

2022

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Elizabeth Lee)

Integrity Commission Amendment Bill 2022 (No 2)

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Integrity Commission Amendment Bill 2022 (No 2)

A Bill for

An Act to amend the *Integrity Commission Act 2018*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Integrity Commission Amendment Act 2022 (No 2)*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 *Note* The naming and commencement provisions automatically commence on
6 the notification day (see [Legislation Act](#), s 75 (1)).

7 **3 Legislation amended**

8 This Act amends the *Integrity Commission Act 2018*.

9 **4 New division 3.5.4A**

10 *insert*

11 **Division 3.5.4A Telecommunications warrants**

12 **Subdivision 3.5.4A.1 Preliminary**

13 **137A Definitions—div 3.5.4A**

14 In this division:

15 *Commonwealth Act* means the *Telecommunications (Interception*
16 *and Access) Act 1979* (Cwlth).

17 *Commonwealth Minister* means the minister administering the
18 Commonwealth Act.

19 *part 2-5 warrant* means a warrant under the [Commonwealth Act](#),
20 part 2-5.

21 *possession*, of a document, record or information, includes custody
22 or control of the document, record or information.

1 **137B Meaning of terms in Commonwealth Act**

2 A term used in this division that is not defined under this Act or the
3 [Legislation Act](#), dictionary, part 1, has the meaning given by the
4 Commonwealth Act.

5 **137C Object of div 3.5.4A**

6 The object of this division is to enable the commission to intercept
7 telecommunications, in accordance with the Commonwealth Act, for
8 the investigation and exposure of corrupt conduct.

9 **Subdivision 3.5.4A.2 Telecommunications warrant**
10 **applications—role of inspector**

11 **137D Application of subdiv 3.5.4A.2**

12 This subdivision applies if an investigator intends to apply for a
13 part 2-5 warrant on behalf of the commission.

14 **137E Inspector must be notified**

- 15 (1) The investigator must—
- 16 (a) notify the inspector of an application for a part 2-5 warrant, and
- 17 (b) comply with any other notification requirement that the
18 inspector may direct.
- 19 (2) If the investigator intends to make the application in writing, the
20 investigator must give the inspector—
- 21 (a) a copy of the written application; and
- 22 (b) a copy of the affidavit required under the [Commonwealth Act](#),
23 section 42 to accompany the written application.
- 24 (3) If the investigator intends to make the application by telephone, the
25 investigator must give the inspector the information required under
26 the [Commonwealth Act](#), section 43 for telephone applications.

1 **137F Full disclosure to inspector of adverse matters**

2 The investigator must disclose to the inspector, in writing, any matter
3 that the investigator considers adverse to the issuing of a part 2-5
4 warrant.

5 **137G Inspector to be given further information**

6 If further information is required under the [Commonwealth Act](#),
7 section 44, to be given to an eligible Judge or nominated AAT
8 member in connection with the application, the investigator must also
9 give the inspector the information.

10 *Note* For the meaning of *eligible Judge* and *nominated AAT member* see the
11 [Commonwealth Act](#), sch 1, cl 2.

12 **137H Inspector entitled to appear at hearing**

13 (1) The inspector is entitled to appear at the hearing of an application for
14 a part 2-5 warrant to test the validity of the application and, for that
15 purpose at the hearing, to—

16 (a) ask questions of any person giving information to the eligible
17 Judge or nominated AAT member; and

18 (b) make submissions to the eligible Judge or nominated AAT
19 member about the following:

20 (i) in relation to an application for a warrant in relation to a
21 telecommunications service—the matters mentioned in
22 the [Commonwealth Act](#), section 46(2) (a) to (f);

23 (ii) in relation to an application for a warrant in relation to a
24 person—the matters mentioned in the [Commonwealth](#)
25 Act, section 46A(2) (a) to (f).

26 (2) The inspector may make submissions to the eligible Judge or
27 nominated AAT member in the presence of the judge or member, or
28 by phone, fax, email or any other way the judge or member considers
29 reasonable.

- 1 (3) As soon as practicable after the application is heard, the inspector
2 must return to the investigator any documents given by the
3 investigator to the inspector under section 137E, section 137F or
4 section 137G in relation to the application.

5 *Note* For the meaning of *eligible Judge* and *nominated AAT member* see the
6 [Commonwealth Act](#), sch 1, cl 2.

