

# EXPOSURE DRAFT

**Chief Minister**

(Prepared by Parliamentary Counsel's Office)

## Integrity Commission Bill 2018

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## EXPOSURE DRAFT





# EXPOSURE DRAFT

**Chief Minister**

(Prepared by Parliamentary Counsel's Office)

## Integrity Commission Bill 2018

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### **A Bill for**

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

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

## Chapter 1 Preliminary

### Part 1.1 Preliminary

#### 1 Name of Act

This Act is the *Integrity Commission Act 2018*.

#### 2 Commencement

- (1) This Act (other than the provisions mentioned in subsection (2)) commences on a day fixed by the Minister by written notice.

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

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) The following provisions commence 12 months after the commencement of section 6:

- section 11 (1), definition of *public official*, paragraph (b) (vi);
- section 12, definition of *public sector entity*, paragraph (a) (iv);
- section 13, definition of *head*, of a public sector entity, paragraph (d);
- section 16 (1), definition of *entity of a public nature*, paragraph (d);
- section 60 (2) (Mandatory corruption notifications—heads of public sector entities);
- dictionary, definitions of *ACT Policing* and *Australian Federal Police*.

- (3) If this Act (other than the provisions mentioned in subsection (2)) has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.
- (4) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

### **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**

**Recommendations 4, 7, 8, 18 and 29**

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**

**Recommendations 15 (a), (b) and (c)**

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.

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

### **Recommendation 52**

- (1) This Act applies in relation to conduct that happened 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 that happened entirely before the commencement of this section if the commission considers that—
  - (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) the conduct happened at too remote a time to justify investigation.

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- (3) In addition, the commission may conduct an investigation under chapter 3 in relation to conduct that happened entirely before the commencement of this section only if the commission is reasonably satisfied 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; and
  - (c) if another investigatory body has already investigated or decided not to investigate the conduct—there is reliable, substantial and highly probative evidence that—
    - (i) was not considered by the investigatory body; or
    - (ii) the investigatory body's investigation or decision not to investigate was materially affected by error.
- (4) 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* by a person

Recommendations 11 and 17

(1) In this Act:

*corrupt conduct*, by a person, means conduct by, or involving, the person that—

- (a) adversely affects, or could adversely affect, directly or indirectly, the honest and impartial exercise of a function of a public official or public sector entity; and
- (b) could, if proved—
  - (i) be an offence against a law in force in the Territory; or
  - (ii) be reasonable grounds for serious disciplinary action against the person.

(2) In this Act:

*corrupt conduct*, by a person, also means a conspiracy or attempt to engage in conduct mentioned in subsection (1).

(3) In this Act:

*corrupt conduct*, by a person, also means conduct by, or involving, the person that—

- (a) adversely affects, or could adversely affect, directly or indirectly, the exercise of a function of a public official or public sector entity; and
- (b) could, if proved, be an offence against a provision of the [Criminal Code](#), chapter 3 (Theft, fraud, bribery and related offences).

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(4) In this Act:

***corrupt conduct***, by a person, also means conduct by, or involving, the person that—

- (a) impairs, or could impair, public confidence in public administration; and
- (b) involves any of the following:
  - (i) collusive tendering;
  - (ii) fraud in relation to an application for a licence, permit or other authority under legislation designed to—
    - (A) protect health and safety or the environment; or
    - (B) facilitate the management and commercial exploitation of resources;
  - (iii) dishonestly obtaining or assisting in obtaining, or dishonestly benefiting from—
    - (A) the payment or application of public funds for private advantage; or
    - (B) the disposition of public assets for private advantage;
  - (iv) defrauding the public revenue;
  - (v) fraudulently obtaining or retaining employment or appointment as a public official.

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## 10 Meaning of *corrupt conduct* by a public official

### Recommendation 17

(1) In this Act:

*corrupt conduct*, by a public official, means conduct by, or involving, the public official that—

(a) is or involves—

- (i) the exercise of the public official's functions as a public official in a way that is not honest or is not impartial; or
- (ii) a breach of trust as a public official; or
- (iii) a misuse of information or material acquired in or in relation to the exercise of the public official's functions as a public official whether the misuse is for the public official's benefit or the benefit of someone else; and

(b) could, if proved—

- (i) be an offence against a law in force in the Territory; or
- (ii) be reasonable grounds for serious disciplinary action against the public official.

(2) In this Act:

*corrupt conduct*, by a public official, also means a conspiracy or attempt to engage in conduct mentioned in subsection (1).

(3) In this Act:

***corrupt conduct***, by a public official, also means—

(a) action that—

(i) is about a matter of administration that is—

(A) contrary to a law in force in the Territory; or

(B) unreasonable, unjust, oppressive or improperly discriminatory; or

(C) negligent; or

(D) based wholly or partly on improper motives; and

(ii) adversely affects another person's interests in a substantial and specific way; or

(b) action that is a substantial misuse of public property.

(4) In this section:

***action*** includes inaction.

## 11 **Meaning of *public official***

Recommendations 10 and 14

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 public servant;

- (ii) a statutory office-holder;
- (iii) an officer of the Assembly;
- (iv) a member of the Legislative Assembly;
- (v) a member of staff of an MLA;
- (vi) a member of ACT Policing;
- (vii) 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;
- (viii) a person prescribed by regulation as a public official; but
- (c) does not include the following:
  - (i) the commissioner;
  - (ii) a member of staff of the commission;
  - (iii) the inspector;
  - (iv) a member of staff of the inspector;
  - (v) the Chief Justice, a judge or the associate judge;
  - (vi) the Chief Magistrate, a magistrate or any office that must be occupied by a magistrate;
  - (vii) an ACAT member to the extent that the member exercises a judicial or quasi-judicial function;
  - (viii) a person mentioned in paragraph (a) or (b) to the extent that the person exercises a judicial or quasi-judicial function;
  - (ix) a person prescribed by regulation not to be a public official.

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## 12      **Meaning of *public sector entity***

Recommendations 10 and 14

In this Act:

***public sector entity***—

(a) means any of the following:

(i) an ACT public service entity;

*Note*      ***ACT public service entity***—see s 14.

(ii) a Legislative Assembly entity;

*Note*      ***Legislative Assembly entity***—see s 15.

(iii) an entity of a public nature;

*Note*      ***Entity of a public nature***—see s 16.

(iv) ACT Policing;

(v) an entity prescribed by regulation to be a public sector entity; but

(b) does not include the following:

(i) the commission;

(ii) the inspector;

(iii) an entity prescribed by regulation to not be a public sector entity.

## 13      **Meaning of *head* of a public sector entity**

### Recommendation 23

(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 14.

- (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 15.

- (i) for a member of the Legislative Assembly—the Speaker; and
- (ii) for a member of staff of an MLA—the Speaker; and

## EXPOSURE DRAFT

- (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
  - (c) for an entity of a public nature—the person who has responsibility for managing the affairs of the entity; and
- Note*     **Entity of a public nature**—see s 16.
- (d) for ACT Policing—the chief police officer; and
  - (e) for an entity prescribed by regulation under section 12, definition of **public sector entity**, paragraph (a) (v)—the person prescribed by regulation.

*Note*     **Public sector entity** does not include the commission or the inspector (see s 12).

- (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.

**14      *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.

**15      *Meaning of Legislative Assembly entity***

In this Act:

*Legislative Assembly entity*—

- (a) means any of the following:
  - (i) a member of the Legislative Assembly;
  - (ii) a member of staff of an MLA;

- (iii) the Office of the Legislative Assembly;
  - (iv) an officer of the Assembly; but
- (b) does not include the following:
  - (i) the commissioner;
  - (ii) staff of the commission;
  - (iii) the inspector
  - (iv) staff of the inspector.

## 16 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; or
- (d) ACT Policing.

*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.

## 17 **Meaning of *serious corrupt conduct***

### Recommendations 8 and 19

In this Act:

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

## EXPOSURE DRAFT

**18**      **Meaning of *systemic corrupt conduct***

**Recommendation 19**

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.

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## **Chapter 2                    Integrity commission**

### **Part 2.1                    Commission—establishment,    independence and functions**

#### **19                    Establishment**

**Recommendations 1 and 9**

The ACT Integrity Commission is established.

#### **20                    Constitution of commission**

**Recommendation 60 (a)**

The commission consists of the commissioner.

#### **21                    Officer of the Legislative Assembly**

**Recommendations 58, 59, 60 (d)**

- (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.

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- (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 the commission**

### **Recommendation 60 (b)**

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**

### **Recommendations 5, 6, 7, 8, 18 and 29**

- (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) 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, and to give leadership to, 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*).

# EXPOSURE DRAFT

## Part 2.2 Commissioner—appointment

### 25 Commissioner—appointment

#### Recommendation 60

- (1) The Speaker must, on behalf of the Territory, appoint a person as the ACT Integrity Commissioner (the *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 an open and accountable selection process.
- (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**

**Recommendations 60 (e) and (g) and 61 (b) and (c)**

- (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.
- (2) The Speaker must not appoint a person as the commissioner if the person—
- (a) is or has, in the 5 years immediately before the day of the proposed appointment, 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
  - (b) is or has, in the 5 years immediately before the day of the proposed appointment, been a public servant; or

## **EXPOSURE DRAFT**

- (c) 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
- (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.

