the commission—
 - (a) must consult each mandated reporter who is not an exempt mandated reporter; and
 - (b) may consult anyone the commission considers appropriate.
- (3) The mandatory corruption notification directions may—
 - (a) state the types of matters that must be notified; and
 - (b) relate to the obligations of a stated person; and
 - (c) provide for the form, content and method of notification; and

- (d) be of general or limited application; and
- (e) state any other matter the commission considers necessary.
- (4) The mandatory corruption notification directions are a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

- (5) The mandatory corruption notification directions must be published on the commission's website as soon as practicable after they are made.
- (6) Each mandated reporter who is not an exempt mandated reporter must comply with the mandatory corruption notification directions.
- (7) In this section:

exempt mandated reporter means the following people:

- (a) the auditor-general;
- (b) the ombudsman;
- (c) the electoral commissioner;
- (d) a member of the human rights commission;
- (e) the head of a public sector entity prescribed by regulation.

mandated reporter means the following people:

- (a) the head of a public sector entity;
- (b) an SES member;
- (c) a member of the Legislative Assembly;
- (d) a chief of staff of a Minister or the Leader of the Opposition.

65 Offence—mandatory corruption notifications—heads of public sector entities

- (1) A person commits an offence if the person—
- (a) is the head of a public sector entity; and
 - (b) knows that a public official has engaged in conduct that constitutes—
 - (i) serious corrupt conduct; or
 - (ii) systemic corrupt conduct; and
 - (c) does not, as soon as practicable, notify the commission about the conduct.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) applies to the following heads of public sector entities only if the public official is a public official in the public sector entity for which they are the head:
- (a) the auditor-general;
 - (b) the ombudsman;
 - (c) the electoral commissioner;
 - (d) a member of the human rights commission;
 - (e) the clerk of the Legislative Assembly.

66 Offence—mandatory corruption notifications—senior executives

A person commits an offence if the person—

- (a) is an SES member; and
- (b) knows that a public official has engaged in conduct that constitutes—
 - (i) serious corrupt conduct; or

- (ii) systemic corrupt conduct; and
- (c) does not, as soon as practicable, notify the commission about the conduct.

Maximum penalty: 50 penalty units.

67 Offence—mandatory corruption notifications—MLAs

- (1) A person commits an offence if the person—
 - (a) is a member of the Legislative Assembly; and
 - (b) knows that—
 - (i) another member of the Legislative Assembly has engaged in conduct that constitutes—
 - (A) serious corrupt conduct; or
 - (B) systemic corrupt conduct; or
 - (ii) a member of staff of an MLA has engaged in conduct that constitutes—
 - (A) serious corrupt conduct; or
 - (B) systemic corrupt conduct; and
 - (c) does not, as soon as practicable, notify the commission about the conduct.

Maximum penalty: 50 penalty units.

68 Offence—mandatory corruption notifications—chiefs of staff

- A person commits an offence if the person—
- (a) is the chief of staff of—
 - (i) a Minister; or
 - (ii) the Leader of the Opposition; and

- (b) knows that—
 - (i) a member of the Legislative Assembly has engaged in conduct that constitutes—
 - (A) serious corrupt conduct; or
 - (B) systemic corrupt conduct; or
 - (ii) another member of staff of an MLA has engaged in conduct that constitutes—
 - (A) serious corrupt conduct; or
 - (B) systemic corrupt conduct; and
- (c) does not, as soon as practicable, notify the commission about the conduct.

Maximum penalty: 50 penalty units.

Division 3.1.3 Reports must be dismissed, referred or investigated

69 Meaning of *corruption report*

In this Act:

corruption report means—

- (a) a corruption complaint; or
- (b) a mandatory corruption notification.

70 Commission must dismiss, refer or investigate corruption reports

If the commission receives a corruption report, the commission must—

- (a) dismiss the corruption report under section 71; or

- (b) refer the corruption report to another entity under—
 - (i) section 107 (Commission may refer corruption reports to referral entity); or
 - (ii) section 111 (Commission may refer matters to prosecutorial body); or
- (c) investigate the corruption report under section 100 (Commission may investigate corruption report).

Note 1 The commission may carry out a preliminary inquiry to decide whether to dismiss, refer or investigate a corruption report (see s 86).

Note 2 The commission must tell certain people about this decision (see div 3.1.4).

71 When corruption reports must be dismissed

- (1) The commission must dismiss a corruption report about the conduct of a judicial officer if the corruption report directly relates to—
 - (a) the merits of a decision made by the judicial officer; or
 - (b) an order made by the judicial officer; or
 - (c) a judgment given by the judicial officer.
- (2) The commission must dismiss a corruption report if satisfied on reasonable grounds that the corruption report does not justify investigation.
- (3) For subsection (2), reasonable grounds may include 1 or more of the following:
 - (a) the subject matter of the corruption report is trivial;
 - (b) the subject matter of the corruption report is unrelated to the functions of the commission;

Note If another entity has power to investigate the report, the commission may give the report to the other entity (see s (4)).

- (c) the corruption report is frivolous or vexatious or not made in good faith;
- (d) the corruption report lacks substance or credibility;
- (e) the corruption report was not made genuinely or was made primarily for a mischievous purpose;
- (f) the corruption report does not contain sufficient information to enable referral or investigation;
- (g) if the corruption report is a corruption complaint and the following applies:
 - (i) the commission has asked the complainant for assistance to investigate the corruption complaint;
 - (ii) the complainant has failed, without reasonable excuse, to give the assistance;
 - (iii) the commission is reasonably satisfied that the lack of assistance makes it impracticable for the corruption report to be referred or investigated;
- (h) if the corruption report is a corruption complaint and the complainant has not disclosed the complainant's name and contact details—the commission is reasonably satisfied that the lack of information makes it impracticable for the corruption report to be referred or investigated;
- (i) the subject matter of the corruption report has already been appropriately investigated or otherwise dealt with under this Act or another law in force in the Territory;
- (j) the corruption report relates to conduct that happened too long ago to justify investigation;

Note If a person delays making a corruption complaint by more than 1 year, an explanation may be required (see s (5)).

- (k) having regard to all the circumstances, further dealing with the corruption report is not justified.

Note 1 An investigation must be discontinued for the same reasons (see s 112).

Note 2 Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

- (4) If the commission dismisses a corruption report under subsection (1) or (2) and another entity has power to investigate the subject matter of the corruption report, the commission may give the corruption report to the other entity.

Examples

- 1 a corruption report about a member of the Australian Federal Police may be given to the Australian Commission for Law Enforcement Integrity (ACLEI)
- 2 a corruption report about a NSW public servant may be given to the NSW Independent Commission Against Corruption (ICAC)

Note 1 If both the commission and another entity have power to investigate a corruption report, the commission may conduct a joint investigation with the other entity under s 104, or refer the corruption report to the other entity under s 107.

Note 2 The commission may disclose information to certain entities if it is relevant to the exercise of the entity's functions and the commission considers it appropriate (see s 196).

- (5) If a complainant delays making a corruption complaint by more than 1 year after becoming aware of the conduct in the complaint, the commission may—
- (a) require the complainant to give an explanation for the delay; and
 - (b) if not satisfied with the explanation—dismiss the corruption complaint.

Division 3.1.4 Commission must keep people informed

72 Commission must keep complainant informed

- (1) If the commission receives a corruption complaint, the commission must tell the complainant about—
 - (a) if the complaint is dismissed under section 71—the decision to dismiss the complaint, including—
 - (i) the ground for the decision; and
 - (ii) the reasons for making the decision on that ground; and
 - (iii) if the commission gives the corruption report to another entity under section 71 (4)—the name and contact details of the other entity; and
 - (b) if the complaint is referred to another entity under section 107 (Commission may refer corruption reports to referral entity) or section 111 (Commission may refer matters to prosecutorial body)—
 - (i) the referral; and
 - (ii) if the referral is withdrawn under section 109—the withdrawal; and
 - (c) if the complaint is investigated under section 100—the progress of the investigation at least once every 3 months; and
 - (d) if an investigation of the complaint is discontinued under section 112 (1)—the decision to discontinue the investigation, including—
 - (i) the ground for the decision; and
 - (ii) the reasons for making the decision on that ground; and

- (iii) if the commission gives the corruption report to another entity under section 112 (2)—the name and contact details of the other entity; and
- (e) if the investigation is completed—the outcome of the investigation and a copy of the investigation report presented to the Legislative Assembly under section 189 (Investigation report—presentation to Legislative Assembly).

Note 1 The commission must comply with this section as soon as possible after the action is taken (see [Legislation Act](#), s 151B).

Note 2 The commission must also give the person a non-disclosure notice about the information (see s 198).

- (2) This section does not apply if—
 - (a) the corruption complaint was made anonymously; or
 - (b) the complainant has asked, in writing, not to be kept informed about the corruption complaint.

73 Commission must keep referring entity informed

If an entity refers a corruption complaint to the commission under section 59, the commission must tell the referring entity about—

- (a) if the complaint is dismissed under section 71—the decision to dismiss the complaint, including—
 - (i) the ground for the decision; and
 - (ii) the reasons for making the decision on that ground; and
- (iii) if the commission gives the corruption report to another entity under section 71 (4)—the name and contact details of the other entity; and

- (b) if the complaint is referred to another entity under section 107 (Commission may refer corruption reports to referral entity) or section 111 (Commission may refer matters to prosecutorial body)—
 - (i) the referral; and
 - (ii) if the referral is withdrawn under section 109—the withdrawal; and
- (c) if an investigation of the complaint is discontinued under section 112 (1)—the decision to discontinue the investigation, including—
 - (i) the ground for the decision; and
 - (ii) the reasons for making the decision on that ground; and
 - (iii) if the commission gives the corruption report to another entity under section 112 (2)—the name and contact details of the other entity; and
- (d) if the complaint is investigated and the investigation is completed—the outcome of the investigation and a copy of the investigation report presented to the Legislative Assembly under section 189 (Investigation report—presentation to Legislative Assembly).

Note 1 The commission must comply with this section as soon as possible after the action is taken (see [Legislation Act](#), s 151B).

Note 2 The commission must also give the person a non-disclosure notice about the information (see s 198).

74 Commission must keep notifier informed

If the commission receives a mandatory corruption notification from the head of a public sector entity, the commission must tell the head of the entity about—

- (a) if the notification is dismissed under section 71—the decision to dismiss the complaint, including—
 - (i) the ground for the decision; and
 - (ii) the reasons for making the decision on that ground; and
 - (iii) if the commission gives the corruption report to another entity under section 71 (4)—the name and contact details of the other entity; and
- (b) if the notification is referred to another entity under section 107 (Commission may refer corruption reports to referral entity) or section 111 (Commission may refer matters to prosecutorial body)—
 - (i) the referral; and
 - (ii) if the referral is withdrawn under section 109—the withdrawal; and
- (c) if the notification is investigated under section 100—the progress of the investigation at least once every 3 months; and
- (d) if an investigation of the notification is discontinued under section 112 (1)—the decision to discontinue the investigation, including—
 - (i) the ground for the decision; and
 - (ii) the reasons for making the decision on that ground; and
 - (iii) if the commission gives the corruption report to another entity under section 112 (2)—the name and contact details of the other entity; and

- (e) if the investigation is completed—the outcome of the investigation and a copy of the investigation report presented to the Legislative Assembly under section 189 (Investigation report—presentation to Legislative Assembly).

Note 1 The commission must comply with this section as soon as possible after the action is taken (see [Legislation Act](#), s 151B).

Note 2 The commission must also give the person a non-disclosure notice about the information (see s 198).

75 Limitations on keeping people informed

If the commission is required to tell a person about a matter under section 72, section 73 or section 74, the commission must not tell the person about the matter if—

- (a) telling the person would be likely to adversely affect—
 - (i) a person’s safety; or
 - (ii) an investigation under this Act; or
- (b) telling the person—
 - (i) would identify another person who has given information in relation to a corruption report; or
 - (ii) could allow the identity of the other person to be worked out; or
- (c) telling the person would be contrary to a law in force in the Territory.

Part 3.2 Commission—confidentiality notices

76 **Meaning of *restricted information***

In this Act:

restricted information means any of the following information:

- (a) evidence or information given to, or obtained by, the commission;
- (b) the contents of a document, or a description of a thing, produced to, or obtained by, the commission;
- (c) the contents of a document, or a description of a thing, that the commission has made a copy of or seized under part 3.5 (Commission—powers of entry, search and seizure);
- (d) the existence of, or any information about, a confidentiality notice, preliminary inquiry notice or examination summons;
- (e) the subject matter of a preliminary inquiry or investigation;
- (f) information that would identify a person, or could allow the identity of a person to be worked out, who—
 - (i) has been or is proposed to be examined by the commission;
or
 - (ii) has produced or may produce a document or other thing to the commission;
- (g) the fact that a person—
 - (i) has been or is proposed to be examined by the commission;
or
 - (ii) has produced or may produce a document or other thing to the commission.

77 Meaning of *confidentiality notice*

In this Act:

confidentiality notice means a notice given by the commission to a person under section 78 or section 79.

78 Confidentiality notices for preliminary inquiries

- (1) This section applies if, during a preliminary inquiry, the commission—
 - (a) gives a preliminary inquiry notice to a person; and
 - (b) considers on reasonable grounds that the disclosure of restricted information would be likely to prejudice—
 - (i) the preliminary inquiry; or
 - (ii) the safety or reputation of a person; or
 - (iii) the fair trial of a person who has been, or may be, charged with an offence.
- (2) The commission may give a confidentiality notice to a person directing the person to not disclose the restricted information.

Note The commission must report monthly to the inspector about confidentiality notices (see s 205).

79 Confidentiality notices for investigations

- (1) This section applies if, during an investigation, the commission considers on reasonable grounds that the disclosure of restricted information would be likely to prejudice—
 - (a) an investigation; or
 - (b) the safety or reputation of a person; or
 - (c) the fair trial of a person who has been, or may be, charged with an offence.

- (2) The commission may give a confidentiality notice to a person directing the person to not disclose the restricted information.

Note The commission must report monthly to the inspector about confidentiality notices (see s 205).

80 Confidentiality notices—content

- (1) A confidentiality notice given to a person must—
- (a) state the restricted information to which it applies; and
 - (b) include a statement setting out the following:
 - (i) that disclosure of the restricted information may be an offence and penalties may apply;
Note See s 85.
 - (ii) that certain kinds of disclosures may be permitted disclosures;
Note **Permitted disclosure**—see s 81.
 - (iii) an explanation of the permitted disclosures and any prohibited disclosures;
Note **Prohibited disclosure**—see s (2).
 - (iv) an explanation of the effect of—
 - (A) section 82 (Confidentiality notices—amendment and revocation); and
 - (B) section 83 (Confidentiality notices—extension); and
 - (C) section 84 (Confidentiality notices—expiry).

- (2) In preparing a confidentiality notice, the commission may decide that a certain kind of permitted disclosure of the restricted information must be prohibited (a ***prohibited disclosure***) because the disclosure would be likely to prejudice—
- (a) an investigation; or
 - (b) the safety or reputation of a person; or
 - (c) the fair trial of a person who has been, or may be, charged with an offence.

81 **Meaning of *permitted disclosure* of restricted information—pt 3.2**

In this part:

permitted disclosure of restricted information, by a person, means a disclosure of restricted information that is—

- (a) necessary for the person to comply with—
 - (i) a confidentiality notice; or
 - (ii) a preliminary inquiry notice; or
 - (iii) an examination summons; or
- (b) made by the person—
 - (i) to an interpreter if the person does not have a sufficient knowledge of the English language to understand the confidentiality notice; or
 - (ii) to an independent person if the person is illiterate or has a mental impairment, physical impairment or other impairment which prevents the person from understanding the confidentiality notice without assistance; or

Note ***Mental impairment***—see the dictionary.

- (iii) to a parent, guardian or independent person if the person is under the age of 18 years; or
- (c) made by the person to obtain legal advice or representation in relation to the person's rights, liabilities, obligations and privileges under this Act, including in relation to—
 - (i) a confidentiality notice; or
 - (ii) a preliminary inquiry notice; or
 - (iii) an examination summons; or
- Note* The commission may make a legal advice direction directing a person not to seek legal advice or representation from a stated lawyer (see s 193).
- (d) made by a lawyer who has received a disclosure under paragraph (c), to comply with a legal duty of disclosure or a professional obligation arising from the lawyer's professional relationship with their client; or
- (e) if the person has received a preliminary inquiry notice or an examination summons and is required to attend the commission at a stated time—disclosure of the requirement to attend, to—
 - (i) the person's domestic partner; or
 - (ii) the person's employer or manager, to enable the person to take leave from employment to comply with the preliminary inquiry notice or examination summons; or
- (f) already published by the commission in a report or otherwise made public under this Act; or
- (g) made by the person in making a complaint about the commission or commission personnel to the inspector under section 257 (Inspector—making a complaint to the inspector); or
- (h) otherwise authorised or required under this Act.

82 Confidentiality notices—amendment and revocation

- (1) If the commission decides on reasonable grounds to amend a confidentiality notice given to a person, the commission must give the person—
 - (a) a notice revoking the confidentiality notice; and
 - (b) a new confidentiality notice under section 78 (Confidentiality notices for preliminary inquiries) or section 79 (Confidentiality notices for investigations).
- (2) If the commission decides on reasonable grounds to revoke a confidentiality notice given to a person, the commission must give the person a notice revoking the confidentiality notice.

Note 1 The power to make a confidentiality notice includes the power to amend or repeal the confidentiality notice. The power to amend or repeal the confidentiality notice is exercisable in the same way, and subject to the same conditions, as the power to make the confidentiality notice (see [Legislation Act](#), s 46).

Note 2 The commission must report monthly to the inspector about revoking confidentiality notices (see s 205).

83 Confidentiality notices—extension

- (1) If the commission considers on reasonable grounds that it is necessary to extend the operation of the confidentiality notice, the commission may apply to the Supreme Court for an extension of the confidentiality notice.
- (2) The Supreme Court may, on application by the commission, make an order extending the operation of the confidentiality notice if satisfied that it is necessary to avoid prejudice to—
 - (a) the investigation being conducted by the commission; or
 - (b) the safety or reputation of a person; or
 - (c) the fair trial of a person who has been, or may be, charged with an offence; or

- (d) any proceeding that is proposed to be commenced or which has not been finally determined.

Note The commission must report monthly to the inspector about extensions of confidentiality notices (see s 205).

84 Confidentiality notices—expiry

A confidentiality notice expires on the earliest of the following:

- (a) the day the commission issues a notice under section 82 revoking the confidentiality notice;
- (b) the day an extension granted under section 83 expires;
- (c) 3 years after the day the confidentiality notice was issued.

85 Offences—disclose restricted information in confidentiality notice

- (1) A person commits an offence if—
 - (a) the person is given a confidentiality notice about restricted information; and
 - (b) the confidentiality notice has not expired; and
 - (c) the person discloses the restricted information.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Subsection (1) does not apply if—
 - (a) the disclosure is a permitted disclosure; and
- (b) the permitted disclosure is not identified as a prohibited disclosure in the confidentiality notice; and

Note **Permitted disclosure**—see s 81.

- (c) when making the permitted disclosure, the person—
 - (i) tells the recipient that this section applies to any subsequent disclosure of the restricted information by the recipient; and
 - (ii) gives the recipient a copy of the confidentiality notice.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) A person commits an offence if—
 - (a) a permitted disclosure of restricted information is made to the person; and
 - (b) the person receives a copy of a confidentiality notice about the restricted information with the permitted disclosure; and
 - (c) the confidentiality notice has not expired; and
 - (d) the person discloses the restricted information.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Part 3.3 Commission—preliminary inquiries

86 Preliminary inquiries about corruption reports

The commission may carry out a preliminary inquiry to decide whether to dismiss, refer or investigate a corruption report.

87 Preliminary inquiries about own initiative matters

The commission may carry out a preliminary inquiry to decide whether to investigate a matter on its own initiative.

88 Certain powers not to be used for preliminary inquiries

The commission must not, in carrying out a preliminary inquiry—

- (a) use the powers in part 3.5 (Commission—powers of entry, search and seizure); or
- (b) use the powers in part 3.6 (Commission—examinations); or
- (c) authorise or use an assumed identity under the *Crimes (Assumed Identities) Act 2009*; or
- (d) authorise or conduct a controlled operation under the *Crimes (Controlled Operations) Act 2008*; or
- (e) apply for a surveillance device warrant under the *Crimes (Surveillance Devices) Act 2010*.

89 Power to request information from head of public sector entity

- (1) In carrying out a preliminary inquiry, the commission may ask the head of a public sector entity to give information held by the public sector entity to the commission that the commission considers relevant to the preliminary inquiry.

- (2) The head of the public sector entity must comply with the request within a reasonable time, being not more than 7 days after receiving the request.
- (3) However, the head of the public sector entity need not comply with the request if the head advises the commission of a reasonable excuse for not doing so.
- (4) The head of the public sector entity who complies with the request, and any person who assists the head in complying with this section, has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

90 Power to issue preliminary inquiry notice

- (1) In carrying out a preliminary inquiry, the commission may issue a notice (a ***preliminary inquiry notice***) to a person, requiring the person to attend the commission at a stated time and place to produce a document or other thing to the commission.

Note A preliminary inquiry notice cannot require a person to appear before the commission to give oral evidence.

- (2) The commission may issue a preliminary inquiry notice only if satisfied that—
 - (a) the production of the document or other thing is necessary to decide whether to dismiss, refer or investigate a corruption report, or investigate a matter on its own initiative; and
 - (b) it is reasonable to do so.
- (3) In deciding whether it is reasonable to issue the preliminary inquiry notice, the commission must have regard to—
 - (a) whether it is reasonably practicable to obtain the information in the document or other thing in another way; and
 - (b) the evidentiary or intelligence value of the information, document or other thing sought to be obtained from the person; and

- (c) the age of the person and whether the person is suffering from a mental impairment; and

Note **Mental impairment**—see the dictionary.

- (d) the impact the preliminary inquiry notice may have on the person, in particular, due to disability, health or cultural or linguistic background.
- (4) The commission must not issue a preliminary inquiry notice to a person under the age of 18 years unless the commission considers on reasonable grounds that—
 - (a) the information, document or other thing that the person could provide may be compelling and probative evidence; and
 - (b) it is not practicable to obtain the information, document or other thing in another way.
 - (5) The commission may excuse a person issued with a preliminary inquiry notice from attendance if the person produces the required document or other thing to the commission before the time for production stated in the preliminary inquiry notice.
 - (6) A person who complies with a preliminary inquiry notice has the same protection and immunity as a witness has in a proceeding in the Supreme Court.

Note 1 For how documents may be given, see the [Legislation Act](#), pt 19.5.

Note 2 Documents may be produced electronically in certain circumstances (see [Electronic Transactions Act 2001](#)).

Note 3 Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

Note 4 The commission must report monthly to the inspector about preliminary inquiry notices (see s 205).

91 Preliminary inquiry notice—content

- (1) A preliminary inquiry notice must require the person to whom it is directed to attend at a stated time and place and produce to the commission any document or other thing described in the preliminary inquiry notice that is in the person's possession or control.

- (2) A preliminary inquiry notice must be accompanied by—

- (a) any relevant confidentiality notice; and

Note **Confidentiality notice**—see s 77.

- (b) a statement setting out the following:

- (i) that failure to comply with the preliminary inquiry notice may be contempt of the commission, or an offence, and penalties may apply;

Note See s 99 and s 166.

- (ii) that giving false or misleading information is a serious offence;

Note See the [Criminal Code](#), s 338.

- (iii) that if the person to whom the preliminary inquiry notice is directed is under the age of 16 years and provides proof of age to the commission, the person need not comply with the preliminary inquiry notice;

Note See the requirements in s 92.