7 **137I Privilege and secrecy requirements do not apply to**
8 **disclosure**

- 9 (1) This section applies to—
10 (a) an investigator; and
11 (b) a person giving information under section 137H (1) (a).
12 (2) A privilege, or a secrecy requirement under a territory law, does not
13 apply to the disclosure of information or production of documents
14 under this division.
15 (3) In this section:
16 *privilege* does not include parliamentary privilege.

17 **Subdivision 3.5.4A.3 Telecommunications warrants—record**
18 **keeping**

19 **137J Commission must keep records connected with issue of**
20 **part 2-5 warrants**

- 21 The commissioner must ensure the commission keeps a written
22 record of the following information:
23 (a) each part 2-5 warrant issued to the commission;
24 (b) a copy of each notification given by the commissioner, under the
25 [Commonwealth Act](#), section 59A, to the secretary of the
26 Commonwealth department mentioned in that section;

- 1 (c) each approval to exercise the authority conferred by a part 2-5
2 warrant, given by the commissioner under the [Commonwealth](#)
3 [Act](#), section 55 (3);
- 4 (d) each appointment of an approving officer made by the
5 commissioner under the [Commonwealth Act](#), section 55 (4);
- 6 (e) a copy of each document, other than a document mentioned in
7 section 137H (3), given to an investigator by the inspector under
8 subdivision 3.5.4A.2;
- 9 (f) each instrument revoking a part 2-5 warrant issued to the
10 commission;
- 11 (g) a copy of each certificate issued by a certifying officer under the
12 [Commonwealth Act](#), section 61 (4);
- 13 *Note* For the meaning of *certifying officer*, see the [Commonwealth Act](#),
14 s 5.
- 15 (h) each appointment of an authorising officer made by the
16 commissioner under the [Commonwealth Act](#), section 66 (4);
- 17 (i) each authorisation given by the commissioner or an authorising
18 officer under the [Commonwealth Act](#), section 66 (2).

19 **137K Commission must keep other records connected with**
20 **telecommunications interceptions**

- 21 (1) The commissioner must ensure the commission keeps a written
22 record of the following information:
- 23 (a) for each telephone application made by the commission for a
24 part 2-5 warrant—particulars of the telephone application,
25 including—
- 26 (i) the information given to the eligible Judge or nominated
27 AAT member on the application; and
- 28 (ii) any further information required to be given in connection
29 with the application;

- 1 (b) for each application made by the commission for a part 2-5
2 warrant, a statement as to whether—
- 3 (i) the application was withdrawn or refused; or
4 (ii) a warrant was issued on the application;
- 5 (c) for each part 2-5 warrant whose authority is exercised by the
6 commission, particulars of—
- 7 (i) the warrant; and
8 (ii) the day and time each interception under the warrant
9 began; and
10 (iii) how long each interception lasted; and
11 (iv) the name of the person who carried out each interception;
12 and
13 (v) for a named person warrant—each service to or from
14 which communications have been intercepted under the
15 warrant;
- 16 (d) for each restricted record that has at any time been in the
17 commission’s possession, particulars of—
- 18 (i) if the restricted record is a record obtained by an
19 interception under a warrant issued to the commission—
20 the warrant; and
21 (ii) each occasion when the restricted record came, whether by
22 its making or otherwise, to be in the commission’s
23 possession; and
24 (iii) each occasion, if any, when the restricted record stopped,
25 whether by its destruction or otherwise, being in the
26 commission’s possession; and

1 (iv) each other agency or other body, if any, from or to which,
2 or other person, if any, from or to whom, the commission
3 received or supplied the restricted record;

4 *Note* For the meaning of *agency*, *named person warrant* and *restricted*
5 *record*, see the [Commonwealth Act](#), s 5.

6 (e) particulars of each use made by the commission of lawfully
7 intercepted information;

8 (f) particulars of each communication of lawfully intercepted
9 information by a member of staff of the commission to a person
10 or entity other than a member of staff of the commission;

11 (g) particulars of each occasion when, to the knowledge of a
12 member of staff of the commission, lawfully intercepted
13 information was given in evidence in a relevant proceeding in
14 relation to the commission.

15 *Note 1* For the meaning of *lawfully intercepted information*, see the
16 [Commonwealth Act](#), s 5.

17 *Note 2* *Relevant proceeding* means a proceeding mentioned in the
18 [Commonwealth Act](#), s 6L.