## **27 Commissioner—term of appointment**

### **Recommendation 60 (c)**

- (1) The commissioner must not be appointed for longer than 7 years.
- (2) 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*).

## **28 Commissioner—oath or affirmation of office**

### **Recommendation 59 (b)**

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.



**29 Commissioner—disclosure of interests**

**Recommendation 59 (b)**

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.

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

**30 Commissioner—must not do inconsistent work etc**

**Recommendation 59 (b)**

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.

**31 Commissioner—resignation**

**Recommendation 59 (b)**

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

## **32 Commissioner—retirement**

### **Recommendation 59 (b)**

- (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

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- (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.

### 33 Commissioner—suspension generally

Recommendations 59 (b) and 63

- (1) The Speaker may suspend the commissioner on the ground of—
  - (a) misbehaviour; or
  - (b) physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner's functions.

*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 may ask 1 or more of the following for advice about the proposed suspension:
  - (a) the public sector standards commissioner;

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(b) 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.

## **34 Commissioner—suspension—relevant Assembly committee notice and meetings**

**Recommendations 59 (b) and 63**

- (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.

## **35 Commissioner—ending suspension**

### **Recommendations 59 (b) and 63**

- (1) If the Speaker does not comply with section 34 (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 34 (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 34 (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

## **EXPOSURE DRAFT**

- (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 34 (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 34 (2) (a).

## **36 Commissioner—ending appointment**

### **Recommendation 59 (b)**

- (1) The Speaker must end the commissioner’s appointment if—
  - (a) the Legislative Assembly—
    - (i) passes a resolution under section 35 (4) (a); or

- (ii) otherwise resolves to require the Speaker to end the commissioner's appointment for—
      - (A) misbehaviour; or
      - (B) physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner's functions; or
    - (b) the commissioner becomes bankrupt or personally insolvent.
  - (2) For a resolution mentioned in subsection (1) (a) (ii)—
    - (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 32 (Commissioner—Retirement).

**37 Commissioner—leave of absence**

**Recommendation 59 (b)**

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

**38 Commissioner—acting commissioner**

**Recommendation 62**

- (1) Before the Speaker appoints a person to act as commissioner, the Speaker must consult with the presiding member of the relevant Assembly committee about the proposed appointment.
- (2) However, for a period of leave of absence approved by the Speaker under section 37, the commissioner may appoint a person to act as commissioner after consulting with the Speaker.



## Part 2.3 Commission—CEO

### 39 CEO—appointment

#### Recommendation 73

- (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, in the 5 years immediately before the day of the proposed appointment, been a public servant; or
  - (b) 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 48).

- (3) 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.

*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).

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**40 CEO—term of appointment**

- (1) The CEO must not be appointed for longer than 7 years.
- (2) 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*).

**41 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.

**42 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.

**43 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.

**44 CEO—leave of absence**

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

**EXPOSURE DRAFT**

## Part 2.4 Commission—staff

### 45 Meaning of *staff of the commission*

In this Act:

*staff of the commission* means—

- (a) the CEO; and
- (b) staff employed under section 46; and
- (c) consultants and contractors engaged under section 47.

### 46 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).

### 47 Commission consultants and contractors

#### Recommendation 71

- (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.

## **48 Staff of the commission—eligibility for appointment**

### **Recommendation 74 (b)**

- (1) The commissioner may appoint a person as a member of staff of the commission only if the commissioner is satisfied the person is suitable to be a member of staff of the commission.
- (2) 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).

## **49 Staff of the commission—not subject to direction from others**

### **Recommendation 72**

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.

## **50 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.

## **51 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 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.

**52 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.

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## **Part 2.5                      Commission—cooperation with other entities**

### **53                      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 needless 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 needless duplication of work.
- (3) In exercising its education function, the commission may exchange information with the head of a public sector entity.

*Note 1*    The commission may enter into a memorandum of understanding or agreement with another entity (see s 54).

*Note 2*    The commission may conduct an investigation as a joint investigation with an integrity body or law enforcement agency (see s 100).

*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 194).



**54 Commission—arrangements with other entities**

**Recommendation 30 (a)**

- (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 194).

**EXPOSURE DRAFT**

## **Chapter 3 Commission—investigating corrupt conduct**

### **Part 3.1 Reporting corrupt conduct**

#### **Division 3.1.1 Corruption complaints**

##### **55 Anyone may make corruption complaint**

Recommendations 23, 26, 27

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

##### **56 How to make a corruption complaint**

- (1) A corruption complaint may be made to the commission—
  - (a) orally or in writing; and
  - (b) using any form of electronic communication; and
  - (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.

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*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.

## **57 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—

(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 69).

(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 55 (Anyone may make corruption complaint).

(4) In this section:

***relevant entity*** means any of the following:

(a) the auditor-general;

(b) the ombudsman;

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- (c) the human rights commissioner;
- (d) the Legislative Assembly commissioner for standards;
- (e) the Speaker;
- (f) an entity having functions, under a State or Commonwealth law that corresponds to this Act, that correspond to the functions of the commissioner;
- (g) an entity prescribed by regulation.

**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.

## **58 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 98).

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## Division 3.1.2      **Mandatory corruption notifications by public sector entities**

### 59      **Meaning of *mandatory corruption notification***

In this Act:

*mandatory corruption notification* means a notification by—

- (a) a head of a public sector entity under section 60; or
- (b) a member of the Legislative Assembly, or a member of staff of an MLA, under section 61.

### 60      **Mandatory corruption notifications—heads of public sector entities**

Recommendations 23, 26, 27

- (1) The head of a public sector entity must notify the commission about any matter the head of the entity suspects on reasonable grounds involves serious corrupt conduct or systemic corrupt conduct.
- (2) However, the chief police officer need not notify the commission about a matter in relation to a member of ACT Policing if the chief police officer suspects on reasonable grounds the matter—
  - (a) involves a corruption issue within the meaning of the *Law Enforcement Integrity Commissioner Act 2006* (Cwlth), section 7; and
  - (b) does not involve serious corrupt conduct or systemic corrupt conduct of a public official other than a member of ACT Policing.

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## **61 Mandatory corruption notifications—MLAs and staff**

**Recommendations 23, 26, 27**

- (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 member of staff of an MLA must notify the commission about any matter the member 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.

## **62 Directions about mandatory corruption notifications**

- (1) The commission may make directions about mandatory corruption notifications (the *mandatory corruption notification directions*).
- (2) 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.
- (3) The mandatory corruption notification directions are a notifiable instrument.

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

- (4) The mandatory corruption notification directions must be published on the commission's website as soon as is practicable after they are made.
- (5) Each head of a public sector entity, member of the Legislative Assembly and member of staff of an MLA must comply with the mandatory corruption notification directions.
- (6) However, the mandatory corruption notification directions do not apply to the following heads of public sector entities:
  - (a) the auditor-general;
  - (b) the ombudsman;
  - (c) the electoral commissioner;
  - (d) the human rights commissioner;
  - (e) the Speaker;
  - (f) the head of a public sector entity prescribed by regulation.

### **Division 3.1.3      Reports must be dismissed, referred or investigated**

#### **63      Meaning of *corruption report***

In this Act:

*corruption report* means—

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

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## **64 Commission must dismiss, refer or investigate corruption reports**

### **Recommendation 24**

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

- (a) dismiss the corruption report under section 65; or
- (b) refer the corruption report to another entity under—
  - (i) section 103 (Commission may refer corruption reports to referral entity); or
  - (ii) section 106 (Commission may refer matters to prosecutorial body); or
- (c) investigate the corruption report under section 97 (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 81).

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

## **65 When corruption reports must be dismissed**

### **Recommendations 24, 50, 51 and 52**

- (1) The commission must dismiss a corruption report if satisfied on reasonable grounds that the corruption report doesn't justify investigation because—
  - (a) the subject matter of the corruption report is trivial; or
  - (b) the subject matter of the corruption report is unrelated to the functions of the commission; or

*Note* If another entity has power to investigate the report, the commission may give the report to the other entity (see s (2)).



- (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) the corruption report does not contain sufficient information to enable referral or investigation; or
- (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; or
- (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; or
- (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; or
- (j) the corruption report relates to conduct that happened at too remote a time to justify investigation; or

*Note* If a person delays making a corruption complaint by more than 1 year, an explanation may be required (see s (3)).

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- (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 107).

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

- (2) If the commission dismisses a corruption report under subsection (1) (b) 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 AFP (other than ACT Policing) may be given to the Australian Commission for Law Enforcement Integrity (ACLEI)
- 2 a corruption report about a judge may be given to the judicial council
- 3 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 100, or refer the corruption report to the other entity under s 103.

*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 194).