- (iv) that the person is entitled to seek legal advice in relation to the preliminary inquiry notice;

Note The commission may make a legal advice direction directing a person not to seek legal advice from a stated lawyer (see s 193).

- (v) that the person may be able to claim a privilege;

Note See s 95 and pt 3.7.

- (vi) that the person has a right to complain to the inspector;

Note See s 257.

- (vii) any other matter prescribed by regulation.

92 Preliminary inquiry notice—person under 16 years

- (1) A preliminary inquiry notice directed to a person under the age of 16 years has no effect.
- (2) A person who claims to be under the age of 16 years for subsection (1) must provide proof of age to the commission in the form of—
 - (a) an Australian birth certificate; or
 - (b) an Australian passport or a passport issued by another country; or
 - (c) anything else that satisfies the commission about the person's age.

93 Preliminary inquiry notice—service

- (1) A preliminary inquiry notice directed to a person must be served at least 7 days before the day the person is required to attend or otherwise comply with the preliminary inquiry notice.
- (2) If it is not reasonably practicable to serve a preliminary inquiry notice on a person under subsection (1), the commission may apply to the Supreme Court for an order that the preliminary inquiry notice be served in another way.

- (3) If the Supreme Court receives an application and is satisfied that it is not reasonably practicable to serve a preliminary inquiry notice under subsection (1), the court may—
- (a) order that the preliminary inquiry notice be served in another way that the court considers appropriate; or
 - (b) make an order for substituted service.

94 Preliminary inquiry notice—first actions to be taken

Before a person who is required to attend a preliminary inquiry under a preliminary inquiry notice is required to produce a document or other thing, the commission must—

- (a) if the commission considers the person may be under the age of 18 years—confirm the age of the person; and
- (b) release any person under the age of 16 years from compliance with the preliminary inquiry notice; and
- (c) tell the person orally and in writing about the person’s rights and obligations as stated in section 91 (2); and
- (d) if a lawyer is representing a person at the preliminary inquiry—tell the lawyer about any non-disclosure requirements that apply under this Act; and
- (e) take any other action prescribed by regulation.

95 Preliminary inquiry notice—claiming privilege or secrecy

- (1) This section applies if—
- (a) a preliminary inquiry notice directed to a person requires a document or other thing to be produced to the commission; and
 - (b) the person claims that the document or other thing—
 - (i) is the subject of privilege; or

Note **Privilege**—see s 174 and s (5).

- (ii) cannot be disclosed because of a secrecy requirement under a law in force in the Territory.

Example

a confidentiality requirement under the [Health Records \(Privacy and Access\) Act 1997](#), s 17

- (2) The claimant must attend before the commission in accordance with the preliminary inquiry notice.
- (3) The commission must consider the claim and either—
 - (a) withdraw the requirement to produce the document or other thing; or
 - (b) refuse to withdraw the requirement and require the claimant to immediately secure the document or other thing (by sealing in an envelope or otherwise) and give it to the commission.
- (4) In considering the claim, the commission must not inspect the document or other thing.
- (5) In this section:

privilege does not include parliamentary privilege.

Note Parliamentary privilege is dealt with in s 177.

96 Preliminary inquiry notice—application to Supreme Court to decide privilege or secrecy

- (1) If the commission requires the claimant to secure the document or other thing and give it to the commission under section 95 (3) (b), the commission must—
 - (a) immediately give the secured document or other thing to the proper officer of the Supreme Court to be held in safe custody; and
 - (b) within 7 days, apply to the Supreme Court for determination of the claim; and

- (c) within a reasonable time before the hearing of the application, give notice of the application to the claimant.
- (2) If the commission does not make an application within the 7 days, the proper officer must return the secured document or other thing to the claimant.
- (3) The claimant is entitled to appear and be heard on the hearing of the application.

97 Preliminary inquiry notice—Supreme Court to decide privilege or secrecy

- (1) If the Supreme Court receives an application under section 96, the court must determine whether the document or other thing is the subject of—
 - (a) privilege; or
 - (b) a secrecy requirement under a law in force in the Territory.
- (2) To make the determination, the judge constituting the court and any other person authorised by the court may open and inspect the secured document or other thing.
- (3) If the court determines that the document or other thing—
 - (a) is the subject of privilege or a secrecy requirement—the court must order that the document or other thing be returned to the claimant; or
 - (b) is not the subject of privilege or a secrecy requirement—the court must order that the document or other thing be given to the commission.
- (4) In this section:

privilege does not include parliamentary privilege.

Note Parliamentary privilege is dealt with in s 177.

98 Preliminary inquiry notice—offence to open secured document or other thing

- (1) This section applies if—
- (a) the claimant secures a document or other thing under section 95 (3) (b); and
 - (b) the secured document or other thing has not been returned to the claimant under section 96 (2); and
 - (c) the court has not determined whether the secured document or other thing is the subject of privilege or a secrecy requirement under section 97.
- (2) A person commits an offence if the person—
- (a) opens or otherwise inspects the secured document or other thing; and
 - (b) is not—
 - (i) the judge constituting the court; or
 - (ii) another person authorised by the court to open and inspect the secured document or other thing under section 97 (2).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

99 Preliminary inquiries—application of Criminal Code, ch 7

A preliminary inquiry before the commission is a legal proceeding for the [Criminal Code](#), chapter 7 (Administration of justice offences).

Note The [Criminal Code](#), ch 7 includes offences such as falsifying evidence, destroying or concealing evidence and failing to produce a document or other thing.

Part 3.4 Commission—conducting an investigation

Division 3.4.1 Starting an investigation

100 Commission may investigate corruption report

The commission may conduct an investigation if the commission—

- (a) receives a corruption report; and
- (b) suspects on reasonable grounds that the conduct in the corruption report may constitute corrupt conduct.

Note 1 The commission must dismiss, refer or investigate corruption reports (see s 70).

Note 2 The commission may carry out a preliminary inquiry to decide whether to dismiss, refer or investigate a corruption report (see s 86).

101 Commission may investigate on own initiative

- (1) The commission may, on its own initiative, conduct an investigation about a matter if the commission suspects on reasonable grounds that the matter involves corrupt conduct.
- (2) The commission may carry out a preliminary inquiry to decide whether to investigate the matter.

102 Investigation of judicial officers

- (1) In investigating a judicial officer, the commission—
 - (a) must have proper regard for the preservation of the independence of judicial officers; and
 - (b) for a judicial officer other than the Chief Justice or Chief Magistrate—must notify, and may consult, the head of jurisdiction unless doing so would prejudice an investigation.

- (2) In this section:

head of jurisdiction means—

- (a) for a judge, associate judge or registrar of the Supreme Court—the Chief Justice; or
- (b) for a magistrate, an office that must be occupied by a magistrate or a registrar of the Magistrates Court—the Chief Magistrate.

103 Investigation may be conducted during court proceeding

- (1) The commission may do any of the following despite any proceeding (whether civil or criminal) in any court or tribunal:
 - (a) commence or continue an investigation;
 - (b) discontinue or complete an investigation;
 - (c) provide a report about an investigation;
 - (d) do anything necessary or convenient to carry out an action under paragraphs (a) to (c).
- (2) The commission must take all reasonable steps to ensure the conduct of an investigation does not prejudice any proceeding (whether civil or criminal) in any court or tribunal.

Examples

- 1 issuing a confidentiality notice for the duration of the proceeding
- 2 deferring giving a report to the Speaker until completion of the proceeding

- (3) This section applies to a proceeding regardless of whether—
 - (a) the proceeding commenced before or after the investigation commenced; or
 - (b) the commission or a member of staff of the commission is a party to the proceeding.

104 Investigation may be conducted as joint investigation

- (1) The commission may conduct an investigation as a joint investigation with an integrity body or law enforcement agency (a *joint investigation*).
- (2) The commission may conduct a joint investigation in any way the commission considers appropriate.
- (3) Without limiting subsection (2), in conducting a joint investigation the commission may do 1 or more of the following:
 - (a) consult, coordinate and cooperate with an integrity body or law enforcement agency that is conducting an investigation in relation to the same, or a similar or related, subject matter;
 - (b) receive information from an integrity body or law enforcement agency with which the commission is conducting a joint investigation;
 - (c) enter into a memorandum of understanding or agreement with an integrity body or law enforcement agency about the conduct of joint investigations.

Note The commission may disclose information to an integrity body or law enforcement agency if it is relevant to the exercise of the body's or agency's functions and the commission considers it appropriate (see s 196).

Division 3.4.2 Referring matters to another entity

105 Commission must refer corruption reports about staff to inspector

The commission must refer a corruption report to the inspector if the corruption report involves conduct of a person who is, or was at the time of the conduct—

- (a) the commissioner; or

- (b) a member of staff of the commission.

Note The commission may disclose information to the inspector if it is relevant to the exercise of the inspector's functions and the commission considers it appropriate (see s 196).

106 Meaning of *referral entity*

- (1) In this Act:

referral entity means any of the following:

- (a) the Speaker;
- (b) the auditor-general;
- (c) the ombudsman;
- (d) the chief police officer;
- (e) the head of service;
- (f) a director-general;
- (g) a statutory office-holder;
- (h) the Legislative Assembly commissioner for standards.

- (2) In this section:

Speaker includes, if the Speaker is unavailable, the Deputy Speaker.

unavailable—the Speaker is ***unavailable*** if—

- (a) the Speaker is absent from duty; or
- (b) there is a vacancy in the office of Speaker; or
- (c) the Speaker has an actual or perceived conflict of interest that would prevent the Speaker from properly carrying out the functions of Speaker under this Act; or
- (d) the Speaker cannot for any reason exercise the functions of the Speaker.

107 Commission may refer corruption reports to referral entity

- (1) The commission may, at any time, refer a corruption report to a referral entity if—
- (a) the commission has power to investigate the corruption report; and
 - (b) the referral entity has power to investigate the subject matter of the corruption report; and
 - (c) the commission considers it would be more appropriate for the corruption report to be investigated by the referral entity.

Note 1 If the commission does not have power to investigate the corruption report, the commission may give the report to another entity that does have power to investigate it (see s 71 (4)).

Note 2 The commission may disclose information to a referral entity if it is relevant to the exercise of the entity's functions and the commission considers it appropriate (see s 196).

- (2) In deciding whether to make a referral under subsection (1), the commission must consult the referral entity.
- (3) Nothing in this section requires the referral entity to deal with the corruption report.

Note 1 The commission may conduct an investigation as a joint investigation with an integrity body or law enforcement agency (see s 104).

Note 2 Referrals to prosecutorial bodies are made under s 111.

108 Referral to referral entity—results and actions

- (1) This section applies if the commission refers a corruption report to any of the following referral entities:
- (a) the chief police officer;
 - (b) the head of service;
 - (c) a director-general;

- (d) a statutory office-holder other than—
 - (i) an officer of the Assembly; or
 - (ii) a member of the human rights commission.
- (2) The commission may ask the referral entity to give the commission a written report about—
 - (a) the results of the investigation; and
 - (b) any action taken, or proposed to be taken, in relation to the corruption report.

109 Referral to referral entity—withdrawal of referral

- (1) This section applies if the commission refers a corruption report to any of the following referral entities:
 - (a) the head of service;
 - (b) a director-general;
 - (c) a statutory office-holder other than—
 - (i) an officer of the Assembly; or
 - (ii) a member of the human rights commission; or
 - (iii) the public sector standards commissioner.
- (2) The commission may, at any time—
 - (a) decide to investigate the corruption report; and
 - (b) by written notice to the referral entity (a ***withdrawal notice***), withdraw the referral.
- (3) If a referral entity receives a withdrawal notice, the referral entity must—
 - (a) cease its investigation of the referred corruption report; and

- (b) give the commission any evidence the referral entity has in its possession or control that relates to the referred corruption report; and
- (c) cooperate with the commission, and give all reasonable assistance requested by the commission, in relation to the referred corruption report.

110 Commission may refer matters to judicial council or judicial commission

- (1) The commission may, at any time, refer a matter to the judicial council or a judicial commission if—
 - (a) the matter is relevant to the exercise of the judicial council's or a judicial commission's functions; and
 - (b) the commission considers it appropriate to refer the matter.
- (2) In deciding whether to make a referral under subsection (1), the commission must consult the judicial council or judicial commission.
- (3) To remove any doubt, the commission may refer a matter under subsection (1) regardless of whether the matter is being investigated by the commission.
- (4) The commission may enter into a memorandum of understanding or agreement with the judicial council or a judicial commission about practices and procedures to be used for referrals.

Note The commission may disclose information to the judicial council or a judicial commission if it is relevant to the exercise of the judicial council's or judicial commission's functions and the commission considers it appropriate (see s 196).

111 Commission may refer matters to prosecutorial body

- (1) The commission may, at any time, refer a matter to a prosecutorial body if—
 - (a) the matter is relevant to the exercise of the prosecutorial body's functions; and
 - (b) the commission considers it appropriate to refer the matter.
- (2) In deciding whether to make a referral under subsection (1), the commission must consult the prosecutorial body.
- (3) To remove any doubt, the commission may refer a matter under subsection (1) regardless of whether the matter is being investigated by the commission.
- (4) The commission may enter into a memorandum of understanding or agreement with a prosecutorial body about practices and procedures to be used for referrals.

Note The commission may disclose information to a prosecutorial body if it is relevant to the exercise of the body's functions and the commission considers it appropriate, but must not give a video recording or transcript of a person's evidence at an examination to a prosecutorial body (see s 196).

Division 3.4.3 Discontinuing an investigation

112 Discontinuing an investigation

- (1) The commission must discontinue an investigation if satisfied on reasonable grounds of any of the matters mentioned in section 71 (When corruption reports must be dismissed).
- (2) If the commission discontinues an investigation because it is satisfied under section 71 (3) (b) that the subject matter of the corruption report for the investigation is unrelated to the functions of the commission, and another entity has power to investigate the subject matter of the corruption report, the commission may give the corruption report and any other information the commission has that relates to the matter to the other entity.

Examples

- 1 a corruption report about a member of the Australian Federal Police may be given to the Australian Commission for Law Enforcement Integrity (ACLEI)
- 2 a corruption report about a NSW public servant may be given to the NSW Independent Commission Against Corruption (ICAC)

Note 1 If both the commission and another entity have power to investigate a corruption report, the commission may conduct a joint investigation with the other entity under s 104, or refer the corruption report to the other entity under s 107.

Note 2 The commission may disclose information to certain entities if it is relevant to the exercise of the entity's functions and the commission considers it appropriate (see s 196).

Part 3.5 Commission—powers of entry, search and seizure

Division 3.5.1 Investigators

113 Investigators—appointment

- (1) The commission may appoint a member of staff of the commission as an investigator.

Note 1 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see [Legislation Act](#), s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) The commissioner is an investigator.

114 Investigators—identity cards

- (1) The commission must give each investigator an identity card that states the person's name and appointment as an investigator, and shows—
 - (a) a recent photograph of the person; and
 - (b) the date of issue and expiry of the card; and
 - (c) anything else prescribed by regulation.
- (2) A person who stops being an investigator must return the person's identity card to the commission as soon as practicable (but within 7 days) after the day the person stops being an investigator.

115 Investigator must show identity card on exercising power

- (1) If an investigator exercises a power under this Act that affects an individual, the investigator must first show the investigator's identity card to the individual.
- (2) If an investigator exercises a power under this Act that affects a person, other than an individual, the investigator must first show the investigator's identity card to an individual the investigator believes on reasonable grounds is an employee, officer or agent of the person.

Examples—person other than an individual

- corporation
- partnership

Division 3.5.2 Powers of investigators

Note 1 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

Note 2 In addition to the powers in this division, the commissioner has powers under other legislation including the following:

- [Crimes \(Assumed Identities\) Act 2009](#)
- [Crimes \(Controlled Operations\) Act 2008](#)
- [Crimes \(Surveillance Devices\) Act 2010](#).

116 Definitions—pt 3.5

In this part:

connected—a thing is ***connected*** with corrupt conduct if—

- (a) corrupt conduct has been engaged in, in relation to it; or
- (b) it will provide evidence of corrupt conduct; or
- (c) it was used, is being used, or is intended to be used, to engage in corrupt conduct.

corrupt conduct includes corrupt conduct there are reasonable grounds for believing has been, is being, or will be, engaged in.

occupier, of premises, includes a person—

- (a) an investigator reasonably believes is an occupier of the premises; and
- (b) apparently in charge of the premises.

premises includes land, a vehicle, a vessel and an aircraft.

warrant means a warrant issued under division 3.5.3 (Search warrants).

117 Power to enter premises

- (1) For this Act, an investigator may—
 - (a) at any reasonable time, enter premises that the public is entitled to use or that are open to the public (whether or not on payment of money); or
 - (b) at any time, enter premises with the occupier's consent; or
 - (c) enter premises in accordance with a search warrant.
- (2) However, subsection (1) (a) does not authorise entry into a part of the premises that is being used only for residential purposes.
- (3) An investigator may, without the consent of the occupier of premises, enter land around the premises to ask for consent to enter the premises.
- (4) To remove any doubt, an investigator may enter premises under subsection (1) without payment of an entry fee or other charge.
- (5) An investigator may—
 - (a) for subsection (1) (a) or (b)—enter the premises with necessary assistance; and

- (b) for subsection (1) (c)—enter the premises with necessary assistance and force.

Note A search warrant to enter premises issued under this Act permits an investigator to enter premises with necessary assistance and force (see s 122).

- (6) In this section:

at any reasonable time includes at any time when the public is entitled to use the premises or when the premises are open to or used by the public (whether or not on payment of money).

necessary assistance, for an investigator entering premises, includes the attendance of 1 or more people who, in the opinion of the investigator, have knowledge or skills that could assist the investigator carry out the investigator's function.

118 Production of identity card

An investigator, and any other person other than a police officer who is accompanying the investigator, may not remain at premises entered under this part if the investigator does not produce the investigator's identity card when asked by the occupier.

119 Consent to entry

- (1) When seeking the consent of an occupier to enter premises under section 117 (1) (b), an investigator must—
- (a) produce the investigator's identity card; and
 - (b) tell the occupier—
 - (i) the purpose of the entry; and
 - (ii) the reason for, and identity of, any other person accompanying the investigator; and
 - (iii) that anything found and seized under this part may be used in evidence in court; and

- (iv) that consent may be refused.
- (2) If the occupier consents, the investigator must ask the occupier to sign a written acknowledgment (an ***acknowledgment of consent***)—
 - (a) that the occupier was told—
 - (i) the purpose of the entry; and
 - (ii) the reason for, and identity of, any other person accompanying the investigator; and
 - (iii) that anything found and seized under this part may be used in evidence in court; and
 - (iv) that consent may be refused; and
 - (b) that the occupier consented to the entry; and
 - (c) stating the time and date when consent was given.
- (3) If the occupier signs an acknowledgment of consent, the investigator must immediately give a copy to the occupier.
- (4) A court must find that the occupier did not consent to entry to the premises by the investigator under this part if—
 - (a) the question whether the occupier consented to the entry arises in a proceeding in the court; and
 - (b) an acknowledgment of consent for the entry is not produced in evidence; and
 - (c) it is not proved that the occupier consented to the entry.

120 General powers on entry to premises

- (1) An investigator who enters premises under this part may, for this Act, do 1 or more of the following in relation to the premises or anything at the premises:
 - (a) inspect or examine;

- (b) take measurements or conduct tests;
 - (c) take samples;
 - (d) make sketches, drawings or any other kind of record (including photographs, films, audio, video or other recordings);
 - (e) require the occupier, or anyone at the premises, to give the investigator reasonable help to exercise a power under this section.
- (2) A person must take all reasonable steps to comply with a requirement made of the person under subsection (1) (e).

Maximum penalty: 50 penalty units.

Note Sections 127 to 130 deal with claiming privilege when a search warrant is executed.

121 Power to seize things

- (1) An investigator who enters premises under this part with the occupier's consent may seize anything at the premises if seizure of the thing is consistent with the purpose of the entry told to the occupier when seeking the occupier's consent.
- (2) An investigator who enters premises under a warrant under this part may seize anything at the premises that the investigator is authorised to seize under the warrant.
- (3) An investigator who enters premises under this part (whether with the occupier's consent or under a warrant) may seize anything at the premises if satisfied on reasonable grounds that—
- (a) the thing is connected with corrupt conduct; and
 - (b) the seizure is necessary to prevent the thing from being—
 - (i) concealed, lost or destroyed; or
 - (ii) used to engage in, continue or repeat the corrupt conduct.

- (4) Having seized a thing, an investigator may—
 - (a) remove the thing from the premises where it was seized (the ***place of seizure***) to another place; or
 - (b) leave the thing at the place of seizure but restrict access to it.
- (5) A person commits an offence if the person—
 - (a) interferes with a seized thing, or anything containing a seized thing, to which access has been restricted under subsection (4) (b); and
 - (b) does not have an investigator’s approval to interfere with the thing.

Maximum penalty: 50 penalty units.

- (6) An offence against subsection (5) is a strict liability offence.

Division 3.5.3 Search warrants

122 Warrants—generally

- (1) An investigator may apply to a magistrate for a warrant to enter premises.
- (2) The application must—
 - (a) be sworn; and
 - (b) state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the investigator gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.
- (4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) there is a particular thing or activity connected with corrupt conduct; and

- (b) the thing or activity—
 - (i) is, or is being engaged in, at the premises; or
 - (ii) may be, or may be engaged in, at the premises within the next 7 days.
- (5) The warrant must state—
 - (a) that an investigator may, with necessary assistance and force, enter the premises and exercise the investigator’s powers under this part; and
 - (b) the nature of the corrupt conduct for which the warrant is issued; and
 - (c) the things that may be seized under the warrant; and
 - (d) the hours when the premises may be entered; and
 - (e) the date, within 7 days after the day of the warrant’s issue, when the warrant ends.

123 Warrants—application other than in person

- (1) An investigator may apply for a warrant by phone, radio, email, letter or other form of communication if the investigator considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances.
- (2) Before applying for the warrant, the investigator must prepare an application stating the grounds on which the warrant is sought.
- (3) The investigator may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately give a written copy to the investigator if it is practicable to do so.

- (5) If it is not practicable to give a written copy of the warrant to the investigator—
 - (a) the magistrate must tell the investigator—
 - (i) the terms of the warrant; and
 - (ii) the date and time the warrant was issued; and
 - (b) the investigator must complete a form of warrant (the **warrant form**) and write on it—
 - (i) the magistrate's name; and
 - (ii) the date and time the magistrate issued the warrant; and
 - (iii) the warrant's terms.
- (6) The written copy of the warrant, or the warrant form properly completed by the investigator, authorises the entry and the exercise of the investigator's powers under this part.
- (7) The investigator must, at the first reasonable opportunity, send to the magistrate—
 - (a) the sworn application; and
 - (b) if the investigator completed a warrant form—the completed warrant form.
- (8) On receiving the documents mentioned in subsection (7), the magistrate must attach them to the warrant.
- (9) A court must find that a power exercised by an investigator was not authorised by a warrant under this section if—
 - (a) the question arises in a proceeding before the court whether the exercise of power was authorised by a warrant; and
 - (b) the warrant is not produced in evidence; and
 - (c) it is not proved that the exercise of power was authorised by a warrant under this section.

124 Search warrants—announcement before entry

- (1) An investigator must, before anyone enters premises under a search warrant—
 - (a) announce that the investigator is authorised to enter the premises; and
 - (b) give anyone at the premises an opportunity to allow entry to the premises; and
 - (c) if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or herself to the person.
- (2) The investigator is not required to comply with subsection (1) if the investigator believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - (a) the safety of anyone (including the investigator or any person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.

125 Details of search warrant to be given to occupier etc

If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the investigator or a person assisting must make available to the person—

- (a) a copy of the warrant; and
- (b) a document setting out the rights and obligations of the person.