19 (2) The record must be made as soon as practicable after the happening
20 of the events to which the particulars relate or the statement relates.

21 **137L Reports to be given by commissioner to Speaker**

22 The commissioner must give the Speaker—

23 (a) within 3 months after a part 2-5 warrant issued to the
24 commission stops being in force, a written report about—

25 (i) the use made by the commission of information obtained
26 by interceptions under the warrant; and

27 (ii) the communication of that information to a person other
28 than a member of staff of the commission; and

- 1 (b) as soon as practicable but not later than 3 months after 30 June
2 each year, a written report that sets out—
- 3 (i) the information required by the [Commonwealth Act](#),
4 part 2-8, division 2, to be set out in the Commonwealth
5 Minister’s report for the year ending on that 30 June; and
- 6 (ii) the information able to be derived from the commission’s
7 records.

8 **137M Copies of reports to be given by Speaker to**
9 **Commonwealth Minister**

10 The Speaker must give the Commonwealth Minister a copy of a
11 report mentioned in section 137L (a) or (b) as soon as practicable after
12 receiving it.

13 **137N Keeping of restricted records by commission**

14 The commissioner must ensure that a restricted record in the
15 possession of the commission is kept, other than when it is being
16 otherwise dealt with under the Commonwealth Act or this Act, in a
17 secure place where it is not accessible to a person not entitled to deal
18 with the record.

19 *Note* For the meaning of *restricted record*, see the [Commonwealth Act](#), s 5.

20 **137O Destruction of restricted records by commission**

- 21 (1) Subject to section 137P, the commissioner must ensure that a
22 restricted record in the possession of the commission is destroyed
23 immediately if the commissioner is satisfied that the record is not
24 likely to be required for a permitted purpose of the commission.

25 *Note* For the meaning of *permitted purpose* and *restricted record*, see the
26 [Commonwealth Act](#), s 5.

- 27 (2) For subsection (1), a permitted purpose does not include a purpose
28 connected with an inspection of the kind, or a report on an inspection
29 the kind, mentioned in section 137Q (1) (a).

1 **137P Commonwealth Minister and inspector may inspect**
2 **restricted record before destruction**

3 The commissioner must not allow a restricted record to be destroyed
4 under section 137O unless—

5 (a) the commissioner has received written notice under the
6 [Commonwealth Act](#), section 79, from the secretary of the
7 Commonwealth department mentioned in that section, that the
8 entry in the General Register relating to the part 2-5 warrant
9 under which the restricted record was obtained has been
10 inspected by the Commonwealth Minister; and

11 (b) the commissioner has—

12 (i) notified the inspector that the commissioner intends to
13 destroy the record; and

14 (ii) given the inspector an opportunity to inspect the record.

15 *Note* For the meaning of *General Register* and *restricted record*, see the
16 [Commonwealth Act](#), s 5.

17 **Subdivision 3.5.4A.4 Telecommunication warrant records—**
18 **inspection**

19 **137Q Inspector functions**

20 (1) The inspector must—

21 (a) inspect the commission's records as required under
22 section 137R to determine the extent of compliance with
23 sections 137J to 137L and 137N to 137P; and

24 (b) report in writing to the Speaker about the results of the
25 inspections.

26 *Note* A provision of a law that gives an entity a function also gives the entity
27 powers necessary and convenient to exercise the function (see [Legislation](#)
28 [Act](#), s 196).

- 1 (2) However, if the inspector has carried out a function under
2 subdivision 3.5.4A.2 in relation to a particular application by an
3 investigator for a part 2-5 warrant, the inspector must—
- 4 (a) not carry out the inspection of the commission’s records relating
5 to the application for the purpose mentioned in
6 subsection (1) (a); but
- 7 (b) delegate the inspector’s functions under this section to a person
8 (an *assistant inspector*) for the purpose of carrying out the
9 inspection of the commission’s records relating to the
10 application.
- 11 (3) An assistant inspector carrying out the inspector’s function under a
12 delegation under subsection (2) (b) is, for the purpose of the
13 inspection, taken—
- 14 (a) not to be acting under a delegation of the inspector; but
15 (b) to be the inspector.
- 16 (4) An assistant inspector must, if asked by a person affected by the
17 exercise of the inspector’s functions by the assistant inspector under
18 this subdivision, produce the instrument of delegation, or a copy of
19 the instrument, for the person’s inspection.