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (3) 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**

### **66 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 65 (1)—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 65 (2)—the name and contact details of the other entity; and
  - (b) if the complaint is referred to another entity under section 103 (Commission may refer corruption reports to referral entity) or section 106 (Commission may refer matters to prosecutorial body)—
    - (i) the referral; and
    - (ii) if the referral is withdrawn under section 105—the withdrawal; and
  - (c) if the complaint is investigated under section 97—the progress of the investigation at least once every 3 months; and
  - (d) if an investigation of the complaint is discontinued under section 107 (1)—the decision to discontinue the investigation, including—
    - (i) the ground for the decision; and

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- (ii) the reasons for making the decision on that ground; and
- (iii) if the commission gives the corruption report to another entity under section 107 (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 187 (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 disclosure notice telling the person that disclosure of the information may be an offence (see s 196).

- (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.

## **67 Commission must keep referring entity informed**

If an entity refers a corruption complaint to the commission under section 57, the commission must tell the referring entity about—

- (a) if the complaint is dismissed under section 65 (1)—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 65 (2)—the name and contact details of the other entity; and

- (b) if the complaint is referred to another entity under section 103 (Commission may refer corruption reports to referral entity) or section 106 (Commission may refer matters to prosecutorial body)—
  - (i) the referral; and
  - (ii) if the referral is withdrawn under section 105—the withdrawal; and
- (c) if an investigation of the complaint is discontinued under section 107 (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 107 (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 187 (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 disclosure notice telling the person that disclosure of the information may be an offence (see s 196).

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**68 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 65 (1)—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 65 (2)—the name and contact details of the other entity; and
- (b) if the notification is referred to another entity under section 103 (Commission may refer corruption reports to referral entity) or section 106 (Commission may refer matters to prosecutorial body)—
  - (i) the referral; and
  - (ii) if the referral is withdrawn under section 105—the withdrawal; and
- (c) if the notification is investigated under section 97—the progress of the investigation at least once every 3 months; and
- (d) if an investigation of the notification is discontinued under section 107 (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

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- (iii) if the commission gives the corruption report to another entity under section 107 (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 187 (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 disclosure notice telling the person that disclosure of the information may be an offence (see s 196).

## **69 Limitations on keeping people informed**

If the commission is required to tell a person about a matter under section 66, section 67 or section 68, 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.

## **EXPOSURE DRAFT**

## Part 3.2 Confidentiality notices

### Recommendation 22

#### 70 Meaning of *restricted information*

##### Recommendation 22

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 (Powers of entry, search and seizure);
- (d) the existence of, or any information about, a confidentiality notice, preliminary inquiry summons 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 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 thing to the commission.

## **71 Meaning of *confidentiality notice***

In this Act:

*confidentiality notice* means a notice given by the commission to a person under section 72 or section 73.

## **72 Confidentiality notices for preliminary inquiries**

### **Recommendation 22**

- (1) This section applies if, during a preliminary inquiry, the commission—
  - (a) gives a preliminary inquiry summons to a person; and
  - (b) considers on reasonable grounds that the disclosure of restricted information would be likely to prejudice the preliminary inquiry.
- (2) The commission may give a confidentiality notice to a person directing the person to not disclose the restricted information.

## **73 Confidentiality notices for investigations**

### **Recommendations 22 and 33 (g)**

- (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.

## **74 Confidentiality notices—content**

### **Recommendation 22**

- (1) A confidentiality notice given to a person must state the restricted information to which it applies.
- (2) A confidentiality notice must be accompanied by a statement—
- (a) setting out the following:
- (i) that disclosure of the restricted information may be an offence and penalties may apply;
- Note* See s 80.
- (ii) that certain kinds of disclosures may be permitted disclosures;
- Note* **Permitted disclosure**—see s 75.
- (iii) an explanation of the permitted disclosures and any prohibited disclosures.
- Note* **Prohibited disclosure**—see s (3).
- (b) a statement setting out an explanation of the effect of—
- (i) section 76 (Confidentiality notices—amendment and revocation); and
- (ii) section 77 (Confidentiality notices—extension); and
- (iii) section 78 (Confidentiality notices—expiry).

- (3) 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.

**75      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 summons; 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.

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- (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 summons; 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 191).

- (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 summons or 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 summons 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 246 (Inspector—making a complaint to the inspector); or
- (h) otherwise authorised or required under this Act.

## **76 Confidentiality notices—amendment and revocation**

### **Recommendation 22**

- (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 72 or section 73.
- (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* The power to make an instrument includes the power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see [Legislation Act](#), s 46).

## **77 Confidentiality notices—extension**

### **Recommendation 22**

- (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.

**78 Confidentiality notices—expiry**

**Recommendation 22**

A confidentiality notice expires on the earliest of the following:

- (a) the day the commission issues a notice under section 76 revoking the confidentiality notice;
- (b) the day an extension granted under section 77 expires;
- (c) 3 years after the day the confidentiality notice was issued.

**79 Confidentiality notices—commission must notify inspector**

The commission must, as soon as reasonably practicable, give the inspector a copy of each of the following:

- (a) a confidentiality notice given to a person by the commission under section 72 or section 73;
- (b) a notice revoking a confidentiality notice under section 76;
- (c) an application to the Supreme Court under section 77 (1) to extend the period of a confidentiality notice;
- (d) an order made under section 77 (2) by the Supreme Court extending the period of a confidentiality notice.

**80 Offence—disclose restricted information in confidentiality notice**

**Recommendation 22**

- (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
- Note* **Permitted disclosure**—see s 75.
- (b) the permitted disclosure is not identified as a prohibited disclosure in the confidentiality notice; and
  - (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 Preliminary inquiries

### Recommendation 20

#### 81 Preliminary inquiries about corruption reports

##### Recommendation 22

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

#### 82 Preliminary inquiries about own initiative matters

##### Recommendation 22

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

#### 83 Certain powers not to be used for preliminary inquiries

##### Recommendation 22

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

- (a) use the powers in part 3.5 (Powers of entry, search and seizure); or
- (b) use the powers in part 3.6 (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*.

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## **84 Power to request information from head of public sector entity**

### **Recommendation 22**

- (1) In carrying out a preliminary inquiry, the commission may ask the head of a public sector entity to give information 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 in a proceeding in the Supreme Court.

## **85 Power to issue preliminary inquiry summons**

### **Recommendation 22**

- (1) In carrying out a preliminary inquiry, the commission may, if satisfied that it is reasonable to do so, issue a summons (a *preliminary inquiry summons*) to a person, requiring the person to appear before the commission at a stated time and place to produce a document or other thing to the commission.

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

- (2) In deciding whether it is reasonable to issue the preliminary inquiry summons, the commission must have regard to—
- (a) whether the production of the document or thing is necessary to decide whether to dismiss, refer or investigate a corruption report, or investigate a matter of its own initiative; and
  - (b) whether it is reasonably practicable to obtain the information in the document or thing in another way; and
  - (c) the evidentiary or intelligence value of the information, document or 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 preliminary inquiry summons may have on the person, in particular, due to disability, health or cultural or linguistic background.
- (3) The commission must not issue a preliminary inquiry summons to a person under the age of 18 years unless the commission considers on reasonable grounds that—
- (a) the information, document or thing that the person could provide may be compelling and probative evidence; and
  - (b) it is not practicable to obtain the information, document or thing in another way.
- (4) The commission may excuse a person issued with a preliminary inquiry summons 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 summons.

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- (5) A person who complies with a preliminary inquiry summons 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.

## **86 Preliminary inquiry summons—content**

### **Recommendation 22**

- (1) A preliminary inquiry summons 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 summons that is in the person's possession or control.
- (2) A preliminary inquiry summons must be accompanied by—
- (a) any relevant confidentiality notice; and

*Note* **Confidentiality notice**—see s 71.

- (b) a statement setting out the following:

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

*Note* See s 96 and s 164.

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

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

- (iii) 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 preliminary inquiry summons;

*Note* See the requirements in s 88.

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

*Note* The commission may make a legal advice direction directing a person not to seek legal advice from a stated lawyer (see s 191).

- (v) that a person may claim a privilege;

*Note* See s 92 and pt 3.7.

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

*Note* See s 246.

- (vii) any other matter prescribed by regulation.

## **87 Preliminary inquiry summons—commission must notify inspector**

### **Recommendation 22**

If the commission issues a preliminary inquiry summons, the commission must, within 3 days, give a written report to the inspector stating—

- (a) the name of the person summoned; and
- (b) the reasons why the preliminary inquiry summons was issued.

**88 Preliminary inquiry summons—person under 16 years**

**Recommendation 22**

- (1) A preliminary inquiry 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.

**89 Preliminary inquiry summons—notice and immediate attendance**

**Recommendation 22**

- (1) A preliminary inquiry 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 preliminary inquiry summons.
- (2) However, the commission may issue a preliminary inquiry 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 preliminary inquiry.

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

## **90 Preliminary inquiry summons—service**

- (1) If it is not reasonably practicable to serve a preliminary inquiry summons on a person under section 89, 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 a preliminary inquiry summons under section 89, the court may—
  - (a) order that the preliminary inquiry summons be served in another way that the court considers appropriate; or
  - (b) make an order for substituted service.

## **91 Preliminary inquiry summons—first actions to be taken**

### **Recommendation 22**

Before a witness summoned to attend a preliminary inquiry is 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 preliminary inquiry summons; and
- (c) tell the witness orally and in writing about the witness's rights and obligations as stated in section 86 (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.