126 Occupier entitled to be present during search etc

- (1) If the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises while a search warrant is being executed, the person is entitled to observe the search being conducted.

- (2) However, the person is not entitled to observe the search if—
 - (a) to do so would impede the search; or
 - (b) the person is under arrest, and allowing the person to observe the search being conducted would interfere with the objectives of the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

127 Search warrants—claiming privilege

- (1) This section applies if—
 - (a) an investigator executing a search warrant wishes to inspect, copy or seize a document or other thing under the search warrant; and
 - (b) a person who is entitled to claim the privilege, claims that the document or other thing is the subject of privilege.

Note **Privilege**—see s 174 and s (4).

- (2) The investigator must consider the claim and either—
 - (a) stop exercising the power under the search warrant in relation to the document or other thing; or
 - (b) require the claimant to immediately secure the document or other thing (by sealing in an envelope or otherwise) and give it to the investigator.
- (3) In considering the claim, the investigator must not inspect the document or other thing.
- (4) In this section:

privilege does not include parliamentary privilege.

Note Parliamentary privilege is dealt with in s 177.

128 Search warrants—application to Supreme Court to decide privilege

- (1) If the investigator requires the claimant to secure the document or other thing and give it to the investigator under section 127 (2) (b), the investigator must—
 - (a) notify the commissioner about the claim as soon as practicable; and
 - (b) immediately give the secured document or other thing to the proper officer of the Supreme Court to be held in safe custody.
- (2) If the commission is notified about the claim under subsection (1), the commission must—
 - (a) within 7 days, apply to the Supreme Court for determination of the claim; and
 - (b) within a reasonable time before the hearing of the application—give notice of the application to the claimant.
- (3) If the commission does not make an application within the 7 days, the proper officer must return the secured document or other thing to the claimant.
- (4) The claimant is entitled to appear and be heard on the hearing of the application.

129 Search warrants—Supreme Court to decide privilege

- (1) If the Supreme Court receives an application under section 123, the court must determine whether the document or other thing is the subject of privilege.
- (2) To make the determination, the judge constituting the court and any other person authorised by the court may open and inspect the secured document or other thing.

- (3) If the court determines that the document or other thing—
- (a) is the subject of privilege—the court must order that the document or other thing be returned to the claimant; or
 - (b) is not the subject of privilege—the court must order that the document or other thing be given to the commission.

- (4) In this section:

privilege does not include parliamentary privilege.

Note Parliamentary privilege is dealt with in s 177.

130 Search warrants—offence to open secured document or other thing

- (1) This section applies if—
- (a) a claimant secures a document or other thing under section 127 (2) (b); and
 - (b) the secured document or other thing has not been returned to the claimant under section 123 (3); and
 - (c) the court has not determined whether the secured document or other thing is the subject of privilege under section 129.
- (2) A person commits an offence if the person—
- (a) opens or otherwise inspects the secured document or other thing; and
 - (b) is not—
 - (i) the judge constituting the court; or
 - (ii) another person authorised by the court to open and inspect the secured document or other thing under section 129 (2).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

Division 3.5.4 Return and forfeiture of things seized

131 Receipt for things seized

- (1) As soon as practicable after a thing is seized by an investigator under this part, the investigator must give a receipt for it to the person from whom it was seized.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the investigator must leave the receipt, secured conspicuously at the place of seizure under section 121 (Power to seize things).
- (3) A receipt under this section must include the following:
 - (a) a description of the thing seized;
 - (b) an explanation of why the thing was seized;
 - (c) the investigator's name, and how to contact the investigator;
 - (d) if the thing is moved from the premises where it is seized—where the thing is to be taken.

132 Moving things to another place for examination or processing under search warrant

- (1) A thing found at premises entered under a search warrant may be moved to another place for examination or processing to decide whether it may be seized under the warrant if—
 - (a) both of the following apply:
 - (i) there are reasonable grounds for believing that the thing is or contains something to which the warrant relates;
 - (ii) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance; or
 - (b) the occupier of the premises agrees in writing.

- (2) The thing may be moved to another place for examination or processing for not longer than 72 hours.
- (3) An investigator may apply to a magistrate for an extension of time if the investigator believes on reasonable grounds that the thing cannot be examined or processed within 72 hours.
- (4) The investigator must give notice of the application to the occupier of the premises, and the occupier is entitled to be heard on the application.
- (5) If a thing is moved to another place under this section, the investigator must, if practicable—
 - (a) tell the occupier of the premises the address of the place where, and time when, the examination or processing will be carried out; and
 - (b) allow the occupier or the occupier's representative to be present during the examination or processing.
- (6) The provisions of this part relating to the issue of search warrants apply, with any necessary changes, to the giving of an extension under this section.

133 Access to things seized

A person who would, apart from the seizure, be entitled to inspect a thing seized under this part may—

- (a) inspect the thing; and
- (b) photograph the thing; and
- (c) if the thing is a document—take extracts from, or make copies of, the thing.

134 Return of things seized

- (1) A thing seized under this part must be returned to its owner, or reasonable compensation must be paid to the owner by the Territory for the loss of the thing, unless—
 - (a) a prosecution for an offence against a territory law in connection with the thing is begun within 1 year after the day the seizure is made and the thing is required to be produced in evidence in the prosecution; or
 - (b) an application for the forfeiture of the seized thing is made to a court under the [Confiscation of Criminal Assets Act 2003](#) or another territory law within 1 year after the day the seizure is made.
- (2) However, this section does not apply to a thing if—
 - (a) the commissioner believes on reasonable grounds that the only practical use of the thing in relation to the premises where it was seized would be an offence against a law in force in the Territory; or
 - (b) possession of it by its owner would be an offence.

135 Forfeiture of seized things

- (1) This section applies if—
 - (a) anything seized under this part has not been returned under section 134; and
 - (b) an application for disallowance of the seizure under section 136—
 - (i) has not been made within 10 days after the day of the seizure; or
 - (ii) has been made within the 10-day period, but the application has been refused or withdrawn before a decision in relation to the application had been made.

- (2) If this section applies to the seized thing—
 - (a) it is forfeited to the Territory; and
 - (b) it may be sold, destroyed or otherwise disposed of as the commissioner directs.

136 Application for order disallowing seizure

- (1) A person claiming to be entitled to anything seized under this part may apply to the Magistrates Court within 10 days after the day of the seizure for an order disallowing the seizure.
- (2) The application may be heard only if the applicant has served a copy of the application on the commissioner.
- (3) The commissioner is entitled to appear as respondent at the hearing of the application.

137 Order for return of seized thing

- (1) This section applies if a person claiming to be entitled to anything seized under this part applies to the Magistrates Court under section 136 for an order disallowing the seizure.
- (2) The Magistrates Court must make an order disallowing the seizure if satisfied that—
 - (a) the applicant would, apart from the seizure, be entitled to the return of the seized thing; and
 - (b) the thing is not connected with corrupt conduct; and
 - (c) possession of the thing by the person would not be an offence.
- (3) The Magistrates Court may also make an order disallowing the seizure if satisfied there are exceptional circumstances justifying the making of the order.

- (4) If the Magistrates Court makes an order disallowing the seizure, the court may make 1 or more of the following ancillary orders:
- (a) an order directing the commissioner to return the thing to the applicant or to someone else who appears to be entitled to it;
 - (b) if the thing cannot be returned or has depreciated in value because of the seizure—an order directing the Territory to pay reasonable compensation;
 - (c) an order about the payment of costs in relation to the application.

Division 3.5.5 Miscellaneous

138 Damage etc to be minimised

- (1) In the exercise, or purported exercise, of a function under this part, an investigator must take all reasonable steps to ensure that the investigator, and any person assisting the investigator, causes as little inconvenience, detriment and damage as is practicable.
- (2) If an investigator, or a person assisting an investigator, damages anything in the exercise or purported exercise of a function under this part, the investigator must give written notice of the particulars of the damage to the person whom the investigator believes on reasonable grounds is the owner of the thing.
- (3) The notice must state that—
 - (a) the person may claim compensation from the Territory if the person suffers loss or expense because of the damage; and
 - (b) compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction; and
 - (c) the court may order the payment of reasonable compensation for the loss or expense only if satisfied it is just to make the order in the circumstances of the particular case.

- (4) If the damage happens at premises entered under this part in the absence of the occupier, the notice may be given by leaving it secured in a conspicuous place at the premises.

139 Compensation for exercise of enforcement powers

- (1) A person may claim compensation from the Territory if the person suffers loss or expense because of the exercise, or purported exercise, of a function under this part by—
- (a) an investigator; or
 - (b) a person assisting an investigator.
- (2) Compensation may be claimed and ordered in a proceeding for compensation brought in a court of competent jurisdiction.
- (3) A court may order the payment of reasonable compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) A regulation may prescribe matters that may, must or must not be taken into account by the court in considering whether it is just to make the order.

Part 3.6 Commission—examinations

Division 3.6.1 Examinations

140 Power to hold examination

For an investigation, the commission may hold an examination.

141 Commissioner to preside

The commissioner must preside at an examination.

Note The commissioner must not delegate the commissioner's function of presiding at a public examination (see s 53 (2)).

142 Conduct of examinations

- (1) In conducting an examination, the commission—
 - (a) must comply with the rules of natural justice and procedural fairness; and
 - (b) is not bound by the rules of evidence and may inform itself of anything in the way it considers appropriate; and
 - (c) may decide the procedure of the examination as the commission considers appropriate; and
 - (d) must exercise its functions with as little formality and technicality as is possible and, in particular—
 - (i) must accept written submissions as far as possible; and
 - (ii) examinations must be conducted with as little emphasis on an adversarial approach as is possible; and
 - (e) may do whatever it considers necessary or convenient for the fair and prompt conduct of the proceeding.
- (2) The commission must make guidelines about the conduct of examinations (the ***examination conduct guidelines***).

- (3) The examination conduct guidelines are a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

143 Examinations may be public or private

- (1) An examination may be held in public or in private.
- (2) In deciding whether to hold an examination in public or in private, the commission must consider whether—
- (a) it is in the public interest to hold a public examination; and
 - (b) a public examination can be held without unreasonably infringing a person's human rights.
- (3) In deciding whether it is in the public interest to hold a public examination, the commission may consider the following:
- (a) whether the corrupt conduct is related to an individual and was an isolated incident or systemic in nature;
 - (b) the benefit of exposing to the public, and making it aware of, corrupt conduct;
 - (c) the seriousness of the matter being investigated.
- (4) The commission may make guidelines about whether an examination should be held in public or in private (the **examination guidelines**).
- (5) The examination guidelines are a notifiable instrument.

Note 1 A notifiable instrument must be notified under the [Legislation Act](#).

Note 2 The commission must report monthly to the inspector about public examinations (see s 205).

144 Commission must notify inspector of public examination

If the commission intends to hold a public examination, the commission must, not less than 7 days before the day of the public examination, give a written report to the inspector stating—

- (a) that the commission intends to hold a public examination; and

- (b) the reasons why the commission decided to hold a public examination.

145 Offence to be present at examination not open to public

- (1) A person commits an offence if the person—

- (a) is present at an examination that is not open to the public; and
- (b) is not—

- (i) the commissioner or a member of staff of the commission; or
 - (ii) attending in accordance with an examination summons; or
 - (iii) a lawyer representing a person who is attending in accordance with an examination summons; or

Note The commission may make a legal advice direction directing a person not to seek legal advice or representation from a stated lawyer (see s 193).

- (iv) entitled to be present under a direction given by the commission under section 146; or
 - (v) the inspector or a member of the staff of the inspector; or
 - (vi) a lawyer, or other person, engaged by the commission to assist the commission in the examination; or
 - (vii) another person authorised to be present—
 - (A) by the commission; or
 - (B) under this Act or another territory law.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) In this section:

present, at an examination, includes being remotely present at an examination.

146 Commission may give directions

- (1) The commission may give directions about the people who—
 - (a) may be present during an examination or part of an examination; or
 - (b) must not be present during an examination or part of an examination.
- (2) A direction may provide that a person may be remotely present during an examination or part of an examination.
- (3) A direction must not prevent the presence, when evidence is being taken at an examination, of—
 - (a) a lawyer representing a person attending in accordance with an examination summons; or

Note The commission may make a legal advice direction directing a person not to seek legal advice or representation from a stated lawyer (see s 193).

 - (b) a member of staff of the commission; or
 - (c) a member of staff of the inspector; or
 - (d) another person authorised to be present under this Act or another territory law.
- (4) If the commission decides to hold a public examination, a person required to attend the examination under an examination summons may ask the commission to make a direction that the examination, or part of the examination, is to be held in private.
- (5) The commission must, in private, hear arguments about and determine the request, unless the commission reasonably believes the request is vexatious or without merit.

147 Power to issue examination summons

- (1) In carrying out an investigation, the commission may, if satisfied that it is reasonable to do so, issue a summons (an ***examination summons***) to a person, requiring the person to, at a stated time and place, appear before the commission to do 1 or more of the following:
 - (a) give evidence at an examination;
 - (b) produce a document or other thing to the commission.
- (2) In deciding whether it is reasonable to issue the examination summons, the commission must have regard to—
 - (a) whether the production of the document or other thing is necessary for the investigation; and
 - (b) whether it is reasonably practicable to obtain the information in the document or other thing in another way; and
 - (c) the evidentiary or intelligence value of the information, document or other thing sought to be obtained from the person; and
 - (d) the age of the person and whether the person is suffering from a mental impairment; and

Note ***Mental impairment***—see the dictionary.

 - (e) the impact the examination summons may have on the person, in particular, due to disability, health or cultural or linguistic background.
- (3) The commission must not issue an examination summons to a person who is under the age of 18 years unless the commission considers on reasonable grounds that—
 - (a) the information, document or other thing that the person could provide may be compelling and probative evidence; and
 - (b) it is not practicable to obtain the information, document or other thing in any other way.

- (4) The commission may excuse a person issued with an examination summons under subsection (1) (b) from attendance if the person produces the required document or other thing to the commission before the time for production stated in the examination summons.

Note 1 It is an offence for a person to not attend, or not continue to attend, as required in the examination summons (see s 173 which applies the [Criminal Code](#), s 719).

Note 2 For how documents may be given, see the [Legislation Act](#), pt 19.5.

Note 3 Documents may be produced electronically in certain circumstances (see [Electronic Transactions Act 2001](#)).

Note 4 Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

Note 5 The commission must report monthly to the inspector about examination summonses (see s 205).

148 Examination summons—content

- (1) An examination summons must require the person to whom it is directed to attend at a stated time and place and do 1 or more of the following:
- (a) give evidence at an examination before the commission;
 - (b) produce to the commission any document or other thing described in the examination summons that is in the person's possession or control.
- (2) An examination summons mentioned in subsection (1) (a) must state the nature of the matters about which the person is to be questioned, except to the extent the commission considers on reasonable grounds that this would be—
- (a) likely to prejudice the conduct of an investigation; or
 - (b) contrary to the public interest.

(3) An examination summons must be accompanied by—

(a) any relevant confidentiality notice; and

Note **Confidentiality notice**—see s 77.

(b) a statement setting out the following:

(i) that failure to comply with the examination summons may be contempt of the commission, or an offence, and penalties may apply;

Note See s 166 and s 173.

(ii) that giving false or misleading information is a serious offence;

Note See the [Criminal Code](#), s 338.

(iii) whether it is intended that the examination is to be held in public or in private;

(iv) that if the person summoned is under the age of 16 years and provides proof of age to the commission, the person need not comply with the examination summons;

Note See s 149 and s 153.

(v) that the person is entitled to seek legal advice in relation to the examination summons and the examination generally;

Note See s 152.

(vi) that the person has a right to legal representation at an examination;

Note See s 152.

(vii) that the person may have a right to have an interpreter present at the examination;

Note See s 153.

- (viii) that the person may be required to have a parent, a guardian or an independent person present at the examination;

Note See s 153.

- (ix) that the person may be able to claim a privilege but is not excused from answering a question, giving information or producing a document or other thing on the ground that the answer, information, document or other thing may tend to incriminate the person or make the person liable to a penalty;

Note See pt 3.7, in particular, s 175.

- (x) that if a person gives any answer, information, document or other thing that may tend to incriminate the person, an immunity as to the use of that evidence may apply;

Note See s 175.

- (xi) that if the person is a member of the Legislative Assembly, the person is not required to attend on a sitting day of the Legislative Assembly;

Note See the [Parliamentary Privileges Act 1987](#) (Cwlth), s 14.

- (xii) that the person has a right to complain to the inspector;

Note See s 257.

- (xiii) any other matter prescribed by regulation.

149 Examination summons—person under 16 years

- (1) An examination summons directed to a person under the age of 16 years has no effect.
- (2) A person who claims to be under the age of 16 years for subsection (1) must provide proof of age to the commission in the form of—
- (a) an Australian birth certificate; or

- (b) an Australian passport or a passport issued by another country;
or
- (c) anything else that satisfies the commission about the person's age.

150 Examination summons—notice and immediate attendance

- (1) An examination summons directed to a person must be served at least 7 days before the day the person is required to attend or otherwise comply with the examination summons.
- (2) However, the commission may issue an examination summons requiring immediate attendance by a person before the commission if the commission considers on reasonable grounds that a delay in the person's attendance is likely to result in—
 - (a) evidence being lost or destroyed; or
 - (b) the commission of an offence; or
 - (c) the escape of the person who is summoned; or
 - (d) serious prejudice to the conduct of the investigation.

Note 1 For how documents may be served, see the [Legislation Act](#), pt 19.5.

Note 2 It is an offence for a person to not attend, or not continue to attend, as required in the examination summons (see s 173 which applies the [Criminal Code](#), s 719).

151 Examination summons—service

- (1) If it is not reasonably practicable to serve an examination summons on a person under section 150, the commission may apply to the Supreme Court for an order that the examination summons be served in another way.

- (2) If the Supreme Court receives an application and is satisfied that it is not reasonably practicable to serve an examination summons under section 150, the court may—

- (a) order that the examination summons be served in another way that the court considers appropriate; or
(b) make an order for substituted service.

Note 1 An examination summons directed to a young detainee may be dealt with under the [Children and Young People Act 2008](#), s 876A.

Note 2 An examination summons directed to a detainee may be dealt with under the [Corrections Management Act 2007](#), s 217A.

Note 3 An examination summons directed to a person who is admitted to a secure mental health facility may be dealt with under the [Mental Health Act 2015](#), s 144B.

152 Examination—legal representation

- (1) A witness may be represented at an examination by a lawyer.

Note The commission may make a legal advice direction directing a person not to seek legal advice or representation from a stated lawyer (see s 193).

- (2) If the commission makes a legal advice direction, the commission must allow the witness at least 3 days from the day the witness receives the legal advice direction to obtain legal advice or representation by another lawyer before the witness is required to attend to comply with the examination summons.
- (3) Subsection (2) does not apply if the examination summons is issued under section 150 (2).
- (4) If the commission considers there are special circumstances, the commission may authorise a person who is not a witness to be represented by a lawyer during the examination of a witness.

153 Examination—provisions for vulnerable witnesses

- (1) At any time during an examination, if the commission becomes aware that a witness is under the age of 16 years, the commission must immediately release the person from compliance with any examination summons applying to the person.
- (2) If a witness is under the age of 18 years, the witness must be accompanied by a parent or guardian or an independent person.
- (3) If a witness does not have knowledge of the English language sufficient to enable the witness to understand or answer questions, the commission must provide for a competent interpreter to be present for the examination.
- (4) The commission must direct that an independent person be present during the examination of a witness if—
 - (a) the commission believes the witness has a mental impairment; or
 - (b) the witness gives the commission reasonably satisfactory medical evidence that the witness has a mental impairment.

Note **Mental impairment**—see the dictionary.

154 Examination—commission may issue suppression order

- (1) The commission may issue a suppression order prohibiting or restricting the publication of any information or evidence given during a public examination if the commission considers that the order is necessary—
 - (a) to prevent prejudice or hardship being caused to a person, including harm to their safety or reputation; or
 - (b) to avoid the possibility of any prejudice to—
 - (i) a legal proceeding; or
 - (ii) an investigation by the commission under this Act.

- (2) The suppression order must state the ground on which it is made.
- (3) The commission must ensure a copy of the suppression order is placed on the door of the place where the public examination is being held.
- (4) The commission must take reasonable steps to notify any relevant person that the suppression order has been made, including by publishing a notice about the suppression order on the commission's website.
- (5) If the suppression order is made in relation to information or evidence that is given by the commission to another person, the commission must give a copy of the suppression order to the person.

155 Offence—contravene suppression order

A person commits an offence if—

- (a) a suppression order is in force; and
- (b) the person—
 - (i) knows that the suppression order is in force; or
 - (ii) is reckless as to whether the suppression order is in force; and
- (c) the person engages in conduct that constitutes a contravention of the suppression order.

Maximum penalty: 200 penalty units, imprisonment for 2 years or both.

156 Examination—first actions to be taken

- (1) Before a witness summoned to attend an examination is asked any questions or required to produce a document or other thing, the commission must—
 - (a) if the commission considers the witness may be under the age of 18 years—confirm the age of the witness; and
 - (b) release any witness under the age of 16 years from compliance with the examination summons; and
 - (c) tell the witness orally and in writing about the witness’s rights and obligations as stated in section 148 (2); and
 - (d) if a lawyer is representing a person at the examination—tell the lawyer about any non-disclosure requirements that apply under this Act; and
 - (e) take any other action prescribed by regulation.
- (2) Before a witness summoned to attend to give evidence at an examination is asked any questions, the commission must tell the witness the nature of the matters about which the witness is to be asked questions, except to the extent to which the commission considers on reasonable grounds that it would prejudice the investigation or would be contrary to the public interest.

157 Examination—power to examine on oath

- (1) The commissioner may administer an oath to a person.
- (2) The commissioner may, in relation to a person summoned to attend an examination—
 - (a) require the person to take an oath; and
 - (b) administer an oath to the person; and
 - (c) examine the person in accordance with the examination summons; and

- (d) require the person to produce documents or other things in accordance with the examination summons.

Note 1 **Oath** includes affirmation and **take** an oath includes make an affirmation (see [Legislation Act](#), dict, pt 1).

Note 2 It is an offence for a person to fail to take an oath (see s 173 which applies the [Criminal Code](#), s 721).

158 Examination—video recording and transcript

- (1) If a person attends the commission for an examination in accordance with an examination summons, the commission must ensure that the person's attendance is video recorded.
- (2) Unless the commission considers on reasonable grounds that doing so may prejudice an investigation, a person who is examined must be given a copy of—
- (a) the video recording of the person's evidence; and
 - (b) any transcript created of the person's evidence.
- (3) If the commission decides not to give a person a copy of the video recording and transcript, the commission must allow the person to view the video recording of the person's evidence at the commission premises at any reasonable time.

Note The commission must report monthly to the inspector about video recordings and transcripts of examinations (see s 205).

159 Examination—warrant to arrest witness who fails to appear

- (1) The commission may apply to a magistrate for the issue of a warrant to arrest a person, if the commission believes on reasonable grounds that the person has—
- (a) been given an examination summons; and

- (b) failed to appear at the commission in accordance with the examination summons.

Note A member of the Legislative Assembly is not required to attend on a sitting day of the Legislative Assembly (see [Parliamentary Privileges Act 1987](#) (Cwlth), s 14).

- (2) A magistrate may issue an arrest warrant only if satisfied that—
 - (a) the person has—
 - (i) been given an examination summons; and
 - (ii) failed to appear at the commission in accordance with the examination summons; and
 - (b) the commission has taken reasonably practicable steps to contact the person; and
 - (c) the issue of a warrant is in the interests of justice.
- (3) In deciding whether it is in the interests of justice to issue an arrest warrant, the magistrate must consider the following:
 - (a) the importance of the evidence that the person is expected to give;
 - (b) whether the evidence could be obtained by other means;
 - (c) the degree of urgency to resolve the matter;
 - (d) the likelihood that issuing the warrant would secure the person's attendance at the examination;
 - (e) the reason (if any) given by the person for not attending in accordance with the examination summons;
 - (f) the impact of using the warrant for the arrest of the person, in particular, due to disability, health or cultural or linguistic background.