20 **137R Regular inspection of commission records**

- 21 (1) The inspector must inspect the commission’s records at least once
22 before the end of the financial year in which the commission is
23 declared to be an agency under the Commonwealth Act to find out
24 the extent of compliance with sections 137J to 137L and 137N since
25 the commencement of this subdivision.

26 *Note* For the meaning of *agency*, see the [Commonwealth Act](#), s 5.

- 1 (2) After the financial year mentioned in subsection (1), the inspector
2 must inspect the commission's records at least twice each financial
3 year to find out the extent to which the members of staff of the
4 commission have complied with sections 137J to 137L and 137N
5 to 137P since the inspector last inspected the commission's records
6 under this subdivision.
- 7 (3) The inspector may at any time inspect the commission's records to
8 find out the extent to which the members of staff of the commission
9 have complied with sections 137J to 137L and 137N to 137P during
10 any period.

11 **137S Inspection reports to Speaker**

- 12 (1) The inspector must, as soon as practicable, but not later than 3 months
13 after the end of each financial year, report to the Speaker in writing
14 about the results of an inspection under section 137R.
- 15 (2) The inspector must include in the report for a financial year—
- 16 (a) a summary of the inspections conducted in the financial year
17 under section 137R; and
- 18 (b) particulars of any deficiencies identified which adversely affect
19 the integrity of the telecommunications interception regime
20 established by the Commonwealth Act; and
- 21 (c) particulars of the remedial action, if any, taken or proposed to
22 be taken to address those deficiencies.

23 *Note* In complying with this section, the inspector remains bound by the
24 obligations imposed by the [Commonwealth Act](#), s 63, relating to
25 disclosure of intercepted information or interception warrant information.

- 26 (3) The inspector may report to the Speaker in writing at any time about
27 the results of an inspection under this subdivision and must do so if
28 requested by the Speaker.

- 1 (4) The inspector must give the information in a report mentioned in
2 subsection (1) or (3), other than information mentioned in the
3 [Commonwealth Act](#), section 63, to—
4 (a) the commissioner; and
5 (b) the relevant Assembly committee.

6 **137T Reports on other contraventions**

- 7 (1) If as a result of an inspection carried out under this subdivision the
8 inspector considers that a member of staff of the commission has
9 contravened the Commonwealth Act, or that the commissioner has
10 contravened section 137L or section 137P, the inspector may include
11 a report on the contravention in a report to the Speaker under
12 section 137S.
13 (2) However, before reporting the contravention, the inspector must—
14 (a) give the commissioner an opportunity to make comments in
15 writing on the contravention; and
16 (b) include the commissioner's comments, if any, in the report.

17 **137U Conduct of inspection**

- 18 (1) For the purpose of carrying out an inspection of the commission's
19 records under this subdivision, the inspector—
20 (a) may enter the premises occupied by the commission at any
21 reasonable time; and
22 (b) has full and free access to the records of the commission and
23 may copy any record or part of any record of the commission at
24 any reasonable time; and
25 (c) may require a member of staff of the commission to give the
26 inspector any information or document that the inspector
27 considers relevant to the inspection and that is in the member's
28 possession, or to which the member has access.

- 1 (2) The commissioner must ensure that members of staff of the
2 commission give the inspector any assistance the inspector
3 reasonably requires to carry out an inspection under this subdivision.
- 4 (3) Despite any other territory law, and whether or not the commissioner
5 has required information under section 137V, the commissioner or a
6 member of staff of the commission is not prevented from—
- 7 (a) giving information to the inspector, whether orally or in writing
8 and whether or not in answer to a question; or
- 9 (b) giving the inspector access to a record of the commission.
- 10 *Note* The inspector may disclose information to certain entities if it is relevant
11 to the exercise of the entity's functions and the inspector considers it
12 appropriate (see s 274).
- 13 (4) In this section:
- 14 *premises* includes—
- 15 (a) any land; and
- 16 (b) any building, structure, vehicle or place.

17 **137V Power to require information etc**

- 18 (1) If the inspector believes on reasonable grounds that a member of staff
19 of the commission may be able to give information relevant to an
20 inspection under this subdivision, the inspector may, by written notice
21 given to the member, require the member to do either or both of the
22 following:
- 23 (a) give, or allow access to, a document;
- 24 (b) attend before the inspector to answer questions relevant to the
25 inspection.