## **92 Preliminary inquiry summons—claiming privilege or secrecy**

### **Recommendation 22**

- (1) This section applies if—
  - (a) a preliminary inquiry summons 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 173 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

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see *Legislation Act*, s 126 and s 132).

- (2) The claimant must attend before the commission in accordance with the preliminary inquiry summons.
- (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 and give it to the commission.

*Note* A document or other thing is secured if it is sealed in an envelope (see dict, def *secured*).

- (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 under s 176.

## **93 Preliminary inquiry summons—application to Supreme Court to decide privilege or secrecy**

### **Recommendation 22**

- (1) If the commission requires the claimant to secure the document or other thing and give it to the commission under section 92 (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.

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**94 Preliminary inquiry summons—Supreme Court to decide privilege or secrecy**

**Recommendation 22**

- (1) If the Supreme Court receives an application under section 93, 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.

*Note* Parliamentary privilege is dealt with under s 176.

**95 Preliminary inquiry summons—offence to open secured document or other thing**

**Recommendation 22**

- (1) This section applies if—
  - (a) the claimant secures a document or other thing under section 92 (3) (b); and
  - (b) the secured document or other thing has not been returned to the claimant under section 93 (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 94.
- (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 94 (2).

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

## **96 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 Conducting an investigation**

### **Division 3.4.1 Starting an investigation**

#### **97 Commission may investigate corruption report**

**Recommendation 21**

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 64).

*Note 2* The commission may carry out a preliminary inquiry to decide whether to dismiss, refer or investigate a corruption report (see s 81).

#### **98 Commission may investigate on own initiative**

**Recommendations 22 and 31**

- (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.

#### **99 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

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (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.

## **100 Investigation may be conducted as joint investigation**

**Recommendations 13 (c) and (d), 30 (a) and (b)**

- (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 194).

## **Division 3.4.2 Referring matters to another entity**

### **101 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 194).

**102      *Meaning of referral entity***

In this Act:

***referral entity*** means any of the following:

- (a) the chief police officer;
- (b) the auditor-general;
- (c) the ombudsman;
- (d) the public sector standards commissioner;
- (e) the Legislative Assembly commissioner for standards;
- (f) the Speaker;
- (g) the Deputy Speaker;
- (h) the human rights commissioner;
- (i) the head of service;
- (j) a director-general;
- (k) a statutory office-holder;
- (l) another entity prescribed by regulation that has a law enforcement function or integrity function.

**103      *Commission may refer corruption reports to referral entity***

**Recommendations 24 and 45**

- (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* 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 194).

- (2) However, the commission must not refer a corruption report to a referral entity if the commission suspects the report relates to serious corrupt conduct or systemic corrupt conduct.
- (3) In deciding whether to make a referral under subsection (1), the commission must consult the referral entity.
- (4) 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 100).

*Note 2* Referrals to prosecutorial bodies are made under s 106.

## **104 Referral to referral entity—results and actions**

### **Recommendation 30 (e)**

- (1) If the commission refers a corruption report to a referral entity, 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.
- (2) This section does apply to a referral entity that is—
  - (a) the auditor-general; or



- (b) the ombudsman; or
- (c) the human rights commissioner.

**105 Referral to referral entity—withdrawal of referral**

- (1) If the commission refers a corruption report to a referral entity, 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.
- (2) 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.
- (3) This section does apply to a referral entity that is—
  - (a) the chief police officer;
  - (b) the auditor-general;
  - (c) the ombudsman;
  - (d) the public sector standards commissioner;
  - (e) the Legislative Assembly commissioner for standards;
  - (f) the Speaker;

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- (g) the Deputy Speaker;
- (h) the human rights commissioner.

## **106 Commission may refer matters to prosecutorial body**

### **Recommendations 45 and 47 (b)**

- (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 194).

## **Division 3.4.3 Discontinuing an investigation**

### **107 Discontinuing an investigation**

- (1) The commission must discontinue an investigation if satisfied on reasonable grounds of any of the matters mentioned in section 65 (1) (When corruption reports must be dismissed).

- (2) If the commission discontinues an investigation because it is satisfied under section 65 (1) (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 AFP may be given to the Australian Commission for Law Enforcement Integrity (ACLEI)
- 2 a corruption report about a judge may be given to the judicial council
- 3 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 100, or refer the corruption report to the other entity under s 103.

*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 194).

*Note 3* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

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## **Part 3.5 Powers of entry, search and seizure**

### **Division 3.5.1 Investigators**

#### **108 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.

#### **109 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 commits an offence if the person—
  - (a) stops being an investigator; and

- (b) does not 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.

Maximum penalty: 1 penalty unit.

- (3) An offence against this section is a strict liability offence.
- (4) Subsection (2) does not apply to a person if the person's identity card is—
- (a) lost or stolen; or
- (b) destroyed by someone else.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

## **110 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

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

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## Division 3.5.2 Powers of investigators

### Recommendation 32 (b)

*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 part, 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](#).

## 111 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).

## 112 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) 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.

## 113 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.

## **114 Consent to entry**

- (1) When seeking the consent of an occupier to enter premises under section 112 (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.

## **115 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 part.
- (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 122 to 125 deal with claiming privilege when a search warrant is executed.

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## **116 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**

#### **Recommendation 33 (b)**

#### **117 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 any necessary assistance and force, enter the premises and exercise the investigator's powers under this part; and

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- (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.

## **118 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.

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**119 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.

**120 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.

**121      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.

**122      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 173 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 and give it to the investigator.

*Note*      A document or other thing is secured if it is sealed in an envelope (see dict, def **secured**).

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- (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 under s 176.

### **123 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 122 (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.



**124 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.

*Note* Parliamentary privilege is dealt with under s 176.

**125 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 122 (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 124.
- (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 124 (2).

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

## **Division 3.5.4 Return and forfeiture of things seized**

### **126 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 116 (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.

**127      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.

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- (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.

## **128 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.

## **129 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; or
  - (c) all proceedings in relation to the offence with which the seizure was connected have ended and the court has not made an order about the thing.

- (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.

### **130 Forfeiture of seized things**

- (1) This section applies if—
- (a) anything seized under this part has not been returned under section 129; and
  - (b) an application for disallowance of the seizure under section 131—
    - (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.

### **131 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.

### **132 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 131 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.

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## **Division 3.5.5      Miscellaneous**

### **133      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.

### **134      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 Examinations**

Recommendation 53

### **Division 3.6.1 Examinations**

#### **135 Power to hold examination**

Recommendations 53 and 54

For an investigation, the commission may hold an examination.

#### **136 Commissioner to preside**

The commissioner must preside at an examination.

#### **137 Conduct of examination**

Recommendations 35 and 57

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.

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**138 Examinations may be public or private**

**Recommendations 54, 55 and 56**

- (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.

**139 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.

**140 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 191).

- (iv) entitled to be present under a direction given by the commission under section 141; 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* includes being remotely present.

## **141 Commission may give directions**

### **Recommendation 56**

- (1) The commission may give directions about the people who—
  - (a) may be present during an examination or part of an examination; or

## **EXPOSURE DRAFT**

- (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 191).
- (b) a member of staff of the commission; or
  - (c) a member of the 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.

## **142 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 thing is necessary for the investigation; and
  - (b) whether it is reasonably practicable to obtain the information in the document or thing in another way; and
  - (c) the evidentiary or intelligence value of the information, document or 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 thing that the person could provide may be compelling and probative evidence; and
  - (b) it is not practicable to obtain the information, document or thing in any other way.

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- (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 172 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.

## **143 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.

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(3) An examination summons must be accompanied by—

(a) any relevant confidentiality notice; and

*Note* **Confidentiality notice**—see s 71.

(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 164 and s 172.

(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 145 and s 149.

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

*Note* See s 148.

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

*Note* See s 148.

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

*Note* See s 149.

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

*Note* See s 149.

- (ix) that a person may 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 174.

- (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 174.

- (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 246.

- (xiii) any other matter prescribed by regulation.

#### **144 Examination summons—commission must notify inspector**

If the commission issues an examination summons, the commission must, within 3 days, give a written report to the inspector stating—

- (a) the name of the person summoned; and
- (b) the reasons why the examination summons was issued.



**145 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.

**146 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

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- (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 172 which applies the [Criminal Code](#), s 719).

## **147 Examination summons—service**

- (1) If it is not reasonably practicable to serve an examination summons on a person under section 146, 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 146, 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.

## **148 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 191).

- (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 146 (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.

#### **149 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.

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**150 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.

**151 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.

## **152 Examination—first actions to be taken**

### **Recommendation 33 (a)**

- (1) Before a witness summoned to attend an examination is asked any questions or required to produce a document or 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 143 (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.

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**153 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 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 172 which applies the [Criminal Code](#), s 721).

**154 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.

**155 Examination—commission must give video recording and transcript to inspector**

If the commission conducts an examination, the commission must give the inspector a copy of the video recording and any transcript of the examination.

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

**156 Examination—warrant to arrest witness who fails to appear**

**Recommendation 32 (a)**

- (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 the [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.