- (4) The issue of an arrest warrant, or the arrest of a person under that warrant, does not relieve the person from any liability for non-compliance with the examination summons.

Note 1 It is an offence for a person to not attend, or not continue to attend, as required in the examination summons (see s 173 which applies the [Criminal Code](#), s 719).

Note 2 The commission must report monthly to the inspector about arrest warrants (see s 205).

160 Examination—executing warrant to arrest witness who fails to appear

- (1) This section applies if a magistrate issues an arrest warrant under section 159.
- (2) The warrant authorises a police officer to—
- (a) arrest the person named in the warrant; and
 - (b) bring the person before the commission.
- (3) If a police officer believes on reasonable grounds that the person named in the warrant is on any premises, the police officer is authorised to enter the premises, with necessary assistance and force, to execute the warrant.
- (4) However, the police officer must not enter premises (or a part of premises) used only for residential purposes to execute the warrant before 6 am or after 9 pm on any day unless the police officer believes on reasonable grounds that—
- (a) it would not be practicable to arrest the person, either at the premises or somewhere else, at another time; or
 - (b) it is necessary to enter the premises to prevent the concealment, loss or destruction of evidence of, or relating to, corrupt conduct.

- (5) A police officer executing the warrant—
 - (a) must use not more than the minimum amount of force necessary to arrest the person and remove the person to the place stated in the warrant; and
 - (b) must, before removing the person, explain to the person the purpose of the warrant; and
 - (c) must bring the person immediately before the commission; and
 - (d) if a person is under a legal disability—must inform a parent or guardian of the person of the arrest.
- (6) If, after arresting the person, the police officer believes on reasonable grounds that the person cannot be brought immediately before the commission, the police officer must immediately release the person.

Division 3.6.2 Examinations—privilege

161 Examination—claiming privilege

- (1) This section applies if an examination summons directed to a person requires the person to—
 - (a) give evidence at an examination and the person claims that the information in answer to a question at an examination or otherwise required to be given to the commission is the subject of privilege; or
 - (b) produce a document or other thing to the commission and the person claims that the document or other thing is the subject of privilege.

Note **Privilege**—see s 174 and s (5).

- (2) The claimant must attend before the commission in accordance with the examination summons.

- (3) The commission must consider the claim and either—
 - (a) withdraw the requirement to answer the question, provide the information or produce the document or other thing; or
 - (b) refuse to withdraw the requirement and, if the claim relates to a document or other thing, require the claimant to immediately secure the document or other thing (by sealing in an envelope or otherwise) and give it to the commission.
- (4) In considering the claim, if the claim relates to a document or other thing, the commission must not inspect the document or other thing.
- (5) In this section:

privilege does not include parliamentary privilege.

Note Parliamentary privilege is dealt with in s 177.

162 Examination—application to Supreme Court to decide privilege

- (1) If the commission refuses to withdraw the requirement under section 161 (3) (b), the commission must—
 - (a) if the claim relates to a document or other thing—immediately give the secured document or other thing to the proper officer of the Supreme Court to be held in safe custody; and
 - (b) within 7 days, apply to the Supreme Court for determination of the claim; and
 - (c) within a reasonable time before the hearing of the application—give notice of the application to the claimant.
- (2) If the commission does not make an application within the 7 days—
 - (a) if the claim relates to a requirement to answer a question or provide information—the requirement is taken to be withdrawn; and

- (b) if the claim relates to a requirement to produce a document or other thing—the proper officer must return the secured document or other thing to the claimant.
- (3) The claimant is entitled to appear and be heard on the hearing of the application.

163 Examination—Supreme Court to decide privilege

- (1) If the Supreme Court receives an application under section 162 in relation to information required in answer to a question asked at the examination or otherwise required to be provided, the court must determine whether the information is the subject of privilege.
- (2) If the court determines that the information—
 - (a) is the subject of privilege—the court must order that the claimant is not required to provide the information to the commission; or
 - (b) is not the subject of privilege—the court must order that the claimant provide the information to the commission.
- (3) If the Supreme Court receives an application under section 162 in relation to a document or other thing, the court must determine whether the document or other thing is the subject of privilege.
- (4) To make the determination, the judge constituting the court and any other person authorised by the court may open and inspect the secured document or other thing.
- (5) If the court determines that the document or other thing—
 - (a) is the subject of privilege—the court must order that the document or other thing be returned to the claimant; or
 - (b) is not the subject of privilege—the court must order that the document or other thing be given to the commission.

(6) In this section:

privilege does not include parliamentary privilege.

Note Parliamentary privilege is dealt with in s 177.

164 Examination—offence to open secured document or other thing

(1) This section applies if—

- (a) the commission requires a document or other thing to be secured under section 161 (3) (b); and
- (b) the secured document or other thing has not been returned to the claimant under section 162 (2); and
- (c) the court has not determined whether the secured document or other thing is the subject of privilege under section 163.

(2) A person commits an offence if the person—

- (a) opens or otherwise inspects the secured document or other thing; and
- (b) is not—
 - (i) the judge constituting the court; or
 - (ii) another person authorised by the court to open and inspect the secured document or other thing under section 163 (2).

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

165 Examination—protection of witnesses and lawyers

- (1) A person appearing as a witness at an examination has the same protection and immunity as a witness has in a proceeding in the Supreme Court.
- (2) A lawyer representing a person at an examination or assisting the commission at an examination has the same protection and immunity as a lawyer has in representing a party in a proceeding in the Supreme Court.

Division 3.6.3 Examinations—contempt

166 Contempt of commission

- (1) A person is in contempt of the commission if the person—
 - (a) has been served with a preliminary inquiry notice and refuses or fails to produce a document or other thing as required by the preliminary inquiry notice; or
 - (b) has been served with an examination summons and—
 - (i) fails to attend the examination as required by the examination summons; or
 - (ii) when appearing as a witness at the examination—
 - (A) refuses or fails to take an oath when required; or
 - (B) refuses or fails to answer a question relevant to the subject matter of the examination; or
 - (C) refuses or fails to produce a document or other thing as required by the examination summons; or
 - (c) gives evidence at an examination that the person knows is false or misleading in a material particular; or
 - (d) obstructs or hinders the commissioner in the performance of the commissioner's functions at an examination; or

- (e) disrupts an examination; or
 - (f) threatens a person present at an examination.
- (2) However, subsection (1) does not apply if the person has a reasonable excuse.

Note 1 The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

Note 2 An act or omission that is contempt of the commission may also be an offence (see s 173). However, a person cannot be punished more than once for the same act or omission (see s 170).

167 Commission may apply to Supreme Court to deal with contempt

- (1) If it appears to the commission during an examination that a person is in contempt of the commission, the commission may apply to the Supreme Court for the person to be dealt with in relation to the contempt.
- (2) Before making the application, the commission must tell the person that the commission proposes to make the application.
- (3) The application must be accompanied by a certificate (a **contempt certificate**) that states—
- (a) the grounds for making the application; and
 - (b) evidence in support of the application.
- (4) A copy of the contempt certificate must be given to the person before the application is made.

Note The commission must report monthly to the inspector about applications for contempt (see s 205).

168 Supreme Court to deal with contempt

- (1) A contempt of the commission is to be dealt with by the Supreme Court as if the contempt were a contempt of that court.
- (2) The contempt certificate is evidence of the matters set out in it.

169 Commission may withdraw contempt application

The commission may, at any time, withdraw an application in relation to a person under section 167.

170 Act or omission both offence and contempt

If an act or omission by a person constitutes both an offence against this Act and contempt of the commission, the person is liable to be proceeded against for the offence against this Act or for contempt of the commission or both, but is not liable to be punished more than once for the same act or omission.

Division 3.6.4 Examinations—other provisions

171 Witnesses at examinations—provision of legal assistance

A witness prescribed by regulation appearing before the commission at an examination may be entitled to be paid an amount by the Territory for legal assistance in connection with the person's appearance—

- (a) in accordance with the Supreme Court scale of costs; or
- (b) if a regulation is made about how the amount is to be worked out—in the way prescribed by regulation.

172 Witnesses at examinations—reimbursement of expenses

A witness prescribed by regulation appearing before the commission at an examination is entitled to be paid an amount by the Territory for the expenses of the appearance—

- (a) in accordance with the Supreme Court scale of costs; or
- (b) if a regulation is made about how the amount is to be worked out—in the way prescribed by regulation.

173 Examination—application of Criminal Code, ch 7

An examination before the commission is a legal proceeding for the [Criminal Code](#), chapter 7 (Administration of justice offences).

Note The [Criminal Code](#), ch 7 includes offences such as perjury, falsifying evidence, failing to attend an examination and failing to take an oath.

Part 3.7 Commission—privilege

174 Meaning of *privilege*

In this Act:

privilege—

- (a) means any privilege a person is entitled to claim in a proceeding before a court or tribunal; and
- (b) includes public interest immunity under the [Evidence Act 2011](#), section 130 (Exclusion of evidence of matters of state); but
- (c) does not include a privilege disapplied under section 175.

Note The [Evidence Act 2011](#) deals with various kinds of privilege including client legal privilege, professional confidential relationship privilege, journalist privilege, religious confession and privilege against self-incrimination. The [Legislation Act](#), s 170 and s 171 also deals with the privilege against self-incrimination and client legal privilege.

175 Privileges against self-incrimination and exposure to civil penalty do not apply

A person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to—

- (a) produce a document or other thing as required under an examination summons; or
- (b) answer a question or provide information as required—
 - (i) under an examination summons; or
 - (ii) at an examination.

176 Privileges against self-incrimination and exposure to civil penalty—use and derivative use immunity

- (1) Any information, document or other thing obtained directly because of the operation of section 175 is not admissible in evidence against the person in—
 - (a) civil or criminal proceedings; or
 - (b) a disciplinary process or action, unless the commission has made a finding of serious corrupt conduct or systemic corrupt conduct in relation to the person.
- (2) Any information, document or other thing obtained indirectly because of the operation of section 175 is not admissible in evidence against the person in civil or criminal proceedings, unless—
 - (a) the information, document or other thing could have been obtained without the operation of section 175; or
 - (b) the significance of the information, document or other thing could have been appreciated without the operation of section 175.
- (3) In this section:
civil or criminal proceedings—
 - (a) means—
 - (i) a civil proceeding; or
 - (ii) a criminal proceeding, other than a proceeding for—
 - (A) an offence in relation to the falsity or the misleading nature of the answer, document or information; or
 - (B) an offence against the [Criminal Code](#), chapter 7 (Administration of justice offences); but
 - (b) does not include a proceeding for contempt of the commission.

Note Contempt of the commission is dealt with in div 3.6.3.

disciplinary process or action means, in relation to a person's employment as a public official, any of the following:

- (a) a process (a ***disciplinary process***) undertaken to determine what, if any, disciplinary action is warranted in relation to a breach, or possible breach, of the person's terms and conditions of employment;
- (b) an action taken (a ***disciplinary action***) following a disciplinary process that is permitted under legislation or the person's terms and conditions of employment;
- (c) a review process or proceeding, including an appeal process or proceeding, in relation to a disciplinary process or disciplinary action;
- (d) an administrative or judicial process or proceeding involving a claim for a remedy in relation to a disciplinary process or disciplinary action.

Note See also s 196 which deals with the circumstances in which the commission may share information.

177 Parliamentary privilege

- (1) This section applies if, in the exercise of the commission's functions, a claim of parliamentary privilege is made.
- (2) The claim of parliamentary privilege must be dealt with by the Legislative Assembly.

Note 1 Until such time as the Assembly makes its own laws in relation to its powers, privileges and immunities the powers, privileges and immunities are the same as apply to the House of Representatives (see Self-Government Act, s 24).

Note 2 This Act does not affect the law relating to the privileges of the Legislative Assembly (see s 7).

178 Parliamentary privilege—taken to be waived for MLAs’ declarations of interests etc

- (1) The commission may use a relevant declaration for—
 - (a) an investigation under chapter 3 (Commission—investigating corrupt conduct) into whether a member of the Legislative Assembly publicly disclosed a matter, including the nature of the matter; and
 - (b) a finding, opinion or recommendation about the disclosure or non-disclosure of the matter.
- (2) If the commission uses a relevant declaration under subsection (1), the Legislative Assembly is taken to have waived any parliamentary privilege that may apply to the relevant declaration.
- (3) In this section:

relevant declaration means a declaration of pecuniary interests or other matters made (whether before or after the commencement of this section) by a member of the Legislative Assembly in complying with the standing orders of the Legislative Assembly.

Part 3.8 Commission—recommendations

179 Commission may make private recommendation at any time

- (1) The commission may, at any time, make a private recommendation about a matter arising out of an investigation to 1 or more of the following:
 - (a) if the matter involves a Minister—the Chief Minister;
 - (b) if the matter involves a member of the Legislative Assembly—
 - (i) the Speaker; and
 - (ii) the leader of the registered party to which the member belongs;
 - (c) if the matter involves a person who is a member of staff of an MLA—
 - (i) the Speaker; and
 - (ii) the member of the Legislative Assembly employing the person; and
 - (iii) the leader of the registered party to which the member employing the person belongs;
 - (d) if the matter involves a public sector entity—the head of the public sector entity.
- (2) The private recommendation must state the action the commission considers should be taken.

180 Commission may require response to private recommendation

- (1) The commission may require a person who has received a private recommendation under section 179 to give a report to the commission, within a stated reasonable time, stating—
 - (a) whether or not the person has taken, or intends to take, the action recommended by the commission; and
 - (b) if the person has not taken the recommended action, or does not intend to take the recommended action—the reason for not taking or intending to take the action.
- (2) The person must comply with the requirement.

181 Commission may make private recommendation public

- (1) This section applies if the commission requires a person to give a report to the commission within a stated time under section 180.
- (2) The commission may make the private recommendation public in an investigation report or commission annual report if—
 - (a) the commission does not receive the report within the stated time; or
 - (b) if the commission receives the report within the stated time and has considered any reasons stated in the report for the person not taking the recommended action—the commission considers the person has failed to take appropriate action in relation to the private recommendation.

Part 3.9 Commission—completing an investigation and investigation reports

- Note* The commission may, at any time during an investigation—
- refer the matter to a referral entity under s 107
 - refer the matter to a prosecutorial body under s 111
 - make a private recommendation under s 177
 - give information about the investigation to people under s 197
 - provide a special report to the Legislative Assembly under s 206.

182 Investigation reports

- (1) After completing an investigation, the commission must prepare a report of the investigation (an ***investigation report***).
- (2) An investigation report may include the commission's—
 - (a) findings, opinions and recommendations; and
 - (b) reasons for those findings, opinions and recommendations.

183 Investigation report—not to include findings of guilt etc or recommendations about prosecution

- (1) The commission must not include in an investigation report a statement of—
 - (a) a finding or opinion that a stated person—
 - (i) is guilty of or has committed, is committing or is about to commit, an offence against a law in force in the Territory; or
 - (ii) has engaged in, is engaging in, or is about to engage in, conduct that would be reasonable grounds for termination action against the person; or

- (b) a recommendation that a stated person be, or an opinion that a stated person should—
 - (i) be prosecuted for an offence; or
 - (ii) be the subject of termination action.
- (2) A finding or opinion that a person has engaged in, is engaging in, or is about to engage in, corrupt conduct, or in stated conduct that constitutes or involves or could constitute or involve corrupt conduct, is not a finding or opinion under subsection (1) (a).

184 Investigation report—not to include finding of corrupt conduct unless serious or systemic

- (1) The commission must not include in an investigation report a finding that a stated person has engaged in, is engaging in, or is about to engage in, corrupt conduct unless the corrupt conduct is serious corrupt conduct or systemic corrupt conduct.
- (2) However, the commission may include in an investigation report a finding or opinion about conduct of a stated person that may be corrupt conduct if the statement of the finding or opinion does not describe the conduct as corrupt conduct.

185 Investigation report—not to include information that may prejudice proceeding etc

The commission must not include in an investigation report any information that would—

- (a) compromise another investigation under this Act; or
- (b) prejudice a criminal investigation, criminal proceeding or other legal proceeding known to the commission.

Note The commission may prepare a confidential investigation report that includes the omitted information (see s 192).

186 Investigation report—not to include information identifying certain people

The commission must not include in an investigation report any information that would identify a person who is not the subject of an adverse comment or opinion unless the commission—

- (a) is satisfied that it is necessary or desirable to do so in the public interest; and
- (b) is satisfied that it will not cause unreasonable damage to the person’s reputation, safety or wellbeing; and
- (c) states in the investigation report that the person is not the subject of any adverse comment or opinion.

Note The commission may prepare a confidential investigation report that includes the omitted information (see s 192).

187 Investigation report—not to include information contrary to the public interest

- (1) The commission must not include information in an investigation report if the commission considers that the disclosure of the information would, on balance, be contrary to the public interest.
- (2) The disclosure of information may be contrary to the public interest only if the disclosure would be likely to—
 - (a) unreasonably infringe an individual’s right to privacy and reputation, or any other right under the [Human Rights Act 2004](#); or
 - (b) disclose a trade secret, or the business affairs or research of an entity; or
 - (c) prejudice relations between the ACT government and another government.

- (3) However, the commission may include in the investigation report information mentioned in subsection (1) if satisfied the substance of the information is public knowledge.

Note The commission may prepare a confidential investigation report that includes the omitted information (see s 192).

188 Investigation report—comments on proposed reports

- (1) This section applies if the commission is preparing an investigation report (the *proposed report*).
- (2) If the proposed report, or part of it, relates to—
- (a) a person—the commission must give the proposed report, or part, to the person; or
 - (b) a public sector entity—the commission must give the proposed report, or part, to the head of the public sector entity.
- (3) The commission may also give all or part of the proposed report to anyone else the commission considers has a direct interest in the proposed report.
- (4) A proposed report must not include anything that must not be included in an investigation report.
- (5) If the commission gives a person all or part of a proposed report under subsection (2) or (3), the commission must also give the person written notice stating that the person may give written comments about the proposed report to the commission before the end of—
- (a) 6 weeks after the day the notice is given to the person; or
 - (b) a longer period stated in the notice.

Note The commission must also give the person a non-disclosure notice about the information in the proposed report (see s 198).

- (6) If the commission receives comments under this section, the commission—
 - (a) must consider the comments in preparing the investigation report; and
 - (b) may include the comments as an attachment to the investigation report.
- (7) If the commission is satisfied that amendment is an appropriate response to the comments, the commission may amend the proposed report.
- (8) If the commission is not satisfied that amendment is an appropriate response to the comments, the commission must tell the person, in writing, before the investigation report is published, that the proposed report is to be published unamended.

189 Investigation report—presentation to Legislative Assembly

- (1) If the Legislative Assembly is sitting when the commission completes an investigation report—
 - (a) the commission must give the investigation report to the Speaker; and
 - (b) the Speaker must present the investigation report to the Legislative Assembly on the next sitting day.
- (2) If the Legislative Assembly is not sitting when the commission completes an investigation report—
 - (a) the commission must give the report, and a copy for each member of the Legislative Assembly, to the Speaker; and
 - (b) the report is taken for all purposes to have been presented to the Legislative Assembly on the day the commission gives it to the Speaker (the **report day**); and

- (c) the Speaker must arrange for a copy of the report to be given to each member of the Legislative Assembly on the report day; and
- (d) the Speaker must present the report to the Legislative Assembly—
 - (i) on the next sitting day; or
 - (ii) if the next sitting day is the first meeting of the Legislative Assembly after a general election of members of the Assembly—on the second sitting day after the election; and
- (e) publication of the report is taken to have been ordered by the Legislative Assembly on the report day; and
- (f) the Speaker may give directions for the printing and circulation, and in relation to the publication, of the report.

Note 1 If the Speaker is unavailable, see s 300.

Note 2 The commission must also give the complainant etc a copy of the investigation report (see s 72, s 73 and s 74).

- (3) This section does not apply to a confidential investigation report.

190 Investigation report—publication on website

- (1) The commission must publish the investigation report on the commission's website as soon as practicable after giving the report to the Speaker under section 189.

Note If the Speaker is unavailable, see s 300.

- (2) This section does not apply to a confidential investigation report.

191 Investigation report—Ministerial response about ACT public service entity

- (1) This section applies if—
 - (a) an investigation report is presented to the Legislative Assembly under section 189; and

- (b) the investigation report made a finding of serious or systemic corrupt conduct in relation to an ACT public service entity.
- (2) Within 4 months after the day an investigation report is presented to the Legislative Assembly, the Minister responsible for the ACT public service entity must—
 - (a) prepare a written response to the report; and
 - (b) either—
 - (i) present the response to the Legislative Assembly; or
 - (ii) give the response, and a copy for each member of the Assembly, to the Speaker.
- (3) If the Minister gives the response to the Speaker—
 - (a) publication of the response is taken to have been ordered by the Legislative Assembly; and
 - (b) the Speaker must arrange for a copy of the response to be given to each member of the Legislative Assembly; and
 - (c) the Speaker may give directions for the printing and circulation, and in relation to the publication, of the response; and
 - (d) the Minister must present the response to the Legislative Assembly—
 - (i) on the next sitting day; or
 - (ii) if the next sitting day is the first meeting of the Legislative Assembly after a general election of members of the Assembly—on the second sitting day after the election.

Note If the Speaker is unavailable, see s 300.

192 Confidential investigation report

- (1) This section applies if the commission omits information from an investigation report under—
 - (a) section 185 (Investigation report—not to include information that may prejudice proceeding etc); or
 - (b) section 186 (Investigation report—not to include information identifying certain people); or
 - (c) section 187 (Investigation report—not to include information contrary to the public interest).
- (2) The commission may prepare a confidential investigation report that includes the omitted information.
- (3) The commission must give the confidential investigation report to the relevant Assembly committee.
- (4) A confidential investigation report presented to the committee is taken for all purposes to have been referred to the committee by the Legislative Assembly for inquiry and any report that the committee considers appropriate.

Part 3.10 Commission—secrecy and information sharing

193 Legal advice directions

- (1) This section applies if the commission—
- (a) gives a person any of the following (the *relevant document*):
 - (i) a confidentiality notice;
 - (ii) a preliminary inquiry notice;
 - (iii) an examination summons;
 - (iv) information under—
 - (A) section 188 (Investigation report—comments on proposed reports); or
 - (B) section 212 (Special report—comments on proposed reports); or
 - (C) section 224 (Commission annual report—comments on proposed reports); and
 - (b) considers on reasonable grounds that an investigation or examination could be prejudiced if the person sought legal advice or representation in relation to the relevant document from a certain lawyer because the lawyer is—
 - (i) a witness in an examination; or
 - (ii) representing another witness in an examination; or
 - (iii) involved, or suspected of being involved, in a matter being investigated by the commission or the inspector; or
 - (iv) representing a person involved, or suspected of being involved, in a matter being investigated by the commission or the inspector.

- (2) The commission may, at any time, give the person a direction (a **legal advice direction**) directing the person not to seek legal advice or representation in relation to the relevant document from the stated lawyer.

Note For how documents may be given, see the [Legislation Act](#), pt 19.5.

- (3) The person is bound by the legal advice direction from the time the person receives the legal advice direction.

Note The commission must report monthly to the inspector about legal advice directions (see s 205).