- 1 (2) If the inspector believes on reasonable grounds that a member of staff
2 of the commission may be able to give information relevant to an
3 inspection under this subdivision but the inspector does not know the
4 identity of the member, the inspector may, by written notice given to
5 the commissioner, require the commissioner or a member of the staff
6 of the commission nominated by the commissioner to attend before
7 the inspector to answer questions relevant to the inspection.
- 8 (3) A notice under this section must—
- 9 (a) state how, and the time within which, the person given the notice
10 must comply with the requirement; and
- 11 (b) taking into account all the circumstances, include only
12 reasonable requirements.

13 **137W Privilege against self-incrimination and exposure to civil**
14 **penalty do not apply**

- 15 (1) This section applies if a person is required by a notice under
16 section 137V to give information or answer questions.
- 17 (2) The person cannot refuse to give information or answer questions on
18 any of the following grounds:
- 19 (a) the common law privileges against self-incrimination and
20 exposure to the imposition of a civil penalty;
- 21 (b) a requirement under another territory law;
- 22 (c) the public interest.
- 23 *Note* The [Legislation Act](#), s 171 deals with client legal privilege.
- 24 (3) However, any information or document obtained directly or indirectly
25 because of the giving of the information, or any answer to a question,
26 is not admissible in evidence against the person in a civil or criminal
27 proceeding, other than a proceeding for—
- 28 (a) an offence in relation to the falsity or the misleading nature of
29 the information, document or answer; or

1 (b) an offence against the [Criminal Code](#), chapter 7 (Administration
2 of justice offences); or

3 (c) an offence against section 137X.

4 **137X Failure to comply with inspection requirement**

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

6 (a) is required by a notice under section 137V to give information
7 or answer questions; and

8 (b) fails to comply with the requirement.

9 Maximum penalty: 50 penalty units.

10 *Note 1* The [Legislation Act](#), s 170 and s 171 deal with the application of the
11 privilege against self-incrimination and client legal privilege. See also
12 this Act, s 270.

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

15 (2) Subsection (1) does not apply if the person has a reasonable excuse.

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

18 **137Y Exchange of information between inspector and**
19 **Commonwealth ombudsman**

20 (1) The inspector may give the Commonwealth ombudsman information
21 obtained by the inspector under this division if the inspector is
22 satisfied that giving the information is relevant to the performance of
23 the Commonwealth ombudsman's functions under the
24 Commonwealth Act.

25 (2) If the inspector is the ombudsman, and the Commonwealth
26 ombudsman is the ombudsman, the information may be used by the
27 Commonwealth ombudsman if it is relevant to the performance of the
28 Commonwealth ombudsman's functions under the Commonwealth
29 Act.

1 **Subdivision 3.5.4A.5 Miscellaneous**

2 **137Z Copies of reports for Commonwealth Minister**

3 As soon as practicable after a report is given to the Speaker under
4 section 137S, the Speaker must give the Commonwealth Minister a
5 copy of the report.

6 **137ZA Offence—disclose information received under div 3.5.4A**

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

8 (a) receives or obtains information or a record because of the
9 administration of this division; and

10 (b) discloses the information.

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

13 (2) Subsection (1) does not apply if the disclosure was made—

14 (a) under the Commonwealth Act; or

15 (b) in the performance of the person's functions under this Act; or

16 (c) to assist the inspector in exercising the inspector's functions
17 under subdivision 3.5.4A.2 or subdivision 3.5.4A.4.

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

20 (3) In this section—

21 *disclose*, in relation to any information or record, includes
22 communicate to another person, make use of, make a record of, or
23 give in evidence in a proceeding.

- 1 **5 Dictionary, new definitions**
- 2 *insert*
- 3 **Commonwealth Act**, for division 3.5.4A (Telecommunications
4 warrants)—see section 137A.
- 5 **Commonwealth Minister**, for division 3.5.4A (Telecommunications
6 warrants)—see section 137A.
- 7 **part 2-5 warrant**, for division 3.5.4A (Telecommunications
8 warrants)—see section 137A.
- 9 **possession**, for division 3.5.4A (Telecommunications warrants)—see
10 section 137A.

Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 20 October 2022.
- 2 **Notification**
Notified under the [Legislation Act](#) on 2022.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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