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- (3) In deciding whether it is in the interests of justice to issue a 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) if the magistrate has contacted the person—
    - (i) the reason (if any) given by the person for not attending in accordance with the examination summons; and
    - (ii) the impact of using the warrant for the arrest of the person, in particular, due to disability, health or cultural or linguistic background.
- (4) A person arrested under an arrest warrant must be brought before the commission as soon as practicable.
- (5) 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* It is an offence for a person to not attend, or not continue to attend, as required in the examination summons (see s 172 which applies the [Criminal Code](#), s 719).

## **157 Examination—executing warrant to arrest witness who fails to appear**

### **Recommendation 32 (a)**

- (1) This section applies if a magistrate issues a warrant under section 156.



- (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) A police officer executing the warrant—
  - (a) may, with necessary assistance and force, enter any premises to arrest the person named in the warrant; and
  - (b) 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
  - (c) must, before removing the person, explain to the person the purpose of the warrant; and
  - (d) must bring the person immediately before the commission; and
  - (e) if a person is under a legal disability—must inform a parent or guardian of the person of the arrest.
- (4) 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.

**158 Arrest warrant—commission must notify inspector**

If a magistrate issues a warrant under section 156, the commission must, within 3 days, give a written report to the inspector stating—

- (a) the name of the person named in the arrest warrant; and
- (b) the reasons why the commission applied for the arrest warrant.

## **Division 3.6.2 Examinations—privilege**

### **159 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 173 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 and give it to the commission.

*Note* A document or other thing is secured if it is sealed in an envelope (see dict, def **secured**).

- (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 under s 176.

**160 Examination—application to Supreme Court to decide privilege**

- (1) If the commission refuses to withdraw the requirement under section 159 (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.

**161 Examination—Supreme Court to decide privilege**

- (1) If the Supreme Court receives an application under section 160 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 160 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.

*Note* Parliamentary privilege is dealt with under s 176.

**162 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 159 (3) (b); and
  - (b) the secured document or other thing has not been returned to the claimant under section 160 (2); and
  - (c) the court has not determined whether the secured document or other thing is the subject of privilege under section 161.
- (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 161 (2).

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

**163 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**

### **164 Contempt of commission**

**Recommendations 43 and 44**

- (1) A person is in contempt of the commission if the person—
  - (a) has been served with a preliminary inquiry summons and refuses or fails to produce a document or other thing as required by the preliminary inquiry summons; 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 172). However, a person cannot be punished more than once for the same act or omission (see s 169).

## **165 Commission may apply to Supreme Court to deal with contempt**

### **Recommendation 43**

- (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.

## **166 Contempt application—commission must notify inspector**

If the commission makes an application to the Supreme Court for a person to be dealt with for contempt, the commission must, within 3 days, give a written report to the inspector that—

- (a) states the name of the person; and

(b) includes a copy of the contempt certificate.

**167 Supreme Court to deal with contempt**

**Recommendation 43**

- (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.

**168 Commission may withdraw contempt application**

**Recommendation 43**

The commission may, at any time, withdraw an application in relation to a person under section 165.

**169 Act or omission both offence and contempt**

**Recommendation 43**

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**

**170 Witnesses at examinations—provision of legal assistance**

A witness prescribed by regulation appearing before the commission at an examination may be entitled to legal assistance in connection with the person's appearance as a witness in the way prescribed by regulation.



**171      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.

**172      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 Privilege

### Division 3.7.1 Definitions

#### 173 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 174.

*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.

### Division 3.7.2 Application of privilege

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

Recommendations 33 (f) and (g), 34 and 47

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.

**175 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 174 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 174 is not admissible in evidence against the person in civil or criminal proceedings, unless—
  - (a) the information, document or thing could have been obtained without the operation of section 174; or
  - (b) the significance of the information, document or other thing could have been appreciated without the operation of section 174.
- (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 194 which deals with the circumstances in which the commission may share information.

## **Division 3.7.3      Parliamentary privilege**

### **176      Parliamentary privilege—memorandum of understanding**

#### **Recommendation 15**

- (1) The commission and the Speaker, on behalf of the Legislative Assembly, must enter into a memorandum of understanding about parliamentary privilege (a *parliamentary privilege memorandum*).
- (2) A parliamentary privilege memorandum is a notifiable instrument.  
*Note*      A notifiable instrument must be notified under the [Legislation Act](#).
- (3) The commission and staff of the commission must act in accordance with the parliamentary privilege memorandum in relation to any matter that may be the subject of parliamentary privilege.

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## **Part 3.8 Recommendations**

### **177 Commission may make private recommendation at any time**

#### **Recommendation 48 (b)**

- (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 recommendation must state the action the commission considers should be taken.

**178 Commission may require response to private recommendation**

**Recommendation 48 (b)**

- (1) The commission may require a person who has received a private recommendation under section 177 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.

**179 Commission may make private recommendation public**

- (1) This section applies if the commission—
  - (a) requires a person to give a report to the commission within a stated time under section 178; and
  - (b) either—
    - (i) has not received the report within the stated time; or
    - (ii) has received the report and considers the person has failed to take appropriate action in relation to a private recommendation.
- (2) After considering any reasons stated in the report for not taking the recommended action, the commission may make a private recommendation public in an investigation report or annual report.

## **Part 3.9**

# **Completing an investigation— investigation reports**

- Note* The commission may, at any time during an investigation—
- refer the matter to a referral entity under s 103
  - refer the matter to a prosecutorial body under s 106
  - make a private recommendation under s 177
  - give information about the investigation to people under s 195
  - provide a special report to the Legislative Assembly under s 202.

## **180 Investigation reports**

### **Recommendation 48**

- (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.

## **181 Investigation report—not to include findings of guilt etc or recommendations about prosecution**

### **Recommendations 38, 39, 48 and 49**

- (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 serious disciplinary 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 serious disciplinary 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).

**182 Investigation report—not to include finding of corrupt conduct unless serious corrupt conduct**

**Recommendation 48**

- (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.

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

**Recommendations 48 and 49**

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

- (a) compromise another investigation; or

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- (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 190).

**184 Investigation report—not to include information identifying certain people**

**Recommendations 48 and 49**

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 190).

**185 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 reasonably likely to—
  - (a) 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 190).

## **186 Investigation report—comments on proposed reports**

- (1) This section applies if the commission is preparing an investigation report (the *proposed investigation report*).
- (2) If the proposed investigation report, or part of it, relates to a relevant entity, the commission must give the proposed investigation report, or part, to the relevant entity.
- (3) The commission may also give all or part of the proposed investigation report to anyone else the commission considers has a direct interest in the proposed investigation report.
- (4) If the commission gives a relevant entity all or part of a proposed investigation report under subsection (2) or (3), the commission must also give the relevant entity written notice (a *proposed investigation report notice*) stating that the relevant entity may give written comments about the proposed investigation report to the commission before the end of—
  - (a) 6 weeks after the day the notice is given to the relevant entity; or
  - (b) a longer period stated in the notice.

- (5) If the commission receives comments under this section, the commission must consider the comments in preparing the final investigation report.
- (6) The commission—
  - (a) may include the comments as an attachment to the investigation report; and
  - (b) may, if the commissioner is satisfied that amendment is an appropriate response to the comments, amend the proposed investigation report.
- (7) In this section:

***relevant entity*** means a person or public sector entity.

*Note* The commission must also give the person a disclosure notice telling the person that disclosure of the information may be an offence (see s 196).

## **187 Investigation report—presentation to Legislative Assembly**

### **Recommendation 48**

- (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* The commission must also give the complainant etc a copy of the investigation report (see s 66, s 67 and s 68).

- (3) This section does not apply to a confidential investigation report.
- (4) In this section:

**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.

**188 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, Deputy Speaker or clerk under section 187.
- (2) This section does not apply to a confidential investigation report.

**189 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 187; 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.

- (4) In this section:

*Speaker*, for a response given to the Deputy Speaker or clerk under section 187, means the Deputy Speaker or clerk.

## **190 Confidential investigation report**

### **Recommendation 48 (c)**

- (1) This section applies if the commission omits information from an investigation report under—
  - (a) section 183 (Investigation report—not to include information that may prejudice proceeding etc); or
  - (b) section 184 (Investigation report—not to include information identifying certain people); or
  - (c) section 185 (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 presiding member of the relevant Assembly committee.
- (4) The presiding member must present the confidential investigation report to the committee.
- (5) 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                      Secrecy and information sharing

Recommendations 25, 49 and 75

### 191                      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 summons;
    - (iii) an examination summons;
    - (iv) information under section 186 (Investigation report—comments on proposed reports);
    - (v) information under section 208 (Special 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.

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- (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.

**192 Legal advice direction—commission must notify inspector**

If the commission makes a legal advice direction, the commission must give a written report to the inspector stating—

- (a) the direction; and
- (b) the reasons for the direction; and
- (c) the factors taken into consideration in making the direction.