194 Offence—fail to comply with legal advice direction

- (1) A person commits an offence if—

- (a) the commission gives the person a legal advice direction; and
- (b) the person fails to comply with the legal advice direction.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) This section does not apply if the person has a reasonable excuse.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

195 Public sector entity may disclose information to commission

The head of a public sector entity may disclose any information held by the public sector entity to the commission if the head considers that—

- (a) the information is relevant to the exercise of the functions of the commission; and
- (b) the disclosure of the information to the commission is appropriate.

196 Disclosure of information by commission

- (1) The commission may disclose any information that has been disclosed to, or obtained by, the commission in the exercise of its functions under this Act to an information sharing entity if the commission considers that—
 - (a) the information is relevant to the exercise of the functions of the information sharing entity; and
 - (b) the disclosure of the information to the information sharing entity is appropriate.
- (2) However, the commission must not give a video recording, or transcript, of a person's evidence at an examination to—
 - (a) a law enforcement agency, unless the evidence is admissible in a criminal proceeding against the person under section 176 (Privileges against self-incrimination and exposure to civil penalty—use and derivative use immunity); or
 - (b) a prosecutorial body, unless the evidence is admissible in a criminal proceeding against the person under section 176; or
 - (c) the public sector standards commissioner or the Legislative Assembly commissioner for standards, unless the evidence is admissible in a disciplinary process or action against the person under section 176; or
 - (d) an employer of a person, unless the commission has made a finding of serious corrupt conduct or systemic corrupt conduct in relation to the person.

(3) In this section:

information sharing entity means any of the following:

(a) an integrity body;

Note The commission may conduct a joint investigation with an integrity body under s 104.

(b) a law enforcement agency;

Note The commission may conduct a joint investigation with a law enforcement agency under s 104.

(c) a prosecutorial body;

Note The commission may refer a matter to a prosecutorial body under s 111.

(d) a referral entity;

Note The commission may refer a corruption report to a referral entity under s 107.

(e) the head of a public sector entity;

Note The commission may work cooperatively with a public sector entity under s 55.

(f) if the commission has entered into a memorandum of understanding or agreement with another entity under section 56—the other entity;

(g) if the commission dismisses a corruption report and gives the corruption report to another entity under section 71—the other entity;

(h) if the commission discontinues an investigation and gives the corruption report to another entity under section 112—the other entity.

197 Information about investigation may be given to certain people

- (1) The commission may give information about the commencement, conduct or results of an investigation to 1 or more of the following:
 - (a) if the investigation involves a Minister—the Chief Minister;
 - (b) if the investigation involves a member of the Legislative Assembly—
 - (i) the Speaker; and
 - (ii) the leader of the registered party to which the member belongs;
 - (c) if the matter involves a person who is a member of staff of an MLA—
 - (i) the Speaker; and
 - (ii) the member of the Legislative Assembly employing the person; and
 - (iii) the leader of the registered party to which the member employing the person belongs;
 - (d) if the investigation involves a public sector entity—the head of the public sector entity.
- (2) The information may include information about—
 - (a) any action taken by the commission; and
 - (b) any recommendation by the commission that any action or further action be taken.
- (3) However, the commission must not give a person information under this section if the commission considers that giving the information would—
 - (a) not be in the public interest or in the interests of justice; or

- (b) put a person's safety at risk; or
- (c) cause unreasonable damage to a person's reputation; or
- (d) prejudice an investigation under this Act or an investigation by the Australian Federal Police; or
- (e) be likely to lead to the disclosure of any secret investigative method used by the commission or police officer; or
- (f) contravene a statutory secrecy obligation; or
- (g) involve the unreasonable disclosure of information relating to the personal affairs of a person.

Note The commission must also give the person a non-disclosure notice about the information (see s 198).

198 Commission must give non-disclosure notice when giving information

- (1) This section applies if the commission gives a person information under—
- (a) section 72 (Commission must keep complainant informed); or
 - (b) section 73 (Commission must keep referring entity informed); or
 - (c) section 74 (Commission must keep notifier informed); or
 - (d) section 188 (Investigation report—comments on proposed reports); or
 - (e) section 197 (1) (Information about investigation may be given to certain people); or
 - (f) section 212 (Special report—comments on proposed reports); or
 - (g) section 224 (Commission annual report—comments on proposed reports).

(2) The commission must also give the person a notice (a **non-disclosure notice**) about the information, setting out the following:

- (a) that disclosure of the information may be an offence and penalties may apply;
- (b) that certain kinds of disclosures may be permitted disclosures;

Note **Permitted disclosure**—see s 199.

- (c) a statement of the permitted disclosures and any prohibited disclosures;

Note **Prohibited disclosure**—see s (3).

- (d) an explanation of the effect of section 200 (Non-disclosure notices—expiry).

(3) In preparing the non-disclosure notice about the information, the commission may decide that a certain kind of permitted disclosure of the information must be prohibited (a **prohibited disclosure**) because the disclosure would be likely to prejudice—

- (a) an investigation; or
- (b) the safety or reputation of a person; or
- (c) the fair trial of a person who has been, or may be, charged with an offence.

Note The power to make a non-disclosure notice includes the power to amend or repeal the non-disclosure notice (see [Legislation Act](#), s 46).

199 **Meaning of *permitted disclosure* of information—pt 3.10**

In this part:

permitted disclosure of information, by a person, means a disclosure of information mentioned in a non-disclosure notice, that is—

- (a) made by the person—
 - (i) to an interpreter if the person does not have a sufficient knowledge of the English language to understand the non-disclosure notice; or
 - (ii) to an independent person if the person is illiterate or has a mental impairment, physical impairment or other impairment which prevents the person from understanding the information in the non-disclosure notice without assistance; or

Note ***Mental impairment***—see the dictionary.

- (iii) to a parent, guardian or independent person if the person is under the age of 18 years; or
- (b) made by the person to obtain legal advice or representation in relation to the person's rights, liabilities, obligations and privileges under this Act, including in relation to the non-disclosure notice; or

Note The commission may make a legal advice direction directing a person not to seek legal advice or representation from a stated lawyer (see s 193).

- (c) made by a lawyer who has received a disclosure under paragraph (b), to comply with a legal duty of disclosure or a professional obligation arising from the lawyer's professional relationship with their client; or
 - (d) already published by the commission in a report or otherwise made public under this Act; or

- (e) made by the person in making a complaint about the commission or commission personnel to the inspector under section 257 (Inspector—making a complaint to the inspector); or
- (f) otherwise authorised or required under this Act.

200 Non-disclosure notices—expiry

A non-disclosure notice given to a person expires on the earliest of the following:

- (a) if the commission revokes the non-disclosure notice—the day the commission gives the person a notice about the revocation;
- (b) 3 years after the day the non-disclosure notice was issued.

201 Offences—disclose information received from the commission

- (1) A person commits an offence if the person—
 - (a) is given information under—
 - (i) section 72 (Commission must keep complainant informed); or
 - (ii) section 73 (Commission must keep referring entity informed); or
 - (iii) section 74 (Commission must keep notifier informed); or
 - (iv) section 188 (Investigation report—comments on proposed reports); or
 - (v) section 197 (1) (Information about investigation may be given to certain people); or
 - (vi) section 212 (Special report—comments on proposed reports);
 - (vii) section 224 (Commission annual report—comments on proposed reports); and

- (b) is given a non-disclosure notice about the information; and
- (c) the non-disclosure notice has not expired; and
- (d) discloses the information.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Subsection (1) does not apply if—

- (a) the disclosure is a permitted disclosure; and
- (b) the permitted disclosure is not identified as a prohibited disclosure in the non-disclosure notice; and
- (c) when making the permitted disclosure, the person—
 - (i) tells the recipient that this section applies to any subsequent disclosure of the information by the recipient; and
 - (ii) gives the recipient a copy of the non-disclosure notice about the information.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) A person commits an offence if—

- (a) a permitted disclosure of information is made to the person; and
- (b) the person receives a copy of a non-disclosure notice about the information with the permitted disclosure; and
- (c) the non-disclosure notice has not expired; and
- (d) the person discloses the information.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

202 Evidence in court proceedings

- (1) This section applies if—
 - (a) a person is a party to a court proceeding (whether civil or criminal); and
 - (b) the court considers it desirable that particular evidence given to the commission be made available to a party to the proceeding; and
 - (c) the person is prohibited by this Act from disclosing the evidence.
- (2) After giving the commission a reasonable opportunity to appear and make representations about the evidence, the court may order that the commission make the evidence available to the court.
- (3) If the court has examined the evidence and is satisfied that it is in the interests of justice to make the evidence available to the party, the court may make the evidence available to the party.

Part 3.11 Commission—outcomes

203 Outcome of prosecutions and termination action to be published

- (1) This section applies if—
 - (a) the commission publishes in an investigation report or commission annual report—
 - (i) a finding or opinion that a person has engaged in, is engaging in, or is about to engage in, corrupt conduct; or
 - (ii) a comment or opinion which is adverse to a person; and
 - (b) the person is subsequently—
 - (i) prosecuted for an offence arising out of the investigation; or
 - (ii) the subject of termination action arising out of the investigation.
- (2) The commission must publish the outcome of the prosecution, or termination action, on the commission's website.

204 Reputational repair protocols

- (1) The commission must make protocols (the ***reputational repair protocols***) about how the commission is to deal with damage to a person's reputation if—
 - (a) the commission publishes in an investigation report, special report or commission annual report—
 - (i) a finding or opinion that a person has engaged in, is engaging in, or is about to engage in, corrupt conduct; or
 - (ii) a comment or opinion which is adverse to a person; and

- (b) any of the following happens:
- (i) the matter is referred to a prosecutorial body but the person is not prosecuted for an offence arising out of the investigation;
 - (ii) the matter is referred to a prosecutorial body, the person is prosecuted for an offence arising out of the investigation and—
 - (A) the prosecution is discontinued or dismissed; or
 - (B) the person is found not guilty of the offence; or
 - (C) the person is convicted of the offence but the conviction is quashed, nullified or set aside; or
 - (D) the person is otherwise cleared of wrongdoing;
 - (iii) the person is the subject of termination action arising out of the investigation and the person is cleared of wrongdoing.
- (2) The reputational repair protocols are a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

Chapter 4 Commission—reporting

Part 4.1 Commission—monthly reports to inspector

205 Commissioner—monthly reports to inspector

The commissioner must give a written report to the inspector at the end of each month including the following for the month:

- (a) a copy of each confidentiality notice given to a person under—
 - (i) section 78 (Confidentiality notices for preliminary inquiries); or
 - (ii) section 79 (Confidentiality notices for investigations);
- (b) a copy of each notice revoking a confidentiality notice given to a person under section 82 (Confidentiality notices—amendment and revocation);
- (c) a copy of each application made to the Supreme Court under section 83 (1) (Confidentiality notices—extension);
- (d) a copy of each order extending a confidentiality notice made by the Supreme Court under section 83 (2);
- (e) for each preliminary inquiry notice issued under section 90 (Power to issue preliminary inquiry notice)—
 - (i) the name of the person to whom the notice was directed; and
 - (ii) the reasons why the notice was issued;
- (f) for each public examination held under section 140 (Power to hold examination)—
 - (i) the investigation to which the examination relates; and

- (ii) the name of each person appearing at the examination; and
 - (iii) the reasons for holding the examination in public;
- (g) a copy of each report given to the inspector under section 144 (Commission must notify inspector of public examination);
- (h) for each examination summons issued under section 147 (Power to issue examination summons)—
 - (i) the name of the person summoned; and
 - (ii) the reasons why the examination summons was issued;
- (i) for each examination that is video recorded under section 158 (Examination—video recording and transcript)—a copy of the video recording and any transcript created;
- (j) for each arrest warrant issued under section 159 (Examination—warrant to arrest witness who fails to appear)—
 - (i) the name of the person named in the warrant; and
 - (ii) the reasons why the commission applied for the warrant;
- (k) for each application to the Supreme Court for a person to be dealt with for contempt under section 167 (Commission may apply to Supreme Court to deal with contempt)—
 - (i) the name of the person; and
 - (ii) a copy of the contempt certificate;
- (l) for each legal advice direction issued under section 193 (Legal advice directions)—
 - (i) a copy of the direction; and
 - (ii) the reasons for the direction; and
 - (iii) the factors taken into consideration in making the direction.

Part 4.2 Commission—special reports

206 Special reports

The commission may, at any time, prepare a report (a *special report*) for the Legislative Assembly on any matter relating to the exercise of the commission's functions, including administrative and general policy matters.

207 Special report—not to include findings of guilt etc or recommendations about prosecution

- (1) The commission must not include in a special report a statement of—
 - (a) a finding or opinion that a stated person—
 - (i) is guilty of or has committed, is committing, or is about to commit, an offence against a law in force in the Territory; or
 - (ii) has engaged in, is engaging in, or is about to engage in, conduct that would be reasonable grounds for termination action against the person; or
 - (b) a recommendation that a stated person be, or an opinion that a stated person should—
 - (i) be prosecuted for an offence; or
 - (ii) be the subject of termination action.
- (2) A finding or opinion that a person has engaged in, is engaging in, or is about to engage in, corrupt conduct, or in stated conduct that constitutes or involves or could constitute or involve corrupt conduct, is not a finding or opinion under subsection (1) (a).

208 Special report—not to include finding of corrupt conduct unless serious or systemic

- (1) The commission must not include in a special report a finding that a stated person has engaged in, is engaging in, or is about to engage in, corrupt conduct unless the corrupt conduct is serious corrupt conduct or systemic corrupt conduct.
- (2) However, the commission may include in a special report a finding or opinion about conduct of a stated person that may be corrupt conduct if the statement of the finding or opinion does not describe the conduct as corrupt conduct.

209 Special report—not to include information that may prejudice proceeding etc

The commission must not include in a special report any information that would—

- (a) compromise another investigation under this Act; or
- (b) prejudice a criminal investigation, criminal proceeding or other legal proceeding known to the commission.

Note The commission may prepare a confidential special report that includes the omitted information (see s 216).

210 Special report—not to include information identifying certain people

The commission must not include in a special report any information that would identify a person who is not the subject of an adverse comment or opinion unless the commission—

- (a) is satisfied that it is necessary or desirable to do so in the public interest; and
- (b) is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing; and

- (c) states in the special report that the person is not the subject of any adverse comment or opinion.

Note The commission may prepare a confidential special report that includes the omitted information (see s 216).

211 Special report—not to include information contrary to the public interest

- (1) The commission must not include information in a special report if the commission considers that the disclosure of the information would, on balance, be contrary to the public interest.
- (2) The disclosure of information may be contrary to the public interest only if the disclosure would be likely to—
 - (a) unreasonably infringe an individual’s right to privacy and reputation, or any other right under the [Human Rights Act 2004](#); or
 - (b) disclose a trade secret, or the business affairs or research of an entity; or
 - (c) prejudice relations between the ACT government and another government.
- (3) However, the commission may include in the special report information mentioned in subsection (1) if satisfied the substance of the information is public knowledge.

Note The commission may prepare a confidential special report that includes the omitted information (see s 216).

212 Special report—comments on proposed reports

- (1) This section applies if the commission is preparing a special report (the ***proposed report***).
- (2) If the proposed report, or part of it, relates to—
 - (a) a person—the commission must give the proposed report, or part, to the person; or

- (b) a public sector entity—the commission must give the proposed report, or part, to the head of the public sector entity.
 - (3) The commission may also give all or part of the proposed report to anyone else the commission considers has a direct interest in the proposed report.
 - (4) A proposed report must not include anything that must not be included in an investigation report.
 - (5) If the commission gives a person all or part of a proposed report under subsection (2) or (3), the commission must also give the person written notice stating that the person may give written comments about the proposed report to the commission before the end of—
 - (a) 6 weeks after the day the notice is given to the person; or
 - (b) a longer period stated in the notice.
- Note* The commission must also give the person a non-disclosure notice about the information (see s 198).
- (6) If the commission receives comments under this section, the commission—
 - (a) must consider the comments in preparing the special report; and
 - (b) may include the comments as an attachment to the special report.
 - (7) If the commission is satisfied that amendment is an appropriate response to the comments, the commission may amend the proposed report.
 - (8) If the commission is not satisfied that amendment is an appropriate response to the comments, the commission must tell the person, in writing, before the special report is published, that the proposed report is to be published unamended.

213 Special report—presentation to Legislative Assembly

- (1) If the Legislative Assembly is sitting when the commission completes a special report—
 - (a) the commission must give the special report to the Speaker; and
 - (b) the Speaker must present the special report to the Legislative Assembly on the next sitting day.
- (2) If the Legislative Assembly is not sitting when the commission completes a special report—
 - (a) the commission must give the report, and a copy for each member of the Legislative Assembly, to the Speaker; and
 - (b) the report is taken for all purposes to have been presented to the Legislative Assembly on the day the commission gives it to the Speaker (the **report day**); and
 - (c) the Speaker must arrange for a copy of the report to be given to each member of the Legislative Assembly on the report day; and
 - (d) the Speaker must present the report to the Legislative Assembly—
 - (i) on the next sitting day; or
 - (ii) if the next sitting day is the first meeting of the Legislative Assembly after a general election of members of the Assembly—on the second sitting day after the election; and
 - (e) publication of the report is taken to have been ordered by the Legislative Assembly on the report day; and
 - (f) the Speaker may give directions for the printing and circulation, and in relation to the publication, of the report.

Note If the Speaker is unavailable, see s 300.

- (3) This section does not apply to a confidential special report.

214 Special report—publication on website

- (1) The commission must publish the special report on the commission's website as soon as practicable after giving the report to the Speaker under section 213.

Note If the Speaker is unavailable, see s 300.

- (2) This section does not apply to a confidential special report.

215 Special report—Ministerial response about ACT public service entity

- (1) This section applies if—
 - (a) a special report is presented to the Legislative Assembly under section 213; and
 - (b) the special report made a finding of serious or systemic corrupt conduct in relation to an ACT public service entity.
- (2) Within 4 months after the day a special report is presented to the Legislative Assembly, the Minister responsible for the ACT public service entity must—
 - (a) prepare a written response to the report; and
 - (b) either—
 - (i) present the response to the Legislative Assembly; or
 - (ii) give the response, and a copy for each member of the Assembly, to the Speaker.
- (3) If the Minister gives the response to the Speaker—
 - (a) publication of the response is taken to have been ordered by the Legislative Assembly; and
 - (b) the Speaker must arrange for a copy of the response to be given to each member of the Legislative Assembly; and

- (c) the Speaker may give directions for the printing and circulation, and in relation to the publication, of the response; and
- (d) the Minister must present the response to the Legislative Assembly—
 - (i) on the next sitting day; or
 - (ii) if the next sitting day is the first meeting of the Legislative Assembly after a general election of members of the Assembly—on the second sitting day after the election.

Note If the Speaker is unavailable, see s 300.

216 Confidential special report

- (1) This section applies if the commission omits information from a special report under—
 - (a) section 209 (Special report—not to include information that may prejudice proceeding etc); or
 - (b) section 210 (Special report—not to include information identifying certain people); or
 - (c) section 211 (Special report—not to include information contrary to the public interest).
- (2) The commission may prepare a confidential special report that includes the omitted information.
- (3) The commission must give the confidential special report to the relevant Assembly committee.
- (4) A confidential special report presented to the committee is taken for all purposes to have been referred to the committee by the Legislative Assembly for inquiry and any report that the committee considers appropriate.

Part 4.3 Commission—annual reports

217 Meaning of *commission annual report*

In this Act:

commission annual report means a report by the commission under the [Annual Reports \(Government Agencies\) Act 2004](#), section 7A (Officer of the Assembly annual report).

218 Commission annual report—content

- (1) A commission annual report must include a statement of the number of each of the following for the year:
 - (a) conflicts of interest reported to the Speaker and inspector under section 31 (Commissioner—must avoid conflict of interest);
 - (b) corruption complaints made to the commission under section 57 (Anyone may make corruption complaint) including the following:
 - (i) a description of each corruption complaint;
 - (ii) the time taken to deal with each corruption complaint;
 - (iii) the average time taken to deal with corruption complaints;
 - (c) corruption complaints referred to the commission under section 59 (Other entities may refer corruption complaints), including a description of each complaint;
 - (d) corruption complaints withdrawn under section 60 (Withdrawal of corruption complaints);
 - (e) mandatory corruption notifications made by heads of public sector entities under section 61 (Meaning of *mandatory corruption notification*), including a description of each matter notified;

- (f) corruption reports dismissed under section 71 (When corruption reports must be dismissed) including—
 - (i) the ground for the decision; and
 - (ii) the number of reports given to another entity under section 71 (4);
- (g) confidentiality notices issued under section 78 (Confidentiality notices for preliminary inquiries) and section 79 (Confidentiality notices for investigations);
- (h) preliminary inquiries carried out under—
 - (i) section 86 (Preliminary inquiries about corruption reports); and
 - (ii) section 87 (Preliminary inquiries about own initiative matters);
- (i) days during the year spent conducting preliminary inquiries;
- (j) preliminary inquiry notices issued under section 90 (Power to issue preliminary inquiry notice);
- (k) investigations conducted under section 100 (Commission may investigate corruption report) including—
 - (i) for each corruption report investigated—
 - (A) a description of the matter investigated; and
 - (B) the number of days between the day the commission received the corruption report and the day the commission decided to conduct the investigation; and
 - (ii) the number of investigations commenced but not completed during the year;
- (l) investigations conducted under section 101 (Commission may investigate on own initiative), including a description of each matter investigated;

- (m) joint investigations conducted under section 104 (Investigation may be conducted as joint investigation);
- (n) corruption reports referred to any of the following entities:
 - (i) the inspector under section 105 (Commission must refer corruption reports about staff to inspector);
 - (ii) a referral entity under section 107 (Commission may refer corruption reports to referral entity), and the number withdrawn under section 109 (Referral to referral entity—withdrawal of referral);
 - (iii) the judicial council or a judicial commission under section 110 (Commission may refer reports to judicial council or judicial commission);
 - (iv) a prosecutorial entity under section 111 (Commission may refer matters to prosecutorial body);
- (o) investigations discontinued under section 112 (1) (Discontinuing an investigation), including—
 - (i) the ground for the decision; and
 - (ii) the number of reports given to another entity under section 112 (2);
- (p) search warrants issued under section 122 (Warrants—generally);
- (q) examinations held under section 140 (Power to hold examination), including—
 - (i) the number of public examinations under section 143 (Examinations may be public or private); and
 - (ii) the number of days during the year spent conducting examinations;
- (r) examination summonses issued under section 147 (Power to issue examination summons);

- (s) suppression orders issued under section 154 (Examination—commission may issue suppression order);
- (t) arrest warrants issued under section 159 (Examination—warrant to arrest witness who fails to appear);
- (u) applications for contempt of the commission made under section 167 (Commission may apply to Supreme Court to deal with contempt);
- (v) private recommendations made under section 179 (Commission may make private recommendation at any time);
- (w) investigation reports presented to the Legislative Assembly under section 189 (Investigation report—presentation to Legislative Assembly) including, for each investigation completed during the year—the number of days between the day the investigation was completed and the day the investigation report was presented to the Legislative Assembly;
- (x) confidential investigation reports given to the relevant Assembly committee under section 192 (Confidential investigation report) including, for each investigation completed during the year—the number of days between the day the investigation was completed and the day the confidential investigation report was given to the relevant Assembly committee;
- (y) legal advice directions made under section 193 (Legal advice directions);
- (z) information sharing entities to whom the commission has disclosed information under section 196 (Disclosure of information by commission) including the general nature and extent of the information disclosed;

- (za) prosecutions and termination actions arising out of investigations including the number of—
 - (i) outcomes published under section 203 (Outcome of prosecutions and termination action to be published); and
 - (ii) reputational damage matters dealt with under section 204 (Reputational repair protocols);
- (zb) special reports presented to the Legislative Assembly under section 213 (Special report—presentation to Legislative Assembly);
- (zc) confidential special reports given to the relevant Assembly committee under section 216 (Confidential special report);
- (zd) times the commission exercised functions under the following legislation:
 - (i) *Crimes (Assumed Identities) Act 2009*;
 - (ii) *Crimes (Controlled Operations) Act 2008*;
 - (iii) *Crimes (Protection of Witness Identity) Act 2011*;
 - (iv) *Crimes (Surveillance Devices) Act 2010*.