**193 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).

**194 Disclosure of information by commission**

**Recommendations 30 (c) and 47 (a)**

- (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) In particular, the commission may disclose information under subsection (1) to—
  - (a) if the commission is working cooperatively with a public sector entity under section 53—the public sector entity; and
  - (b) if the commission has entered into a memorandum of understanding or agreement with another entity under section 54 (Commission—arrangements with other entities)—the other entity; and
  - (c) if the commission dismisses a corruption report and gives the corruption report to another entity under section 65—the other entity; and
  - (d) if the commission is conducting a joint investigation with an entity under section 100—the entity; and
  - (e) if the commission refers a corruption report to the inspector under section 101—the inspector; and
  - (f) if the commission refers a corruption report to a referral entity under section 103—the referral entity; and

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- (g) if the commission refers a matter to a prosecutorial body under section 106—the prosecutorial body; and
  - (h) if the commission discontinues an investigation and gives the corruption report to another entity under section 107—the other entity.
- (3) 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 175 (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 175; 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 175; 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.
- (4) This section applies subject to—
  - (a) section 278 (Offences—use or divulge protected information); and
  - (b) any other restriction on the disclosure of information under this Act or another territory law.

(5) In this section:

***criminal proceeding*** means a criminal proceeding mentioned in section 175 (3), definition of ***civil or criminal proceedings***, paragraph (a) (ii).

***disciplinary process or action***—see section 175 (3).

***information sharing entity*** means any of the following:

- (a) an integrity body;
- (b) a law enforcement agency;
- (c) a prosecutorial body;
- (d) a referral entity;

*Note* ***Referral entity***—see s 102.

- (e) a head of a public sector entity.

## **195 Information about investigation may be given to certain people**

**Recommendations 48 and 49**

- (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;

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- (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 disclosure notice telling the person that disclosure of the information may be an offence (see s 196).

## **196 Commission must give disclosure notice when giving information**

- (1) This section applies if the commission gives a person information under—
  - (a) section 66 (Commission must keep complainant informed); or
  - (b) section 67 (Commission must keep referring entity informed); or
  - (c) section 68 (Commission must keep notifier informed); or
  - (d) section 186 (Investigation report—comments on proposed reports); or
  - (e) section 195 (1) (Information about investigation may be given to certain people); or
  - (f) section 208 (Special report—comments on proposed reports).
- (2) The commission must also give the person a notice (a ***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;
  - (c) a statement of the permitted disclosures and any prohibited disclosures.

*Note* ***Permitted disclosure***—see s 197.

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

- (3) In preparing the 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.

**197      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 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 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 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 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 191).

- (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 246 (Inspector—making a complaint to the inspector); or
- (f) otherwise authorised or required under this Act.

**198 Offence—disclose information received from the commission**

- (1) A person commits an offence if the person—
  - (a) is given information under—
    - (i) section 66 (Commission must keep complainant informed); or
    - (ii) section 67 (Commission must keep referring entity informed); or
    - (iii) section 68 (Commission must keep notifier informed); or
    - (iv) section 186 (Investigation report—comments on proposed reports); or

- (v) section 195 (1) (Information about investigation may be given to certain people); or
  - (vi) section 208 (Special report—comments on proposed reports); and
- (b) is given a disclosure notice about the information; and
- Note*     **Disclosure notice**—see s 196 (2).
- (c) 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 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 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 disclosure notice about the information with the permitted disclosure; and

- (c) the person discloses the information.

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

## **199 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.

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## **Part 3.11 Outcomes**

### **200 Outcome of prosecutions and serious disciplinary action to be published**

**Recommendations 7 and 40**

- (1) This section applies if—
  - (a) the commission publishes in an investigation report or 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 serious disciplinary action arising out of the investigation.
- (2) The commission must publish the outcome of the prosecution, or serious disciplinary action, on the commission's website.

## **201 Exoneration guidelines**

### **Recommendation 40**

The commission must make guidelines about how the commission is to deal with damage to a person's reputation if—

- (a) the commission publishes in an investigation report or 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) if the matter is referred to a prosecutorial body—
  - (i) the person is not prosecuted for an offence arising out of the investigation; or
  - (ii) 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; and
- (c) if the person is the subject of serious disciplinary action arising out of the investigation—the person is cleared of wrongdoing.

## Chapter 4 Commission—reporting

### Part 4.1 Special reports

#### 202 Special reports

##### Recommendation 48 (a)

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.

#### 203 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 serious disciplinary 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 serious disciplinary 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).

**204 Special report—not to include finding of corrupt conduct unless serious corrupt conduct**

- (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.

**205 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; 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 212).

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**206 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 212).

**207 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 reasonably likely to—
  - (a) 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 212).

## **208 Special report—comments on proposed reports**

- (1) This section applies if the commission is preparing a special report (the *proposed special report*).
- (2) If the proposed special report, or part of it, relates to a relevant entity, the commission must give the proposed special report, or part, to the relevant entity.
- (3) The commission may also give all or part of the proposed special report to anyone else the commission considers has a direct interest in the proposed special report.
- (4) If the commission gives a relevant entity all or part of a proposed special report under subsection (2) or (3), the commission must also give the relevant entity written notice (a *proposed special report notice*) stating that the relevant entity may give written comments about the proposed special report to the commission before the end of—
- (a) 6 weeks after the day the notice is given to the relevant entity;  
or
  - (b) a longer period stated in the notice.
- (5) If the commission receives comments under this section, the commission must consider the comments in preparing the final special report.
- (6) The commission—
- (a) may include the comments as an attachment to the special report; and

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- (b) may, if the commissioner is satisfied that amendment is an appropriate response to the comments, amend the proposed special report.

- (7) In this section:

***relevant entity*** means a person or public sector entity.

*Note* The commission must also give the person a disclosure notice telling the person that disclosure of the information may be an offence (see s 196).

## **209 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.
- (3) This section does not apply to a confidential special report.
- (4) In this section:

***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

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- (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.

**210 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, Deputy Speaker or clerk under section 209.
- (2) This section does not apply to a confidential special report.

**211 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 209; 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.
- (4) In this section:
- Speaker*—see section 209 (4).

## **212 Confidential special report**

- (1) This section applies if the commission omits information from a special report under—
- (a) section 205 (Special report—not to include information that may prejudice proceeding etc); or
  - (b) section 206 (Special report—not to include information identifying certain people); or
  - (c) section 207 (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.

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- (3) The commission must give the confidential special report to the presiding member of the relevant Assembly committee.
- (4) The presiding member must present the confidential special report to the committee.
- (5) 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 4.2                      Annual reports**

### **213                      Annual report—content**

#### **Recommendation 68**

- (1) A report by the commission under the *Annual Reports (Government Agencies) Act 2004*, section 7A (Officer of the Assembly annual report) must include a statement of the number of each of the following for the year:
- (a) corruption complaints made to the commission under section 55 (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;
  - (b) corruption complaints referred to the commission under section 57 (Other entities may refer corruption complaints), including a description of each complaint;
  - (c) corruption complaints withdrawn under section 58 (Withdrawal of corruption complaints);
  - (d) mandatory corruption notifications made by heads of public sector entities under section 59 (Meaning of *mandatory corruption notification*), including a description of each matter notified;
  - (e) corruption reports dismissed under section 65 (1) (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 65 (2);

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- (f) confidentiality notices issued under section 72 (Confidentiality notices for preliminary inquiries) and section 73 (Confidentiality notices for investigations);
- (g) preliminary inquiries carried out under—
  - (i) section 81 (Preliminary inquiries about corruption reports); and
  - (ii) section 82 (Preliminary inquiries about own initiative matters);
- (h) days during the year spent conducting preliminary inquiries;
- (i) preliminary inquiry summonses issued under section 85 (Power to issue preliminary inquiry summons);
- (j) investigations conducted under section 97 (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;
- (k) investigations conducted under section 98 (Commission may investigate on own initiative), including a description of each matter investigated;
- (l) joint investigations conducted under section 100 (Investigation may be conducted as joint investigation);



- (m) corruption reports referred to—
  - (i) the inspector under section 101 (Commission must refer corruption reports about staff to inspector);
  - (ii) a referral entity under section 103 (Commission may refer corruption reports to referral entity) and the number withdrawn under section 105 (Referral to referral entity—withdrawal of referral);
  - (iii) a prosecutorial entity under section 106 (Commission may refer matters to prosecutorial body);
- (n) investigations discontinued under section 107 (1) (Discontinuing an investigation), including—
  - (i) the ground for the decision; and
  - (ii) the number of reports given to another entity under section 107 (2);
- (o) search warrants issued under section 117 (Warrants—generally);
- (p) examinations held under section 135 (Power to hold examination), including—
  - (i) the number of public examinations under section 138 (Examinations may be public or private); and
  - (ii) the number of days during the year spent conducting examinations;
- (q) examination summonses issued under section 142 (Power to issue examination summons);
- (r) suppression orders issued under section 150 (Examination—commission may issue suppression order);
- (s) arrest warrants issued under section 156 (Examination—warrant to arrest witness who fails to appear);

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- (t) applications for contempt of the commission made under section 165 (Commission may apply to Supreme Court to deal with contempt);
- (u) private recommendations made under section 177 (Commission may make private recommendation at any time);
- (v) investigation reports presented to the Legislative Assembly under section 187 (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;
- (w) confidential investigation reports given to the relevant Assembly committee under section 190 (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;
- (x) legal advice directions made under section 191 (Legal advice directions);
- (y) information sharing entities to whom the commission has disclosed information under section 194 (Disclosure of information by commission) including the general nature and extent of the information disclosed;
- (z) prosecutions and serious disciplinary actions arising out of investigations including the number of—
  - (i) outcomes published under section 200 (Outcome of prosecutions and serious disciplinary action to be published); and

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- (ii) exonerations dealt with under section 201 (Exoneration guidelines);
- (za) special reports presented to the Legislative Assembly under section 209 (Special report—presentation to Legislative Assembly);
- (zb) confidential special reports given to the relevant Assembly committee under section 212 (Confidential special report);
- (zc) 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 report must be presented to the Legislative Assembly under the *Annual Reports (Government Agencies) Act 2004*, s 15.