Note The commission annual report must be presented to the Legislative Assembly under the *Annual Reports (Government Agencies) Act 2004*, s 15.

- (2) A commission annual report must also include the following:
 - (a) any recommendations for change to territory laws, or for administrative action, that the commission considers should be made as a result of the exercise of its functions;
 - (b) a description of the commission's activities during the year in relation to its educating and advising functions.

- (3) If the commissioner considers that compliance with the *Annual Reports (Government Agencies) Act 2004* would prejudice the commissioner's independence, the commissioner is not required to comply with that Act to that extent.

219 Commission annual report—not to include findings of guilt etc or recommendations about prosecution

- (1) The commission must not include in a commission annual report a statement of—
- (a) a finding or opinion that a stated person—
 - (i) is guilty of or has committed, is committing or is about to commit, an offence against a law in force in the Territory; or
 - (ii) has engaged in, is engaging in, or is about to engage in, conduct that would be reasonable grounds for termination action against the person; or
 - (b) a recommendation that a stated person be, or an opinion that a stated person should—
 - (i) be prosecuted for an offence; or
 - (ii) be the subject of termination action.
- (2) A finding or opinion that a person has engaged in, is engaging in, or is about to engage in, corrupt conduct, or in stated conduct that constitutes or involves or could constitute or involve corrupt conduct, is not a finding or opinion under subsection (1) (a).

220 Commission annual report—not to include finding of corrupt conduct unless serious or systemic

- (1) The commission must not include in a commission annual report a finding that a stated person has engaged in, is engaging in, or is about to engage in, corrupt conduct unless the corrupt conduct is serious corrupt conduct or systemic corrupt conduct.
- (2) However, the commission may include in a commission annual report a finding or opinion about conduct of a stated person that may be corrupt conduct if the statement of the finding or opinion does not describe the conduct as corrupt conduct.

221 Commission annual report—not to include information that may prejudice proceeding etc

The commission must not include in a commission annual report any information that would—

- (a) compromise another investigation under this Act; or
- (b) prejudice a criminal investigation, criminal proceeding or other legal proceeding known to the commission.

222 Commission annual report—not to include information identifying certain people

The commission must not include in a commission annual report any information that would identify a person who is not the subject of an adverse comment or opinion unless the commission—

- (a) is satisfied that it is necessary or desirable to do so in the public interest; and
- (b) is satisfied that it will not cause unreasonable damage to the person's reputation, safety or wellbeing; and
- (c) states in the commission annual report that the person is not the subject of any adverse comment or opinion.

223 Commission annual report—not to include information contrary to the public interest

- (1) The commission must not include information in a commission annual report if the commission considers that the disclosure of the information would, on balance, be contrary to the public interest.
- (2) The disclosure of information may be contrary to the public interest only if the disclosure would be likely to—
 - (a) unreasonably infringe an individual’s right to privacy and reputation, or any other right under the [Human Rights Act 2004](#); or
 - (b) disclose a trade secret, or the business affairs or research of an entity; or
 - (c) prejudice relations between the ACT government and another government.
- (3) However, the commission may include in the commission annual report information mentioned in subsection (1) if satisfied the substance of the information is public knowledge.

224 Commission annual report—comments on proposed reports

- (1) This section applies if the commission is preparing a commission annual report (the ***proposed report***).
- (2) If the proposed report, or part of it, relates to—
 - (a) a person—the commission must give the proposed report, or part, to the person; or
 - (b) a public sector entity—the commission must give the proposed report, or part, to the head of the public sector entity.
- (3) The commission may also give all or part of the proposed report to anyone else the commission considers has a direct interest in the proposed report.

- (4) A proposed report must not include anything that must not be included in a commission annual report.
- (5) If the commission gives a person all or part of a proposed report under subsection (2) or (3), the commission must also give the person written notice stating that the person may give written comments about the proposed report to the commission before the end of—
 - (a) 6 weeks after the day the notice is given to the person; or
 - (b) a longer period stated in the notice.

Note The commission must also give the person a non-disclosure notice about the information in the proposed report (see s 198).

- (6) If the commission receives comments under this section, the commission—
 - (a) must consider the comments in preparing the commission annual report; and
 - (b) may include the comments as an attachment to the commission annual report.
- (7) If the commission is satisfied that amendment is an appropriate response to the comments, the commission may amend the proposed report.
- (8) If the commission is not satisfied that amendment is an appropriate response to the comments, the commission must tell the person, in writing, before the commission annual report is published, that the proposed report is to be published unamended.

Chapter 5 Inspector of the commission

Part 5.1 Inspector of the commission

Division 5.1.1 Inspector—independence and functions

225 Inspector—officer of the Legislative Assembly

- (1) The inspector is an independent officer of the Legislative Assembly.
- (2) The functions, powers, rights, immunities and obligations of the inspector are as stated in this Act and any other law in force in the Territory.

Note A law in force in the Territory includes a territory law and a Commonwealth law.

- (3) There are no implied functions, powers, rights, immunities or obligations arising from the inspector being an independent officer of the Legislative Assembly.
- (4) The powers of the Legislative Assembly to act in relation to the inspector are as stated in this Act and any other law in force in the Territory.
- (5) In subsection (4):

Legislative Assembly includes—

- (a) the members of the Legislative Assembly; and
- (b) the committees of the Legislative Assembly.
- (6) There are no implied powers of the Legislative Assembly arising from the inspector being an independent officer of the Legislative Assembly.

226 Inspector—independence

Subject to this Act and to other territory laws, the inspector has complete discretion in the exercise of the inspector's functions.

227 Inspector—functions

- (1) The functions of the inspector are—
 - (a) to assess and report on the commission's compliance with this Act and any memorandums of understanding or agreements entered into under this Act; and
 - (b) to receive, investigate and assess complaints about the commission and members of staff of the commission; and
 - (c) to make recommendations to the commission or public bodies about practices or procedures in relation to the performance of functions under this Act; and
 - (d) any other functions given to the inspector under this Act or another territory law.
- (2) The inspector is not subject to direction from anyone in relation to the exercise of the inspector's functions.

228 Inspector—powers

The inspector—

- (a) may investigate any aspect of the commission's operations or any conduct of the commissioner or the staff of the commission; and
- (b) is entitled to full access to the records of the commission and to take, or have copies made of, any of the records; and

- (c) may require the commissioner or the staff of the commission to provide information or produce documents or other things about any matter, or any class of matters, relating to—
 - (i) the commission’s operations; or
 - (ii) the conduct of the commissioner or the staff of the commission; and
- (d) may refer matters relating to the commissioner or the staff of the commission to another public sector entity or public official for consideration or action; and
- (e) may recommend disciplinary action or criminal prosecution against the commissioner or the staff of the commission.

Division 5.1.2 Inspector—appointment

229 Inspector—ombudsman to be inspector until other appointment made

The ombudsman is the inspector until an appointment is made under section 230.

Note The person holding office as the Commonwealth ombudsman is taken to be the ombudsman until an appointment is made under the [Ombudsman Act 1989](#), s 22 (see [A.C.T. Self-Government \(Consequential Provisions\) Act 1988](#) (Cwlth), s 28).

230 Inspector—appointment

- (1) The Speaker may, on behalf of the Territory, appoint a person who is not the ombudsman as inspector of the commission.
- (2) The appointment must be made—
 - (a) in consultation with—
 - (i) the Chief Minister; and
 - (ii) the Leader of the Opposition; and

- (iii) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
 - (iv) the relevant Assembly committee; and
- (b) in accordance with the inspector selection criteria and process determination.

Note **Inspector selection criteria and process determination—**
see s 232.

- (3) However, the Speaker must not appoint a person as inspector unless—
 - (a) satisfied that the person has extensive knowledge of, and experience in—
 - (i) criminal investigation or criminal adjudication; or
 - (ii) law enforcement or the conduct of investigations; or
 - (iii) public administration, governance or government; and
 - (b) the Legislative Assembly has approved the appointment, by resolution passed by a majority of at least $\frac{2}{3}$ of the members.
- (4) The appointment is a disallowable instrument.

Note 1 A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

Note 2 For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

Note 3 If an inspector is not appointed under this section, the Speaker must arrange for another person to exercise the functions of the inspector (see s 247).

231 Inspector—eligibility for appointment

- (1) The Speaker may appoint a person as the inspector only if the person has been—
 - (a) a judge of the Supreme Court; or
 - (b) a judge of the Supreme Court of a State or another territory; or
 - (c) a judge of the Federal Court; or
 - (d) a justice of the High Court; or
 - (e) a lawyer for at least 10 years.
- (2) However, the Speaker must not appoint a person as the inspector if the person—
 - (a) is or has been—
 - (i) the commissioner; or
 - (ii) the CEO of the commission; or
 - (b) is or has been a member of—
 - (i) the Legislative Assembly; or
 - (ii) the Parliament of the Commonwealth; or
 - (iii) the legislature of a State or another territory; or
 - (c) is or has, in the 5 years immediately before the day of the proposed appointment, been a public servant; or
 - (d) is or has, in the 5 years immediately before the day of the proposed appointment, been a member of—
 - (i) a registered party; or
 - (ii) a political party registered under a law of the Commonwealth, a State or another territory; or
 - (iii) a political party; or

- (e) has been convicted—
 - (i) in the ACT, of an offence punishable by imprisonment for at least 1 year; or
 - (ii) outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.

232 Inspector—selection criteria and process

- (1) Before the Speaker appoints a person under section 230, the Speaker must make a determination (an ***inspector selection criteria and process determination***) about—
 - (a) the criteria that apply to the selection of a person for appointment as inspector; and
 - (b) the process for selecting the person.
- (2) In making an inspector selection criteria and process determination, the Speaker must—
 - (a) consult—
 - (i) the Chief Minister; and
 - (ii) the Leader of the Opposition; and
 - (iii) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
 - (iv) the relevant Assembly committee; and
 - (b) ensure the selection process is open, accountable and competitive; and
 - (c) have regard to any selection criteria determined under the *Supreme Court Act 1933*, section 4AA (Requirements of appointment—resident judges).

- (3) An inspector selection criteria and process determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

233 Inspector—length of appointment

The inspector must not be appointed for longer than 7 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

234 Inspector—terms of appointment

- (1) The inspector is appointed on the terms (if any) in relation to matters not provided for by this part or a determination under the [Remuneration Tribunal Act 1995](#) that are prescribed by the management standards under the [Public Sector Management Act 1994](#).
- (2) This section does not apply to a person holding the office of inspector under section 229 (Inspector—ombudsman to be inspector until other appointment made).

235 Inspector—oath or affirmation of office

Before a person is appointed as inspector, the person must take an oath of office, or make an affirmation of office, before the Speaker.

Note For the form of the oath and affirmation of office, see the [Oaths and Affirmations Act 1984](#), s 6 and sch 1.

236 Inspector—disclosure of interests

The inspector must give a written statement of the inspector's personal and financial interests to the Speaker within 7 days after—

- (a) the day the inspector is appointed; and
- (b) the first day of each financial year; and

- (c) the day there is a change in the interest.

Note The inspector must take all reasonable steps to avoid a conflict of interest (see [Public Sector Management Act 1994](#), s 9).

237 Inspector—must not do inconsistent work etc

The inspector must not—

- (a) have paid employment that is inconsistent with the inspector's functions; or
- (b) engage in any unpaid activity that is inconsistent with the inspector's functions.

238 Inspector—resignation

The inspector may resign by giving a signed notice of resignation to the Speaker.

239 Inspector—retirement

- (1) The Speaker may retire the inspector on the ground of physical or mental incapacity if—
 - (a) the incapacity substantially affects the exercise of the inspector's functions; and
 - (b) the inspector consents to the retirement.
- (2) However, the inspector must not be retired on the ground of invalidity unless—
 - (a) if the inspector is an eligible employee for the [Superannuation Act 1976](#) (Cwlth)—
 - (i) the inspector is under the inspector's maximum retiring age within the meaning of that Act; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 2 under that [Act](#), section 54C for the inspector; or

- (b) if the inspector is a member of the superannuation scheme established under the [Superannuation Act 1990](#) (Cwlth)—
 - (i) the inspector is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under that [Act](#), section 13 for the inspector; or
 - (c) if the inspector is an ordinary employer-sponsored member of PSSAP within the meaning of the [Superannuation Act 2005](#) (Cwlth)—
 - (i) the inspector is under 60 years old; and
 - (ii) a certificate has been given by the Commonwealth Superannuation Board of Trustees No 1 under that [Act](#), section 43 for the inspector.
- (3) In this section:
- invalidity** means—
- (a) for an eligible employee for the [Superannuation Act 1976](#) (Cwlth)—invalidity under that Act; or
 - (b) for a member of the superannuation scheme established under the [Superannuation Act 1990](#) (Cwlth)—invalidity under that Act; or
 - (c) for an ordinary employer-sponsored member of PSSAP within the meaning of the [Superannuation Act 2005](#) (Cwlth)—invalidity under that Act.

physical or mental incapacity includes invalidity.

240 Inspector—suspension—generally

- (1) The Speaker may suspend the inspector—
- (a) for misbehaviour; or
 - (b) for failure to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the inspector's functions; or
 - (c) for physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner's functions; or
 - (d) if the inspector becomes bankrupt or personally insolvent.

Note Power given by a law to make a decision includes power to reverse or change the decision. The power to reverse or change the decision is exercisable in the same way, and subject to the same conditions, as the power to make the decision (see [Legislation Act](#), s 180).

- (2) If the Speaker is considering suspending the inspector, the Speaker—
- (a) must consult the following people about the proposed suspension:
 - (i) the Chief Minister;
 - (ii) the Leader of the Opposition;
 - (iii) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party;
 - (iv) the relevant Assembly committee; and
 - (b) may ask 1 or more of the following for advice about the proposed suspension:
 - (i) the public sector standards commissioner;
 - (ii) anyone else the Speaker considers appropriate.

- (3) If the Speaker suspends the inspector, the Speaker must give the inspector written notice of the suspension and a copy of a statement of the reasons for the suspension.

Note For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (4) The suspension takes effect when the notice and statement are given to the inspector under subsection (3).
- (5) The inspector may be suspended only under this section.
- (6) The inspector is entitled to be paid salary and allowances while suspended.

241 Inspector—suspension—relevant Assembly committee notice and meetings

- (1) If the Speaker suspends the inspector, the Speaker must give written notice of the suspension and a copy of the statement of the reasons for the suspension to each member of the relevant Assembly committee not later than the next business day, or if the committee has not been established, the next business day after the day the committee is established.
- (2) The relevant Assembly committee must meet in relation to the inspector's suspension—
- (a) not later than 3 business days after the day the committee is given written notice of the suspension (the **notice day**); and
 - (b) at subsequent intervals of not longer than 30 days while the inspector is suspended (a **regular meeting**).
- (3) The relevant Assembly committee must give the inspector written notice that a regular meeting will be held at least 3 business days before the day the meeting is to be held.
- (4) The inspector may make an oral or written submission (or both) to the committee about the inspector's suspension.

- (5) At each regular meeting, the relevant Assembly committee must review the inspector's suspension and may, at any time, pass a resolution about the suspension, including a resolution—
- (a) recommending to the Speaker that the Speaker end the suspension; or
 - (b) to make a statement to the Legislative Assembly recommending that the Speaker end the inspector's appointment.

242 Inspector—ending suspension

- (1) If the Speaker does not comply with section 241 (1), the suspension ends at the end of the notice day.
- (2) If the relevant Assembly committee fails to hold a meeting as required under section 241 (2), the suspension ends on the day after the last day when the meeting could have been held.
- (3) If the relevant Assembly committee makes a recommendation mentioned in section 241 (5) (a) and the Speaker does not end the suspension within 1 business day after the day the recommendation is made—
 - (a) the committee may, at any time, resolve to make a statement to the Legislative Assembly recommending that the suspension be ended; and
 - (b) if the committee makes a statement mentioned in paragraph (a) and—
 - (i) the Legislative Assembly resolves to end the suspension—the suspension ends on the passing of the resolution; or
 - (ii) the Legislative Assembly does not deal with the statement within 3 sitting days—the suspension ends at the end of the 3rd sitting day.

- (4) If the relevant Assembly committee makes a statement mentioned in section 241 (5) (b)—
 - (a) the Legislative Assembly may resolve to require the Speaker to end the inspector's appointment; but
 - (b) if the Legislative Assembly does not, within 3 sitting days, pass a resolution mentioned in paragraph (a)—the suspension ends at the end of the 3rd sitting day.
- (5) If the Speaker ends the inspector's suspension, the Speaker must give written notice of the ending of the suspension and a copy of a statement of the reasons for ending the suspension to the inspector and the relevant Assembly committee.

Note For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.

- (6) In this section:
notice day—see section 241 (2) (a).

243 Inspector—ending appointment

- (1) The Speaker must end the inspector's appointment if the Legislative Assembly—
 - (a) passes a resolution under section 242 (4) (a); or
 - (b) otherwise resolves to require the Speaker to end the inspector's appointment—
 - (i) for misbehaviour; or
 - (ii) for failure to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the commissioner's functions; or
 - (iii) for physical or mental incapacity, if the incapacity substantially affects the exercise of the inspector's functions; or

- (iv) if the inspector becomes bankrupt or personally insolvent.
 - (2) For a resolution mentioned in subsection (1) (b)—
 - (a) at least 7 days before the day the motion to which the resolution relates is first debated in the Legislative Assembly—
 - (i) the Assembly must be given the notice of the motion and a statement of reasons for the motion; and
 - (ii) the Speaker must—
 - (A) give the inspector a copy of the notice and the statement of reasons; and
 - (B) tell the inspector that a written submission about the motion may be made to the Speaker not later than 3 days after the day the inspector is given the notice; and
 - (b) the Speaker must give any written submission to the Legislative Assembly before the day the motion is first debated in the Legislative Assembly.
- Note* For what must be included in a statement of reasons, see the [Legislation Act](#), s 179.
- (3) The Speaker may end the inspector's appointment if the inspector is absent from duty, except on leave granted by the Speaker, for 14 consecutive days or for 28 days in any 12 months.
 - (4) The inspector's appointment may be ended by the Speaker only under this section or section 239 (Inspector—retirement).

244 Inspector—leave of absence

- (1) The Speaker may approve leave of absence for the inspector on the terms the Speaker decides.
- (2) If the ombudsman holds the office of inspector under section 229 (Inspector—ombudsman to be inspector until other appointment made) and is granted (or is taken to have been granted) a period of leave of absence under the [Ombudsman Act 1989](#), section 25 (Leave of absence), the inspector is taken to have been granted leave of absence under subsection (1) for the same period.

245 Inspector—acting inspector—acting ombudsman

- (1) This section applies if the ombudsman holds the office of inspector under section 229 (Inspector—ombudsman to be inspector until other appointment made).
- (2) A person acting as ombudsman under the [Ombudsman Act 1989](#), section 29 (Acting appointment) during an absence or unavailability of the ombudsman may act in the office of inspector under this Act during the absence or unavailability.

Note A person acting in a position under a standing acting arrangement has all the functions (including authorities, duties and powers) of the occupant of the position (in this case the inspector)—see the [Legislation Act](#), s 225B.

246 Inspector—acting appointment

- (1) The requirements in section 230 (2) (a) (i), (ii) and (iii), (2) (b) and (3) (b) do not apply to the appointment of an acting inspector.
- (2) If the Speaker approves a period of leave under section 244—
 - (a) an acting appointment may also be made by the inspector after consulting the Speaker; and
 - (b) the requirements in section 230 (2) (a) (iv) also do not apply to the appointment of an acting inspector.

- (3) The appointment of a person to act as inspector must not be for a term longer than 6 months.

Note For other provisions relevant to acting appointments, see the [Legislation Act](#), pt 19.3.2.

247 Inspector—arrangements for another person to exercise functions

- (1) This section applies if—
- (a) an inspector has been appointed under section 230 (Inspector—appointment), but the position is now vacant; or
- Note* The ombudsman is the inspector until an appointment is made under s 230 (see s 229).
- (b) the inspector is unable to act as inspector in relation to a matter because of illness, absence or an actual or perceived conflict of interest.
- (2) The Speaker may, on behalf of the Territory, make arrangements for a person (however described) responsible for exercising functions under a Commonwealth or State law that substantially correspond to the functions of the inspector, to exercise 1 or more of the functions of the inspector.
- (3) The arrangements must be made in consultation with—
- (a) the Chief Minister; and
 - (b) the Leader of the Opposition; and
 - (c) the leader (however described) of a registered party (other than the party to which the Chief Minister or Leader of the Opposition belongs) if at least 2 members of the Legislative Assembly are members of the party; and
 - (d) the relevant Assembly committee.

- (4) The Speaker must not make arrangements with a person unless the Legislative Assembly has approved the arrangement, by resolution passed by a majority of at least $\frac{2}{3}$ of the members.

Division 5.1.3 Inspector—staff

248 Meaning of *staff of the inspector*

In this Act:

staff of the inspector means—

- (a) staff employed under section 249; and
- (b) consultants and contractors engaged under section 250.

249 Inspector's employed staff

- (1) The inspector may employ staff on behalf of the Territory.
- (2) The staff must be—
 - (a) employed under the [Public Sector Management Act 1994](#); or
 - (b) if the ombudsman holds the office of inspector, and the Commonwealth ombudsman is the ombudsman—appointed or employed under the [Public Service Act 1999](#) (Cwlth); or
 - (c) if a Commonwealth authority is employing staff under this section because of an arrangement under section 247—employed under the [Public Service Act 1999](#) (Cwlth); or
 - (d) if a State authority is employing staff under this section because of an arrangement under section 247—employed under an Act that substantially corresponds to the [Public Sector Management Act 1994](#).

Note The [Public Sector Management Act 1994](#), div 8.2 applies to the inspector in relation to the employment of staff (see [Public Sector Management Act 1994](#), s 152).

- (3) In this section:

Commonwealth authority means a body, whether or not incorporated, established under a Commonwealth Act.

State authority means a body, whether or not incorporated, established under a State Act.

250 Inspector's consultants and contractors

- (1) The inspector may, on behalf of the Territory, engage consultants and contractors to assist the inspector in exercising the inspector's functions.
- (2) Consultants and contractors may be engaged on terms and conditions decided by the inspector.
- (3) However, the inspector must not enter into a contract of employment under this section.

251 Staff of the inspector—eligibility for appointment

- (1) The inspector may appoint a person as a member of staff of the inspector only if the inspector is satisfied the person is suitable to be a member of staff of the inspector.

Note **Staff of the inspector**—see s 248.

- (2) However, the inspector must not appoint a person as a member of staff of the inspector if the person is or has, in the 5 years immediately before the day of the proposed appointment, been a public servant.
- (3) In deciding whether a person is suitable to be a member of staff of the inspector, the inspector may ask the person to do 1 or more of the following:
 - (a) provide a police certificate for the person, dated not earlier than 6 months before the date of the request;
 - (b) declare personal interests the inspector considers relevant;

Note **Personal interest guidelines**—see s (4).

- (c) undergo a medical or psychological assessment;
- (d) make a statement about a matter determined by the inspector to be relevant to the person's suitability;
- (e) anything else the inspector considers is necessary to decide whether a person is suitable to be a member of staff of the inspector.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see [Criminal Code](#), pt 3.4).

- (4) The inspector must make guidelines (***personal interest guidelines***) about the personal interests the inspector considers relevant to declare under subsection (3) (b).