- (2) A report by the commission under the *Annual Reports (Government Agencies) Act 2004*, section 7A 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.

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- (4) In this section:

***report-based investigation*** means an investigation conducted under section 97 (Commission may investigate corruption report).

*Note* The commission may also conduct investigations of its own initiative under s 98.

## **214 Annual report—not to include findings of guilt etc or recommendations about prosecution**

**Recommendations 38, 39, 48 and 49**

- (1) The commission must not include in an 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 serious disciplinary 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 serious disciplinary 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).

**215      Annual report—not to include finding of corrupt conduct unless serious corrupt conduct**

- (1) The commission must not include in an 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 an 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.

**216      Annual report—not to include information that may prejudice proceeding etc**

**Recommendations 48 and 49**

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

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

**217      Annual report—not to include information identifying certain people**

**Recommendations 48 and 49**

The commission must not include in an 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

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

**218      Annual report—not to include information contrary to the public interest**

- (1) The commission must not include information in an 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 reasonably likely to—
  - (a) 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 annual report information mentioned in subsection (1) if satisfied the substance of the information is public knowledge.

## Chapter 5                    Inspector of the commission

### Part 5.1                    Inspector—independence and functions

#### 219                    Inspector—officer of the Legislative Assembly

*Recommendation 67*

- (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.

**220 Inspector—independence**

**Recommendation 67**

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

**221 Inspector—functions**

**Recommendation 65**

- (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.



## Part 5.2 Inspector—appointment

### 222 Inspector—appointment

#### Recommendation 67

- (1) The Speaker must, on behalf of the Territory, appoint a person as inspector of the commission (the *inspector*).
- (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 an open and accountable selection process.
- (3) 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.

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- (4) 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*.

- (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.

*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 236).

## **223 Inspector—eligibility for appointment**

### **Recommendation 67**

- (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.
- (2) The Speaker must not appoint a person as the inspector if the person—
- (a) is or has, in the 5 years immediately before the day of the proposed appointment, 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
- (b) is or has, in the 5 years immediately before the day of the proposed appointment, been a public servant; or
- (c) 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
- (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.

## 224 Inspector—term of appointment

### Recommendation 67

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*).

## 225 Inspector—oath or affirmation of office

### Recommendation 67

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.

**226 Inspector—disclosure of interests**

**Recommendation 67**

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).

**227 Inspector—must not do inconsistent work etc**

**Recommendation 67**

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.

**228 Inspector—resignation**

**Recommendation 67**

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

## 229 Inspector—retirement

### Recommendation 67

- (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

## EXPOSURE DRAFT

- (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.

## 230 Inspector—suspension generally

### Recommendation 67

- (1) The Speaker may suspend the inspector on the ground of—
  - (a) misbehaviour; or
  - (b) physical or mental incapacity, if the incapacity substantially affects the exercise of the inspector's functions.

*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 may ask 1 or more of the following for advice about the proposed suspension:
  - (a) the public sector standards commissioner;
  - (b) 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.

## **231 Inspector—suspension—relevant Assembly committee notice and meetings**

### **Recommendation 67**

- (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

## **EXPOSURE DRAFT**

- (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.

## **232 Inspector—ending suspension**

### **Recommendation 67**

- (1) If the Speaker does not comply with section 231 (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 231 (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 231 (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 231 (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 231 (2) (a).

## **233 Inspector—ending appointment**

### **Recommendation 67**

- (1) The Speaker must end the inspector’s appointment if—
  - (a) the Legislative Assembly—
    - (i) passes a resolution under section 232 (4) (a); or

## **EXPOSURE DRAFT**

- (ii) otherwise resolves to require the Speaker to end the inspector's appointment—
      - (A) for misbehaviour; or
      - (B) for physical or mental incapacity, if the incapacity substantially affects the exercise of the inspector's functions; or
    - (b) the inspector becomes bankrupt or personally insolvent.
  - (2) For a resolution mentioned in subsection (1) (a) (ii)—
    - (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 229 (Inspector—retirement).

**234 Inspector—leave of absence**

*Recommendation 67*

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

**235 Inspector—acting inspector**

*Recommendation 67*

- (1) Before the Speaker appoints a person to act as inspector, the Speaker must consult with the presiding member of the relevant Assembly committee about the proposed appointment.
- (2) However, for a period of leave of absence approved by the Speaker under section 234, the inspector may appoint a person to act as inspector after consulting with the Speaker.

*Note* The Speaker may also make arrangements for an inspector of another jurisdiction to exercise a function of the inspector (see s 236).

**236 Inspector—arrangements for another person to exercise functions**

- (1) This section applies if—
- (a) an appointment is not made under section 222 (Inspector—appointment); or
- (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.

## Part 5.3 Inspector—staff

### 237 Meaning of *staff of the inspector*

In this Act:

*staff of the inspector* means—

- (a) staff employed under section 238; and
- (b) consultants and contractors engaged under section 239.

### 238 Inspector's employed staff

- (1) The inspector 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 inspector in relation to the employment of staff (see *Public Sector Management Act 1994*, s 152).

### 239 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.

### 240 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.

- (2) 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;
  - (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).

## **241 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 or inspector's functions.

## **242 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.

**243 Inspector—other arrangements for staff and facilities**

- (1) The inspector may, at any time, 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.

**244 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.

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- (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 261).



## Part 5.4

# 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*).

### 245 Meaning of *commission personnel*—pt 5.4

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.

### 246 Inspector—making a complaint to the inspector

#### Recommendation 66 (a)

- (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.

**247 Inspector—must keep complainant informed**

- (1) If the inspector receives a complaint under section 246, 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 258 (Inspector—referral to other entities)—the referral; and
  - (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 disclosure notice telling the person that disclosure of the information may be an offence (see s 248).
- (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.

**248 Inspector—must give disclosure notice when giving information**

- (1) This section applies if the inspector gives a person information under section 247 (Inspector—must keep complainant informed).
- (2) The inspector must also give the person a notice (a ***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 249.

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

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

- (3) In preparing the 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.

**249      Meaning of *permitted disclosure* of information—pt 5.5**

In this part:

***permitted disclosure*** of information, by a person, means a disclosure of information mentioned in a 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 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 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 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.

**250 Offence—disclose information received from the inspector**

- (1) A person commits an offence if the person—
  - (a) is given information under section 247 (Inspector—must keep complainant informed); and
  - (b) is given a disclosure notice about the information; and

*Note*     **Disclosure notice**—see s 248.

  - (c) 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 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 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 disclosure notice about the information with the permitted disclosure; and
  - (c) the person discloses the information.

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

## **251 Inspector—investigating a complaint**

### **Recommendation 66 (a)**

- (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) A complaint investigation guideline is a notifiable instrument.

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

## **252 Inspector—own initiative investigation**

### **Recommendation 66 (a)**

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.

## **253 Inspector—conduct of investigation**

### **Recommendation 66 (a)**

- (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.

## **254 Inspector—commission must give assistance**

### **Recommendation 66 (a)**

The commission and commission personnel must give the inspector any assistance the inspector reasonably requires to carry out an investigation.

## **255 Inspector—withdrawal of complaint**

### **Recommendation 66 (a)**

- (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 252).



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**256 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 251 (Inspector—investigating a complaint) or section 252 (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 257.

*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).

**257 Inspector—privileges against self-incrimination and exposure to civil penalty**

- (1) This section applies if a person is required by a notice under section 256 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).

## **258 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.

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- (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 261).

**259 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.

**260 Inspector—recommendation that acting commissioner be appointed to investigate commission**

- (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 the commission staff; or
  - (b) the inspector becomes aware of information that, if true, would tend to show corrupt conduct by—
    - (i) the commissioner; or

- (ii) a member of the commission staff.
- (2) The inspector may make a recommendation to the Speaker that an acting commissioner be appointed to investigate—
  - (a) the commissioner; or
  - (b) a member of the commission staff.

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

## **Part 5.5**

# **Inspector—secrecy and information sharing**

### **261 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 particular, the inspector may disclose information under subsection (1) to—
  - (a) the commission; and
  - (b) if the inspector enters into a memorandum of understanding or agreement under section 244 (Inspector—arrangements with other entities)—the other entity; and
  - (c) if the inspector refers a matter to—
    - (i) the commission under section 258 (1)—the commission; and
    - (ii) the public sector standards commissioner under section 258 (2)—the public sector standards commissioner; and
    - (iii) the Legislative Assembly commissioner for standards under section 258 (2)—the Legislative Assembly commissioner for standards; and

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- (iv) a law enforcement agency under section 258 (3)—the law enforcement agency; and
  - (v) a prosecutorial body under section 258 (3)—the prosecutorial body.
- (3) This section applies subject to—
  - (a) section 278; and
  - (b) any other restriction on the disclosure of information under this Act or another territory law.
- (4) In this section:  
*information sharing entity* means any of the following:
  - (a) an integrity body;
  - (b) a law enforcement agency;
  - (c) a prosecutorial body;
  - (d) a head of a public sector entity.