- (5) The personal interest guidelines are a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

- (6) The inspector must publish the personal interest guidelines on the inspector's website.

252 Staff of the inspector—not subject to direction from others

The staff of the inspector are not subject to direction from anyone other than the inspector in relation to the exercise of the inspector's functions.

253 Delegation by inspector

- (1) The inspector may delegate the inspector's functions under this Act or another territory law to—
 - (a) a member of staff of the inspector; or
 - (b) another person.

Note For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) However, the inspector must not delegate a function to a person who is not a member of staff of the inspector without first being satisfied that the function needs to be exercised by a person who is not a member of staff of the inspector.

254 Inspector—other arrangements for staff and facilities

- (1) The inspector may arrange with the head of service to use—

- (a) the services of a public servant; or
- (b) territory facilities.

Note The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see [Public Sector Management Act 1994](#), s 18).

- (2) The inspector may arrange with the Speaker to use territory facilities within the Assembly precincts.

255 Inspector—arrangements with other entities

- (1) The inspector may, at any time, enter into a memorandum of understanding or agreement with another entity to assist in—

- (a) avoiding delay and unnecessary duplication of statutory functions; or
- (b) efficiently managing the interaction of the statutory functions of the parties to the memorandum of understanding or agreement.

- (2) In particular, the inspector may enter into a memorandum of understanding or agreement with another entity for—

- (a) the entity to assist the inspector in relation to investigations or the exercise of other functions of the inspector; or
- (b) the inspector to assist the entity by providing services within the inspector's field of expertise and relevant to its functions.

- (3) In entering into a memorandum of understanding or agreement to assist an entity, the inspector must ensure that the provision of the assistance does not interfere with the ability of the inspector to exercise its functions.
- (4) The inspector may charge an entity for the provision of assistance by the inspector.

Note The inspector may disclose information to certain entities if it is relevant to the exercise of the entity's functions and the inspector considers it appropriate (see s 274).

Part 5.2

Inspector—investigating complaints about the commission

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

256 Meaning of *commission personnel*—pt 5.2

In this part:

commission personnel means the following:

- (a) the commissioner;
- (b) a person who was previously the commissioner;
- (c) a member of staff of the commission;
- (d) a person who was previously a member of staff of the commission.

257 Inspector—making a complaint to the inspector

- (1) A person may make a complaint to the inspector about the conduct of the commission or commission personnel in relation to the exercise of, or failure to exercise, a function under this Act or another law in force in the Territory.
- (2) Without limiting subsection (1), a complaint may be made on the basis that the conduct of the commission or commission personnel was—
 - (a) contrary to law; or
 - (b) unreasonable, unjust, oppressive or improperly discriminatory; or
 - (c) based on improper motives; or

- (d) an abuse of power; or
- (e) otherwise improper.

258 How to make a complaint to the inspector

- (1) A complaint to the inspector may be made as follows:
 - (a) orally or in writing;
 - (b) using any form of electronic communication;
 - (c) anonymously.
- (2) However, if a complaint to the inspector is made orally, the inspector may—
 - (a) put the complaint in writing; or
 - (b) require the complainant to put the complaint in writing and, until the complainant complies with the requirement, decline to investigate the complaint.
- (3) In this section:

electronic communication means communication by telephone, email, fax or any other electronic means.

259 Inspector—must keep complainant informed

- (1) If the inspector receives a complaint under section 257, the inspector must tell the complainant about the following matters:
 - (a) if the inspector decides not to investigate the complaint—the decision and the reasons for the decision;
 - (b) if the inspector investigates the complaint—the progress of the investigation at least once every 3 months;
 - (c) if the complaint is referred to a another entity under section 271 (Inspector—referral to other entities)—the referral;

- (d) if the inspector decides to discontinue the investigation—the decision and the reasons for the decision;
- (e) if the investigation is completed—the outcome of the investigation.

Note 1 The inspector must comply with this section as soon as possible after the action is taken (see [Legislation Act](#), s 151B).

Note 2 The inspector must also give the person a non-disclosure notice about the information (see s 260).

- (2) However, the inspector must not tell the complainant about a matter if telling the complainant—
 - (a) would be likely to adversely affect—
 - (i) a person’s safety; or
 - (ii) an investigation under this Act; or
 - (b) would identify another person who has given information in relation to the matter under investigation; or
 - (c) could allow the identity of another person who has given information in relation to the matter under investigation to be worked out; or
 - (d) would be contrary to a law in force in the Territory.
- (3) This section does not apply if—
 - (a) the complaint was made anonymously; or
 - (b) the complainant has asked, in writing, not to be kept informed about the corruption complaint.

260 Inspector—must give non-disclosure notice when giving information

- (1) This section applies if the inspector gives a person information under—
 - (a) section 259 (Inspector—must keep complainant informed); or
 - (b) section 277 (Inspector’s special report—comments on proposed reports); or
 - (c) section 285 (Inspector’s annual report—comments on proposed reports).
- (2) The inspector must also give the person a notice (a **non-disclosure notice**) about the information, setting out the following:
 - (a) that disclosure of the information may be an offence and penalties may apply;
 - (b) that certain kinds of disclosures may be permitted disclosures;
Note **Permitted disclosure**—see s 261.
 - (c) a statement of the permitted disclosures and any prohibited disclosures;
Note **Prohibited disclosure**—see s (3).
 - (d) an explanation of the effect of section 262 (Non-disclosure notices—expiry).
- (3) In preparing the non-disclosure notice about the information, the inspector may decide that a certain kind of permitted disclosure of the information must be prohibited (a **prohibited disclosure**) because the disclosure would be likely to prejudice—
 - (a) an investigation; or
 - (b) the safety or reputation of a person; or

- (c) the fair trial of a person who has been, or may be, charged with an offence.

Note The power to make an instrument includes the power to amend or repeal the instrument (see [Legislation Act](#), s 46).

261 **Meaning of *permitted disclosure* of information—pt 5.2**

In this part:

permitted disclosure of information, by a person, means a disclosure of information mentioned in a non-disclosure notice, that is—

- (a) made by the person—
 - (i) to an interpreter if the person does not have a sufficient knowledge of the English language to understand the non-disclosure notice; or
 - (ii) to an independent person if the person is illiterate or has a mental impairment, physical impairment or other impairment which prevents the person from understanding the information in the non-disclosure notice without assistance; or
- Note* ***Mental impairment***—see the dictionary.
- (iii) to a parent, guardian or independent person if the person is under the age of 18 years; or
 - (b) made by the person to obtain legal advice or representation in relation to the person's rights, liabilities, obligations and privileges under this Act, including in relation to the non-disclosure notice; or
 - (c) made by a lawyer who has received a disclosure under paragraph (b), to comply with a legal duty of disclosure or a professional obligation arising from the lawyer's professional relationship with their client; or

- (d) already published by the inspector in a report or otherwise made public under this Act; or
- (e) otherwise authorised or required under this Act.

262 Non-disclosure notices—expiry

A non-disclosure notice given to a person expires on the earliest of the following:

- (a) if the inspector revokes the non-disclosure notice—the day the inspector gives the person a notice about the revocation;
- (b) 3 years after the day the non-disclosure notice was issued.

263 Offences—disclose information received from the inspector

- (1) A person commits an offence if the person—
 - (a) is given information under section 259 (Inspector—must keep complainant informed); and
 - (b) is given a non-disclosure notice about the information; and
 - (c) the non-disclosure notice has not expired; and
 - (d) discloses the information.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) Subsection (1) does not apply if—
 - (a) the disclosure is a permitted disclosure; and
 - (b) the permitted disclosure is not identified as a prohibited disclosure in the non-disclosure notice; and
 - (c) when making the permitted disclosure, the person—
 - (i) tells the recipient that this section applies to any subsequent disclosure of the information by the recipient; and

- (ii) gives the recipient a copy of the non-disclosure notice about the information.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

- (3) A person commits an offence if—
 - (a) a permitted disclosure of information is made to the person; and
 - (b) the person receives a copy of a non-disclosure notice about the information with the permitted disclosure; and
 - (c) the non-disclosure notice has not expired; and
 - (d) the person discloses the information.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

264 Inspector—investigating a complaint

- (1) The inspector may investigate a complaint to assess the conduct mentioned in the complaint or any other conduct relevant to the complaint.
- (2) If the inspector decides to investigate a complaint, the inspector must notify the commission, in writing, unless the inspector reasonably believes that giving notice of the investigation could prejudice the investigation of the complaint.
- (3) The inspector has power to do anything necessary and reasonable to investigate a complaint.
- (4) The inspector may make guidelines about how the inspector is to handle complaints under this Act (***complaint investigation guidelines***).
- (5) The complaint investigation guidelines are a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

265 Inspector—own initiative investigation

The inspector may, on its own initiative, investigate the conduct of the commission or commission personnel in relation to the exercise of, or failure to exercise, a function under this Act or another law in force in the Territory.

266 Inspector—conduct of investigation

- (1) In conducting an investigation into the commission or commission personnel, the inspector—
 - (a) may investigate any aspect of the commission’s operations or any conduct of commission personnel; and
 - (b) has full and free access to all the records of the commission and may copy any record or part of any record of the commission; and
 - (c) may require the commission or any commission personnel to give the inspector any information in the commission’s possession that the inspector considers is relevant to the investigation; and
 - (d) may require any commission personnel to attend before the inspector to produce documents or other things relating to any aspect of the commission’s operations or the conduct of commission personnel.
- (2) If the inspector intends to access a record of the commission under subsection (1) (b), the inspector must give the commissioner written notice of that intention at least 3 days before the day the inspector accesses the record.
- (3) The inspector may commence or continue an investigation despite any proceeding (whether civil or criminal) in any court or tribunal.
- (4) The inspector must take all reasonable steps to ensure the conduct of an investigation does not prejudice any proceeding (whether civil or criminal) in any court or tribunal.

- (5) If the inspector considers that it is necessary to do so, the inspector may conduct an investigation in relation to the commission or commission personnel even though the commission is investigating a related matter.
- (6) The inspector may adjourn or suspend the conduct of an investigation if the inspector considers that it is in the interests of justice to do so.

267 Inspector—commission must give assistance

The commission and commission personnel must give the inspector any assistance the inspector reasonably requires to carry out an investigation.

268 Inspector—withdrawal of complaint

- (1) A person who makes a complaint may withdraw the complaint at any time.
- (2) If a complaint is withdrawn, the inspector may continue to investigate the subject matter of the complaint.

Note The inspector may conduct an investigation about a matter on its own initiative (see s 265).

269 Inspector—power to ask for information, documents and other things

- (1) This section applies if the inspector believes on reasonable grounds that a person can produce a document or other thing relevant to an investigation under section 264 (Inspector—investigating a complaint) or section 265 (Inspector—own initiative investigation).
- (2) The inspector may, by written notice given to the person, require the person to produce the document or other thing.
- (3) The notice must state how, and the time within which, the person must comply with the requirement.

- (4) A person commits an offence if the person—
- (a) is required by a notice under this section to produce to the inspector a document or other thing; and
 - (b) fails to comply with the requirement.

Maximum penalty: 50 penalty units.

Note 1 The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege. See also s 270.

Note 2 Giving false or misleading information is an offence against the [Criminal Code](#), s 338.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](#), s 58).

270 Inspector—privileges against self-incrimination and exposure to civil penalty

- (1) This section applies if a person is required by a notice under section 269 to produce a document or other thing.
- (2) The person cannot rely on the common law privileges against self-incrimination and exposure to the imposition of a civil penalty to refuse to produce the document or other thing.

Note The [Legislation Act](#), s 171 deals with client legal privilege.

- (3) However, any information, document or other thing obtained, directly or indirectly, because of producing of the document or other thing is not admissible in evidence against the person in a civil or criminal proceeding, other than a proceeding for—
 - (a) an offence in relation to the falsity or the misleading nature of the document or other thing; or
 - (b) an offence against the [Criminal Code](#), chapter 7 (Administration of justice offences).

271 Inspector—referral to other entities

- (1) The inspector may, at any time, refer a matter to the commission if—
 - (a) the commission has power to investigate the matter; and
 - (b) the inspector considers it would be more appropriate for the matter to be investigated by the commission.
- (2) The inspector may, at any time, refer a matter to the public sector standards commissioner or the Legislative Assembly commissioner for standards (a **relevant commissioner**) if—
 - (a) the relevant commissioner has power to investigate the matter; and
 - (b) the inspector considers it would be more appropriate for the matter to be investigated by the relevant commissioner.
- (3) The inspector may, at any time, refer a matter to a law enforcement agency or prosecutorial body if—
 - (a) the matter is relevant to the exercise of the law enforcement agency's, or prosecutorial body's, functions; and
 - (b) the inspector considers it appropriate to refer the matter.

Note The inspector may disclose information to an entity if it is relevant to the exercise of the entity's functions and the inspector considers it appropriate (see s 274).

272 Inspector—recommendations about practices or procedures

The inspector may, at any time, make a recommendation about practices or procedures in relation to the exercise of functions under this Act to any of the following:

- (a) the head of a public sector entity;
- (b) the commission;
- (c) the relevant Assembly committee.

**273 Inspector—recommendation to Speaker that
commissioner or staff be investigated**

- (1) This section applies if—
 - (a) a complaint made to the inspector raises allegations of corrupt conduct by—
 - (i) the commissioner; or
 - (ii) a member of staff of the commission; or
 - (b) the inspector otherwise becomes aware of information that, if true, would tend to show corrupt conduct by—
 - (i) the commissioner; or
 - (ii) a member of staff of the commission.
- (2) The inspector may make a recommendation to the Speaker that, under section 286 (Speaker may appoint special investigator to investigate commission or inspector), the Speaker appoint a special investigator to investigate—
 - (a) the commissioner; or
 - (b) a member of staff of the commission.

Note For the making of acting appointments, see the [Legislation Act](#), pt 19.3.

Part 5.3 Inspector—secrecy and information sharing

274 Inspector—disclosure of information

- (1) The inspector may disclose any information that has been disclosed to, or obtained by, the inspector in the exercise of its functions under this Act to an information sharing entity if the inspector considers that—
 - (a) the information is relevant to the exercise of the functions of the information sharing entity; and
 - (b) the disclosure of the information to the information sharing entity is appropriate.
- (2) In this section:
information sharing entity means any of the following:
 - (a) the commission;
 - (b) an integrity body;
 - (c) a law enforcement agency;
 - (d) a prosecutorial body;
 - (e) a head of a public sector entity;
 - (f) if the inspector enters into a memorandum of understanding or agreement under section 255 (Inspector—arrangements with other entities)—the other entity;
 - (g) if, under section 271 (2) (Inspector—referral to other entities), the inspector refers a matter to—
 - (i) the public sector standards commissioner—the public sector standards commissioner; and
 - (ii) the Legislative Assembly commissioner for standards—the Legislative Assembly commissioner for standards.

Part 5.4 Inspector—reviews and reports

Division 5.4.1 Inspector’s special reports

275 Inspector’s special report

The inspector may, at any time, prepare a report (an *inspector’s special report*) for the Legislative Assembly if the inspector considers that a matter needs to be brought to the attention of the Legislative Assembly sooner than in the next annual operational review report.

276 Inspector’s special report—not to include information contrary to the public interest

- (1) The inspector must not include information in an inspector’s special report if the inspector considers that the disclosure of the information would, on balance, be contrary to the public interest.
- (2) The disclosure of information may be contrary to the public interest only if the disclosure would be likely to—
 - (a) unreasonably infringe an individual’s right to privacy and reputation, or any other right under the [Human Rights Act 2004](#); or
 - (b) disclose a trade secret, or the business affairs or research of an entity; or
 - (c) prejudice relations between the ACT government and another government.
- (3) However, the inspector may include in the inspector’s special report information mentioned in subsection (1) if satisfied the substance of the information is public knowledge.

277 Inspector's special report—comments on proposed reports

- (1) This section applies if the inspector is preparing an inspector's special report (the *proposed report*).
- (2) If the proposed report, or part of it, relates to—
 - (a) a person—the inspector must give the proposed report, or part, to the person; or
 - (b) a public sector entity—the inspector must give the proposed report, or part, to the head of the public sector entity.
- (3) The inspector may also give all or part of the proposed report to anyone else the inspector considers has a direct interest in the proposed report.
- (4) A proposed report must not include anything that must not be included in an inspector's special report.
- (5) If the inspector gives a person all or part of a proposed report under subsection (2) or (3), the inspector must also give the person written notice stating that the person may give written comments about the proposed report to the inspector before the end of—
 - (a) 6 weeks after the day the notice is given to the person; or
 - (b) a longer period stated in the notice.

Note The inspector must also give the person a non-disclosure notice about the information in the proposed report (see s 260).
- (6) If the inspector receives comments under this section, the inspector—
 - (a) must consider the comments in preparing the inspector's special report; and
 - (b) may include the comments as an attachment to the inspector's special report.

- (7) If the inspector is satisfied that amendment is an appropriate response to the comments, the inspector may amend the proposed report.
- (8) If the inspector is not satisfied that amendment is an appropriate response to the comments, the inspector must tell the person, in writing, before the inspector’s special report is published, that the proposed report is to be published unamended.

278 Inspector’s special report—presentation to Legislative Assembly

- (1) If the Legislative Assembly is sitting when the inspector completes an inspector’s special report—
 - (a) the inspector must give the inspector’s special report to the Speaker; and
 - (b) the Speaker must present the inspector’s special report to the Legislative Assembly on the next sitting day.
- (2) If the Legislative Assembly is not sitting when the inspector completes an inspector’s special report—
 - (a) the inspector must give the report, and a copy for each member of the Legislative Assembly, to the Speaker; and
 - (b) the report is taken for all purposes to have been presented to the Legislative Assembly on the day the inspector gives it to the Speaker (the **report day**); and
 - (c) the Speaker must arrange for a copy of the report to be given to each member of the Legislative Assembly on the report day; and
 - (d) the Speaker must present the report to the Legislative Assembly—
 - (i) on the next sitting day; or

- (ii) if the next sitting day is the first meeting of the Legislative Assembly after a general election of members of the Assembly—on the second sitting day after the election; and
- (e) publication of the report is taken to have been ordered by the Legislative Assembly on the report day; and
- (f) the Speaker may give directions for the printing and circulation, and in relation to the publication, of the report.

Note If the Speaker is unavailable, see s 300.

279 Inspector's special report—publication on website

The inspector must publish the inspector's special report on the inspector's website as soon as practicable after giving the report to the Speaker under section 278.

Note If the Speaker is unavailable, see s 300.

Division 5.4.2 Inspector—annual operational review of commission

280 Inspector—annual operational review of commission

- (1) The inspector must assess the commission's compliance with this Act each financial year (an *annual operational review*).
- (2) In assessing the commission's compliance, the inspector must consider—
 - (a) the commission's management of conflicts of interest including—
 - (i) any conflicts of interest reported to the inspector under section 31 (Commissioner—must avoid conflict of interest); and
 - (ii) the conflicts of interest register under section 32 (Commissioner—conflicts of interest register); and

- (iii) any suspension of a commissioner under section 35 (Commissioner—suspension—generally) that relates to a conflict of interest; and
- (iv) any ending of a commissioner’s appointment under section 38 (Commissioner—ending appointment) that relates to a conflict of interest; and
- (b) whether the commission and members of staff of the commission acted within power and in compliance with this Act and any other relevant Acts; and
- (c) whether the commission has implemented any previous recommendations made by the inspector; and
- (d) any other matters the inspector considers relevant.

281 Inspector—annual operational review report

- (1) The inspector must prepare a report about the annual operational review (an ***annual operational review report***) and give a copy of the proposed report to the commission.
- (2) The inspector must give the commission a reasonable opportunity to comment on the proposed report and include a fair representation of the commission’s comments in the report.
- (3) The inspector must give the report to the Speaker and the commission within 15 weeks after the end of the financial year to which it relates.

Note The inspector’s annual report must include the annual operational review report (see s 283).

Division 5.4.3 Inspector—annual reports

282 Meaning of *inspector's annual report*

In this Act:

inspector's annual report means a report by the inspector under the [Annual Reports \(Government Agencies\) Act 2004](#), section 7A (Officer of the Assembly annual report).

283 Inspector's annual report—content

- (1) An inspector's annual report must include the following:
 - (a) the number of referrals made to the inspector under section 105 (Commission must refer corruption reports about staff to inspector) for the year;
 - (b) the number of each of the following for the year:
 - (i) copies of confidentiality notices given to the inspector under section 205 (a) (Commissioner—monthly reports to inspector);
 - (ii) copies of notices revoking confidentiality notices given to the inspector under section 205 (b);
 - (iii) copies of applications to the Supreme Court given to the inspector under section 205 (c);
 - (iv) copies of orders extending confidentiality notices given to the inspector under section 205 (d);
 - (v) preliminary inquiry notices the inspector is notified about under section 205 (e);
 - (vi) public examinations the inspector is notified about under section 205 (f);
 - (vii) examination summons the inspector is notified about under section 205 (h);

- (viii) copies of video recordings and transcripts given to the inspector under section 205 (i);
- (ix) arrest warrants the inspector is notified about under section 205 (j);
- (x) applications to the Supreme Court the inspector is notified about under section 205 (k);
- (xi) legal advice directions the inspector is notified about under section 205 (l);
- (c) the number of each of the following for the year:
 - (i) complaints made to the inspector under section 257 (Inspector—making a complaint to the inspector);
 - (ii) investigations conducted by the inspector under section 264 (Inspector—investigating a complaint) and section 265 (Inspector—own initiative investigation);
 - (iii) referrals made by the inspector under section 271 (Inspector—referral to other entities);
 - (iv) recommendations made by the inspector under—
 - (A) section 272 (Inspector—recommendations about practices or procedures); and
 - (B) section 273 (Inspector—recommendation to Speaker that commissioner or staff be investigated);
 - (v) information sharing entities to whom the inspector has disclosed information under section 274 (Inspector—disclosure of information) including the general nature and extent of the information disclosed;
 - (vi) inspector’s special reports presented to the Legislative Assembly under section 278 (Inspector’s special report—presentation to Legislative Assembly);

- (d) a description of each of the following for the year:
 - (i) matters referred to the inspector under section 105 (Commission must refer corruption reports about staff to inspector);
 - (ii) complaints made to the inspector under section 257 (Inspector—making a complaint to the inspector);
 - (iii) investigations conducted by the inspector under section 264 (Inspector—investigating a complaint) and section 265 (Inspector—own initiative investigation);
 - (e) the number of times during the year the inspector has inspected the commission’s conflicts of interest register under section 32 (Commissioner—conflicts of interest register) and the inspector’s assessment of how the commissioner is managing conflicts of interest.
- (2) An inspector’s annual report must also include the following for the year:
- (a) the annual operational review report;
- Note* ***Annual operational review report***—see s 281.
- (b) any recommendations for change to territory laws or for administrative action the inspector considers should be made as a result of the exercise of its functions.
- (3) If the inspector considers that compliance with the *Annual Reports (Government Agencies) Act 2004* would prejudice the inspector’s independence, the inspector is not required to comply with that Act to that extent.

Note The inspector’s annual report must be presented to the Legislative Assembly under the *Annual Reports (Government Agencies) Act 2004*, s 15.

284 Inspector’s annual report—not to include information contrary to the public interest

- (1) The inspector must not include information in an inspector’s annual report if the inspector considers that the disclosure of the information would, on balance, be contrary to the public interest.
- (2) The disclosure of information may be contrary to the public interest only if the disclosure would be likely to—
 - (a) unreasonably infringe an individual’s right to privacy and reputation, or any other right under the [Human Rights Act 2004](#); or
 - (b) disclose a trade secret, or the business affairs or research of an entity; or
 - (c) prejudice relations between the ACT government and another government.
- (3) However, the inspector may include in the inspector’s annual report information mentioned in subsection (1) if satisfied the substance of the information is public knowledge.

285 Inspector’s annual report—comments on proposed reports

- (1) This section applies if the inspector is preparing an inspector’s annual report (the **proposed report**).
- (2) If the proposed report, or part of it, relates to—
 - (a) a person—the inspector must give the proposed report, or part, to the person; or
 - (b) a public sector entity—the inspector must give the proposed report, or part, to the head of the public sector entity.
- (3) The inspector may also give all or part of the proposed report to anyone else the inspector considers has a direct interest in the proposed report.

- (4) A proposed report must not include anything that must not be included in an inspector's annual report.
- (5) If the inspector gives a person all or part of a proposed report under subsection (2) or (3), the inspector must also give the person written notice stating that the person may give written comments about the proposed report to the inspector before the end of—
 - (a) 6 weeks after the day the notice is given to the person; or
 - (b) a longer period stated in the notice.

Note The inspector must also give the person a non-disclosure notice about the information in the proposed report (see s 260).

- (6) If the inspector receives comments under this section, the inspector—
 - (a) must consider the comments in preparing the inspector's annual report; and
 - (b) may include the comments as an attachment to the inspector's annual report.
- (7) If the inspector is satisfied that amendment is an appropriate response to the comments, the inspector may amend the proposed report.
- (8) If the inspector is not satisfied that amendment is an appropriate response to the comments, the inspector must tell the person, in writing, before the inspector's annual report is published, that the proposed report is to be published unamended.

Chapter 6 Special investigation of commission or inspector

286 Speaker may appoint special investigator to investigate commission or inspector

- (1) This section applies if—
 - (a) the inspector makes a recommendation to the Speaker under section 273 (Inspector—recommendation to Speaker that commissioner or staff be investigated); or
 - (b) the Speaker otherwise becomes aware of information that, if true, would tend to show corrupt conduct by—
 - (i) the commissioner; or
 - (ii) a member of staff of the commission; or
 - (iii) the inspector; or
 - (iv) a member of staff of the inspector.
- (2) The Speaker may appoint a person (a ***special investigator***) to carry out an investigation (a ***special investigation***) of a matter mentioned in subsection (1).
- (3) However, the Speaker may only appoint a person as a special investigator if the Speaker would be able to appoint the person as acting commissioner (were there a vacancy in the position of commissioner).
- (4) Section 40 (1) (Commissioner—acting appointment) apply to the appointment of the special investigator as if it were an appointment of an acting commissioner.

Example—application of s 40 (1)

the Speaker must consult the relevant Assembly committee under s 25 (2) (a) (iv)

- (5) The provisions of this Act apply to the special investigator as if the special investigator were an acting commissioner however, in carrying out a special investigation, the special investigator may exercise any of the functions of the commissioner or the inspector.

Note The functions of the commissioner are in s 24.
 The functions of the inspector are in s 227.

Chapter 7 Protections for people involved in investigations

Part 7.1 Definitions—ch 7

287 Meaning of *complainant* and *complaint*—ch 7

In this chapter:

complainant means a person who makes a complaint.

complaint means—

- (a) a corruption complaint; or
- (b) a mandatory corruption notification; or
- (c) a complaint to the inspector about the conduct of the commission or commission personnel under section 257.

Part 7.2 Protection for people who report corruption

288 Immunity from liability

If a person makes a complaint—

- (a) the making of the complaint is not—
 - (i) a breach of confidence; or
 - (ii) a breach of professional etiquette or ethics; or
 - (iii) a breach of a rule of professional conduct; and
- (b) the complainant does not incur civil or criminal liability only because of the making of the complaint; and
- (c) for a complainant who is a public official or a member of staff of an MLA—the complainant is not liable to administrative action (including disciplinary action or dismissal) only because of the making of the complaint.

289 Protection from defamation action

- (1) Without limiting section 288, in a proceeding for defamation, a complainant has a defence of absolute privilege for publishing the information in the complaint.
- (2) However, this defence is not available if the complainant publishes the information before the information is published under this Act by the commission or the inspector.

290 **Loss of protection**

- (1) This section applies if a person makes a complaint and a court is satisfied that—
 - (a) the complainant has given information to a person investigating the complaint that the complainant knows is false or misleading;
or
 - (b) the complaint is vexatious.
- (2) The complainant forfeits the protections under this Act in relation to the complaint.
- (3) However, a court may make an order that subsection (2) does not apply if the court considers that the complainant's conduct mentioned in subsection (1) (a)—
 - (a) has not materially prejudiced the investigation of the complaint;
and
 - (b) is of a minor nature.

291 **Liability for own conduct**

- (1) A person's liability for the person's own conduct is not affected by the person's disclosure of that conduct under this Act.
- (2) In this section:
liability includes civil or criminal liability or any liability arising from an administrative action (including disciplinary action or dismissal).

Part 7.3 Detrimental action against a person

292 Meaning of *detrimental action*—pt 7.3

In this part:

detrimental action means action that involves—

- (a) discriminating against a person by treating, or proposing to treat, the person unfavourably in relation to the person's reputation, career, profession, employment or trade; or
- (b) harassing or intimidating a person; or
- (c) injuring a person; or
- (d) damaging a person's property.

293 Offence—taking detrimental action

- (1) A person commits an offence if the person (the ***retaliator***) takes detrimental action because of—

- (a) a complaint; or
- (b) an own initiative investigation.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) For this part, a retaliator ***takes*** detrimental action because of a complaint or own initiative investigation if the retaliator takes, or threatens to take, detrimental action against someone else because—

- (a) a person has made, or intends to make, a complaint; or
- (b) the retaliator believes that a person has made, or intends to make, a complaint; or
- (c) the commission or the inspector has conducted, is conducting or intends to conduct, an own initiative investigation; or

- (d) the retaliator believes that the commission or the inspector has conducted, is conducting or intends to conduct, an own initiative investigation.
- (3) In determining whether a retaliator has taken detrimental action because of a complaint or own initiative investigation, it is sufficient if a reason mentioned in subsection (2) is a contributing reason.
- (4) In this section:
own initiative investigation means an investigation conducted under—
 - (a) section 101 (Commission may investigate on own initiative); or
 - (b) section 265 (Inspector—own initiative investigation).

294 Damages for detrimental action

- (1) A person who takes detrimental action against someone else is liable in damages to anyone who suffers detriment as a result.
- (2) Detrimental action is a tort and damages may be recovered in a proceeding in a court of competent jurisdiction.
- (3) Any remedy that may be given by a court for a tort, including exemplary damages, may be given by a court in a proceeding under this section.
- (4) The right of a person to bring a proceeding for damages under this section does not affect any other right or remedy available to the person arising from detrimental action.

295 Injunction to prevent detrimental action etc

- (1) On application, the Supreme Court may—
 - (a) if satisfied that a person has taken detrimental action—order the person who took detrimental action to remedy the action; or

- (b) if satisfied that a person is taking, or is likely to take, detrimental action—grant an injunction to prevent detrimental action being taken.
- (2) An application may be made by—
 - (a) the commissioner; or
 - (b) the inspector; or
 - (c) a complainant; or
 - (d) a person against whom detrimental action has been or is likely to be taken.
- (3) The Supreme Court may grant an interim injunction restraining a person from taking detrimental action before deciding an application for an injunction under this section.

Chapter 8 Miscellaneous

296 Offence—obstruct commission, inspector and others

- (1) A person commits an offence if the person—
- (a) obstructs, hinders, resists or threatens any of the following people in the exercise of a function or power under this Act:
 - (i) the commissioner or a member of staff of the commission;
 - (ii) the inspector or a member of staff of the inspector; or
 - (b) obstructs, hinders, resists or threatens a lawyer or other person authorised to appear before the commission in relation to that appearance; or
 - (c) fails to comply with a lawful requirement of any of the following people under this Act:
 - (i) the commissioner or a member of staff of the commission;
 - (ii) the inspector or a member of staff of the inspector; or
 - (d) makes a false statement to, misleads, or attempts to mislead, any of the following people in the exercise of a function under this Act:
 - (i) the commissioner or a member of staff of the commission;
 - (ii) the inspector or a member of staff of the inspector; or
 - (e) disrupts an examination before the commission.

Maximum penalty: 50 penalty units, imprisonment for 12 months or both.

- (2) Subsection (1) (a), (b) and (c) do not apply if the person has a reasonable excuse.

Note The defendant has an evidential burden in relation to the matters mentioned in s (2) (see [Criminal Code](#), s 58).

297 Offences—use or divulge protected information

- (1) A person to whom this section applies commits an offence if—
- (a) the person uses information; and
 - (b) the information is protected information about someone else; and
 - (c) the person is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) A person to whom this section applies commits an offence if—
- (a) the person does something that divulges information; and
 - (b) the information is protected information about someone else; and
 - (c) the person is reckless about whether—
 - (i) the information is protected information about someone else; and
 - (ii) doing the thing would result in the information being divulged to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsections (1) and (2) do not apply—
- (a) if the information is used or divulged—
 - (i) under this Act or another territory law; or
 - (ii) in relation to the exercise of a function by a person to whom this section applies under this Act or another territory law; or
 - (iii) in a court proceeding; or

- (b) to the using or divulging of protected information about a person with the person's consent.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law in force in the Territory.

- (5) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

divulge includes—

- (a) communicate; or
- (b) publish.

person to whom this section applies means—

- (a) a person who is or has been—
 - (i) the commissioner; or
 - (ii) a member of staff of the commission; or
 - (iii) the inspector; or
 - (iv) a member of staff of the inspector; or
- (b) anyone else who exercises, or has exercised, a function under this Act.

produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

use, in relation to information, includes make a record of the information.

298 Protection of officials from liability

- (1) An official is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from subsection (1), attach to an official attaches instead to the Territory.
- (3) In this section:

official means—

- (a) the commissioner; or
- (b) a member of staff of the commission; or
- (c) the inspector; or
- (d) a member of staff of the inspector; or
- (e) a person authorised under this Act to do or not to do a thing.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

299 Information guidelines

- (1) The commission must make guidelines about the handling of information under this Act (the **information guidelines**).
- (2) Before making an information guideline, the commission must consult the information privacy commissioner.

- (3) The information guidelines are a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

300 Unavailability of Speaker

- (1) This section applies to the following sections:

- (a) section 189 (Investigation report—presentation to Legislative Assembly);
- (b) section 190 (Investigation report—publication on website);
- (c) section 191 (Investigation report—Ministerial response about ACT public service entity);
- (d) section 213 (Special report—presentation to Legislative Assembly);
- (e) section 214 (Special report—publication on website);
- (f) section 215 (Special report—Ministerial response about ACT public service entity);
- (g) section 278 (Inspector's special report—presentation to Legislative Assembly);
- (h) section 279 (Inspector's special report—publication on website).

- (2) In a section mentioned in subsection (1):

Speaker includes—

- (a) if the Speaker is unavailable—the Deputy Speaker; and
- (b) if both the Speaker and the Deputy Speaker are unavailable—the clerk of the Legislative Assembly.

unavailable—

- (a) the Speaker is **unavailable** if—
 - (i) the Speaker is absent from duty; or

- (ii) there is a vacancy in the office of Speaker; or
 - (iii) the Speaker has an actual or perceived conflict of interest that would prevent the Speaker from properly carrying out the functions of Speaker under this Act; or
 - (iv) the Speaker cannot for any reason exercise the functions of the Speaker; and
- (b) the Deputy Speaker is **unavailable** if—
- (i) the Deputy Speaker is absent from duty; or
 - (ii) there is a vacancy in the office of Deputy Speaker; or
 - (iii) the Deputy Speaker has an actual or perceived conflict of interest that would prevent the Deputy Speaker from properly carrying out the functions of Speaker under this Act; or
 - (iv) the Deputy Speaker cannot for any reason exercise the functions of the Speaker.

301 Assistance for Speaker

In exercising a function under this Act, the Speaker may seek administrative support or advice from—

- (a) the Office of the Legislative Assembly; or
- (b) another entity that is able to provide impartial administrative support or advice.

302 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) The Executive must consult the commission and the relevant Assembly committee before making a regulation under this Act.

- (3) Subject to any disallowance or amendment under the [Legislation Act](#), chapter 7, a regulation under this Act commences—
 - (a) if there is a motion to disallow the regulation and the motion is negated by the Legislative Assembly—on the day after the day the motion is negated; or
 - (b) on the day after the 6th sitting day after the day it is presented to the Legislative Assembly under that chapter; or
 - (c) if the regulation provides for a later date or time of commencement—on that date or at that time.

303 Review of Act

- (1) The Minister must, in consultation with the Speaker, review the operation of this Act as soon as practicable—
 - (a) 3 years after the commencement of this section; and
 - (b) every 5 years after the first review of this Act.
- (2) The Minister must present a report of the review to the Legislative Assembly at a time decided in consultation with the Speaker.

Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- ACAT
- ACT
- administrative unit
- auditor-general
- bankrupt or personally insolvent
- Chief Justice
- Chief Magistrate
- Chief Minister
- chief police officer
- Commonwealth
- Corporations Act
- Deputy Speaker
- director-general (see s 163)
- director of public prosecutions
- document
- domestic partner (see s 169 (1))
- electoral commissioner
- entity
- Executive
- financial year
- head of service
- human rights commissioner
- information privacy commissioner
- judge
- lawyer
- Legislative Assembly
- magistrate

- Magistrates Court
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- Office of the Legislative Assembly
- officer of the Assembly
- ombudsman
- penalty unit (see s 133)
- person (see s 160)
- property
- public sector standards commissioner
- public servant
- public service
- registrar
- Self-Government Act
- self-government day
- Speaker
- State
- statutory office-holder
- Supreme Court
- territory authority
- territory instrumentality
- territory law
- territory-owned corporation
- the Territory.

ACT public service entity—see section 16.

annual operational review—see section 280.

annual operational review report—see section 281.

Assembly precincts—see the [Legislative Assembly Precincts Act 2001](#), dictionary.

Australian Commission for Law Enforcement Integrity (or ***ACLEI***)—see the [Law Enforcement Integrity Commissioner Act 2006](#) (Cwlth), section 5.

Australian Federal Police means the Australian Federal Police constituted under the [Australian Federal Police Act 1979](#) (Cwlth), section 6.

CEO—see section 41.

commission means the ACT Integrity Commission established under section 19.

commission annual report—see section 217.

commission personnel, for part 5.2 (Inspector—investigating complaints about the commission)—see section 256.

commissioner means the ACT Integrity Commissioner appointed under section 25.

commissioner selection criteria and process determination—see section 27.

complainant—

(a) for a corruption complaint—see section 57.

(b) for chapter 7 (Protections for people involved in investigations)—see section 287.

complaint, for chapter 7 (Protections for people involved in investigations)—see section 287.

confidentiality notice—see section 77.

connected, for part 3.5 (Commission—powers of entry, search and seizure)—see section 116.

contempt certificate—see section 167.

corrupt conduct—

- (a) see section 9; and
- (b) for part 3.5 (Commission—powers of entry, search and seizure)—see section 116.

corruption complaint—see section 57.

corruption report—see section 69.

detrimental action, for part 7.3 (Detrimental action against a person)—see section 292.

entity of a public nature—see section 18.

examination summons—see section 147.

head, of a public sector entity—see section 15.

inspector means the inspector of the commission under this Act.

inspector of correctional services—means the inspector of correctional services appointed under the [Inspector of Correctional Services Act 2017](#), section 9.

inspector selection criteria and process determination—see section 232.

inspector's annual report—see section 282.

inspector's special report—see section 275.

integrity body means the following:

- (a) the inspector;
- (b) the judicial council;
- (c) a judicial commission;
- (d) the auditor-general;
- (e) the ombudsman;

- (f) the information privacy commissioner;
- (g) the Australian Commission for Law Enforcement Integrity;
- (h) an entity, established under a law of the Commonwealth or a State, with functions substantially corresponding to the functions of the commission or the inspector;

Note **State** includes the Northern Territory (see [Legislation Act](#), dict, def **State**).

- (i) an auditor-general of the Commonwealth or a State, established under an Act substantially corresponding to the [Auditor-General Act 1996](#);
- (j) an ombudsman of the Commonwealth or a State, established under an Act substantially corresponding to the [Ombudsman Act 1989](#);
- (k) another entity with an integrity function, prescribed by regulation.

investigation report—see section 182.

investigator means a person mentioned in section 113.

joint investigation—see section 104.

judicial commission means a judicial commission under the [Judicial Commissions Act 1994](#).

judicial council means the judicial council under the [Judicial Commissions Act 1994](#).

judicial officer—see section 13.

law enforcement agency means the following:

- (a) the Australian Federal Police;
- (b) the police force or police service (however described) of a State;
- (c) another entity that has a law enforcement function, prescribed by regulation.

legal advice direction—see section 193.

Legislative Assembly commissioner for standards means the Commissioner for Standards appointed by the Speaker pursuant to a resolution of the Legislative Assembly.

Legislative Assembly entity—see section 17.

mandatory corruption notification—see section 61.

member of staff of an MLA means a person employed under the [Legislative Assembly \(Members' Staff\) Act 1989](#).

mental impairment—see the [Criminal Code](#), section 27.

non-disclosure notice—

- (a) given by the commission—see section 198; or
- (b) given by the inspector—see section 260.

occupier, for part 3.5 (Commission—powers of entry, search and seizure)—see section 116.

permitted disclosure—

- (a) of restricted information, for part 3.2 (Commission—confidentiality notices)—see section 81; or
- (b) of information, for part 3.10 (Commission—secrecy and information sharing)—see section 199; or
- (c) of information, for part 5.2 (Inspector—investigating complaints about the commission)—see section 261.

place of seizure—see section 121.

police certificate, for a person, means a written statement by the Australian Federal Police or the Australian Criminal Intelligence Commission indicating—

- (a) whether, according to the records held by the Australian Federal Police or the Australian Criminal Intelligence Commission, the person has been charged with, or convicted of, an offence against a law of—
 - (i) the Territory; or
 - (ii) the Commonwealth; or
 - (iii) a State; or
 - (iv) another country; and
- (b) if so—particulars of each offence.

Note A conviction does not include a spent conviction or an extinguished conviction (see [Spent Convictions Act 2000](#), s 16 (c) (i) and s 19H (1) (c) (i)).

political party—see the [Electoral Act 1992](#), dictionary.

preliminary inquiry notice—see section 90.

premises, for part 3.5 (Commission—powers of entry, search and seizure)—see section 116.

privilege—see section 174.

prohibited disclosure—

- (a) of restricted information in a confidentiality notice—see section 80; or
- (b) of information in a non-disclosure notice given by—
 - (i) the commission—see section 198; or
 - (ii) the inspector—see section 260.

prosecutorial body means any of the following:

- (a) the director of public prosecutions;
- (b) the Director of Public Prosecutions of the Commonwealth appointed under the [Director of Public Prosecutions Act 1983](#) (Cwlth), section 18;
- (c) the Director of Public Prosecutions of a State;
- (d) another person or body with a prosecutorial function, prescribed by regulation.

public official—see section 12.

public sector entity—see section 14.

referral entity—see section 106.

registered party—see the [Electoral Act 1992](#), dictionary.

relevant Assembly committee means the committee of the Legislative Assembly whose functions include the examination of matters related to corruption and integrity in public administration.

restricted information—see section 76.

SES member—see the [Public Sector Management Act 1994](#), dictionary.

serious corrupt conduct—see section 10.

special report—see section 206.

staff of the commission—see section 47.

staff of the inspector—see section 248.

systemic corrupt conduct—see section 11.

takes, for part 7.3 (Detrimental action against a person)—see section 293.

termination action, against a person, means action—

- (a) terminating the person's employment; or
- (b) ending the person's appointment; or
- (c) terminating the person's contract for services.

warrant, for part 3.5 (Commission—powers of entry, search and seizure)—see section 116.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the [Legislation Act 2001](#), part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Integrity Commission Act 2018 A2018-52

notified LR 11 December 2018

s 1, s 2 commenced 11 December 2018 (LA s 75 (1))

ch 1, ch 2, ch 5, ch 9, sch 1 pt 1.1, sch 1 pt 1.10, sch 1 pt 1.12, sch 1 pt 1.13, sch 1 pt 1.15, sch 1 pt 1.20, dict commenced 1 July 2019 (s 2 (1) as am by [A2019-18](#) s 4)

remainder commenced 1 December 2019 (s 2 (2) (a) as am by [A2019-18](#) s 4)

as amended by

[Integrity Commission Amendment Act 2019 A2019-18](#)

notified LR 14 June 2019

s 1, s 2 commenced 14 June 2019 (LA s 75 (1))

s 3, s 4 commenced 15 June 2019 (s 2 (1))

s 5, s 6 commenced 1 July 2019 (s 2 (2) and see Integrity Commission Act 2018 A2018-52 s 2 (1) (as am by this Act s 4))

s 7 commenced 1 December 2019 (s 2 (3) and see Integrity Commission Act 2018 A2018-52, s 2 (2) (a) (as am by this Act s 4))

4 Amendment history

Commencement

s 2 sub [A2019-18](#) s 4
om LA s 89 (4)

Staff of the commission—eligibility for appointment

s 50 am [A2019-18](#) s 5, s 6

Review of Act

s 303 am [A2019-18](#) s 7

Consequential amendments

ch 9 hdg om LA s 89 (3)

Legislation amended—sch 1

s 304 om LA s 89 (3)

Consequential amendments

sch 1 hdg om LA s 89 (3)

Annual Reports (Government Agencies) Act 2004

sch 1 pt 1.1 om LA s 89 (3)

Endnotes

4 Amendment history

Children and Young People Act 2008

sch 1 pt 1.2 om LA s 89 (3)

Co-operatives National Law (ACT) Act 2017

sch 1 pt 1.3 om LA s 89 (3)

Corrections Management Act 2007

sch 1 pt 1.4 om LA s 89 (3)

Crimes (Assumed Identities) Act 2009

sch 1 pt 1.5 om LA s 89 (3)

Crimes (Controlled Operations) Act 2008

sch 1 pt 1.6 om LA s 89 (3)

Crimes (Protection of Witness Identity) Act 2011

sch 1 pt 1.7 om LA s 89 (3)

Crimes (Surveillance Devices) Act 2010

sch 1 pt 1.8 om LA s 89 (3)

Criminal Code 2002

sch 1 pt 1.9 om LA s 89 (3)

Freedom of Information Act 2016

sch 1 pt 1.10 om LA s 89 (3)

Gambling and Racing Control Act 1999

sch 1 pt 1.11 om LA s 89 (3)

Government Procurement Act 2001

sch 1 pt 1.12 om LA s 89 (3)

Information Privacy Act 2014

sch 1 pt 1.13 om LA s 89 (3)

Inspector of Correctional Services Act 2017

sch 1 pt 1.14 om LA s 89 (3)

Legislation Act 2001

sch 1 pt 1.15 om LA s 89 (3)

Mental Health Act 2015

sch 1 pt 1.16 om LA s 89 (3)

Mental Health (Secure Facilities) Act 2016

sch 1 pt 1.17 om LA s 89 (3)

Official Visitor Act 2012

sch 1 pt 1.18 om LA s 89 (3)

Public Interest Disclosure Act 2012

sch 1 pt 1.19 om LA s 89 (3)

Remuneration Tribunal Act 1995

sch 1 pt 1.20 om LA s 89 (3)

Taxation Administration Act 1999

sch 1 pt 1.21 om LA s 89 (3)

Terrorism (Extraordinary Temporary Powers) Act 2006

sch 1 pt 1.22 om LA s 89 (3)

Victims of Crime Act 1994

sch 1 pt 1.23 om LA s 89 (3)

Endnotes

5 Earlier republications

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 July 2019	1 July 2019– 30 Nov 2019	A2019-18	new Act and amendments by A2019-18

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