## Part 5.6 Inspector's special reports

### 262 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.

### 263 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 reasonably likely to—
  - (a) 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.

**264      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.

- (3) In this section:

*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.

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## **Part 5.7**                      **Inspector—annual operational review of commission**

### **265**                      **Inspector—annual operational review of commission**

**Recommendation 66 (b)**

- (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) 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
  - (b) whether the commission has implemented any previous recommendations made by the inspector; and
  - (c) any other matters the inspector considers relevant.

### **266**                      **Inspector—annual operational review report**

**Recommendation 66 (b)**

- (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 267).

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## Part 5.8 Inspector—annual reports

### 267 Inspector—annual report

#### Recommendation 65 (c)

- (1) A report by the inspector under the *Annual Reports (Government Agencies) Act 2004*, section 7A (Officer of the Assembly annual report) must include the following:
  - (a) the number of each of the following for the year:
    - (i) confidentiality notices, notices revoking confidentiality notices, applications to the Supreme Court and orders of the Supreme Court given to the inspector under section 79 (Confidentiality notices—commission must notify inspector);
    - (ii) written reports given to the inspector under section 87 (Preliminary inquiry summons—commission must notify inspector);
    - (iii) referrals made to the inspector under section 101 (Commission must refer corruption reports about staff to inspector);
    - (iv) written reports given to the inspector under section 139 (Commission must notify inspector of public examination);
    - (v) written reports given to the inspector under section 144 (Examination summons—commission must notify inspector);
    - (vi) video recordings and transcripts given to the inspector under section 155 (Examination—commission must give video recording and transcript to inspector);

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- (vii) written reports about warrants given to the inspector under section 158 (Arrest warrant—commission must notify inspector);
- (viii) written reports given to the inspector under section 166 (Contempt application—commission must notify inspector);
- (ix) written reports given to the inspector under section 192 (Legal advice direction—commission must notify inspector);
- (b) the number of each of the following for the year:
  - (i) complaints made to the inspector under section 246 (Inspector—making a complaint to the inspector);
  - (ii) investigations conducted by the inspector under section 251 (Inspector—investigating a complaint) and section 252 (Inspector—own initiative investigation);
  - (iii) referrals made by the inspector under section 258 (Inspector—referral to other entities);
  - (iv) recommendations made by the inspector under—
    - (A) section 259 (Inspector—recommendations about practices or procedures); and
    - (B) section 260 (Inspector—recommendation that acting commissioner be appointed to investigate commission);
  - (v) information sharing entities to whom the inspector has disclosed information under section 261 (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 264 (Inspector's special report—presentation to Legislative Assembly);
  - (c) a description of each of the following for the year:
    - (i) matters referred to the inspector under section 101 (Commission must refer corruption reports about staff to inspector);
    - (ii) complaints made to the inspector under section 246 (Inspector—making a complaint to the inspector);
    - (iii) investigations conducted by the inspector under section 251 (Inspector—investigating a complaint) and section 252 (Inspector—own initiative investigation).
  - (2) A report by the inspector under the *Annual Reports (Government Agencies) Act 2004*, section 7A must also include the following for the year:
    - (a) the annual operational review report;
- (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 report must be presented to the Legislative Assembly under the *Annual Reports (Government Agencies) Act 2004*, s 15.

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**268      Inspector—annual report not to include information  
contrary to the public interest**

- (1) The inspector must not include information in an 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 reasonably likely to—
  - (a) 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 annual report information mentioned in subsection (1) if satisfied the substance of the information is public knowledge.

## Chapter 6 Protections for complainants

### Recommendation 28

#### 269 Meaning of *complaint* and *complainant*—ch 6

In this chapter:

*complainant* means a person who makes a complaint.

*complaint* means—

- (a) a corruption complaint; or
- (b) a complaint to the inspector about the conduct of the commission or commission personnel under section 246.

#### 270 Immunity from liability

### Recommendation 28

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; or
  - (iv) if the complaint is made in relation to a member of the Legislative Assembly—a contempt of the Assembly; 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.

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**271 Protection from defamation action**

**Recommendation 28**

Without limiting section 270, in a proceeding for defamation, a complainant has a defence of absolute privilege for publishing the information in the complaint.

**272 Loss of protection**

**Recommendation 28**

- (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.

**273 Liability for own conduct**

**Recommendation 28**

- (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).

## 274 Meaning of *detrimental action*

### Recommendation 28

In this Act:

**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.

## 275 Offence—taking detrimental action

### Recommendation 28

- (1) A person commits an offence if the person (the **retaliator**) takes detrimental action because of a complaint.

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

- (2) For this Act, a retaliator **takes** detrimental action because of a complaint 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.

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- (3) In determining whether a retaliator has taken detrimental action because of a complaint, it is sufficient if a reason mentioned in subsection (2) is a contributing reason.

## **276 Damages for detrimental action**

### **Recommendation 28**

- (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.

## **277 Injunction to prevent detrimental action etc**

### **Recommendation 28**

- (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.

## EXPOSURE DRAFT

## Chapter 7      Miscellaneous

### 278      Offences—use or divulge protected information

Recommendations 25 and 74 (d)

- (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

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- (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.

## **279 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

## **EXPOSURE DRAFT**

- (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).

## **280 Information guidelines**

- (1) The commission must, in consultation with the information privacy commissioner, make guidelines about the handling of information under this Act (the *information guidelines*).
- (2) An information guideline is a notifiable instrument.

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

## **281 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.

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**282      Review of Act**

**Recommendation 69**

- (1) The Minister must, in consultation with the Speaker, review the operation of this Act as soon as practicable after the end of every 5th year of its operation.
- (2) The Minister must present a report of the review to the Legislative Assembly at a time decided in consultation with the Speaker.

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## Chapter 8      Consequential amendments

### **283      Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

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## Schedule 1                      Consequential amendments

(see s 283)

### Part 1.1                        Bail Act 1992

#### [1.1]                      New section 52 (2) (a) (ia)

*insert*

(ia) *Integrity Commission Act 2018*; or

### Part 1.2                        Children and Young People Act 2008

#### [1.2]                      New section 144 (2) (b) (via)

*insert*

(via) the integrity commissioner;

#### [1.3]                      New section 179 (da)

*insert*

(da) the integrity commissioner;

#### [1.4]                      Section 200 (5), definition of *protected electronic communication*, new paragraph (da)

*insert*

(da) the integrity commissioner;

**[1.5] Section 201 (4), definition of *protected mail***

*substitute*

***protected mail*** means mail between a young detainee and any of the following:

- (a) a lawyer representing the young detainee;
- (b) an official visitor;
- (c) a commissioner exercising functions under the *Human Rights Commission Act 2005*;
- (d) the ombudsman;
- (e) the integrity commissioner;
- (f) a person prescribed by regulation.

**[1.6] Section 202 (3), new definition of *protected mail***

*insert*

***protected mail***—see section 201.

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**[1.7] Section 280 (5), definition of *protected mail***

*substitute*

***protected mail*** means mail between a young detainee and any of the following:

- (a) a lawyer representing the young detainee;
- (b) an official visitor;
- (c) the director of public prosecutions;
- (d) a commissioner exercising functions under the [Human Rights Commission Act 2005](#);
- (e) the information privacy commissioner;
- (f) the ombudsman;
- (g) the integrity commissioner;
- (h) a person prescribed by regulation.

**[1.8] Section 876A (2)**

*substitute*

- (2) In this section:

***civil proceeding***—

- (a) see the [Evidence Act 2011](#), dictionary, part 1; and
- (b) includes an examination before the integrity commission.

***court*** includes—

- (a) the ACAT; and
- (b) the integrity commission.

**[1.9] Dictionary, note 2**

*insert*

- integrity commission
- integrity commissioner

**[1.10] Dictionary, definition of *investigative entity***

*omit*

and the ombudsman

*substitute*

, the ombudsman and the integrity commission

## **Part 1.3 Co-operatives National Law (ACT) Act 2017**

**[1.11] New section 17 (1) (da)**

*insert*

(da) the integrity commission;

**[1.12] Dictionary, note 2**

*insert*

- integrity commission

## **EXPOSURE DRAFT**

## Part 1.4 Corrections Management Act 2007

**[1.13] Section 103 (5), definition of *protected electronic communication*, new paragraph (ea)**

*insert*

(ea) the integrity commissioner;

**[1.14] Section 104 (4), definition of *protected mail***

*omit*

**[1.15] Section 217A (2)**

*substitute*

(2) In this section:

*civil proceeding*—

- (a) see the [Evidence Act 2011](#), dictionary, part 1; and
- (b) includes an examination before the integrity commission.

*court* includes—

- (a) the ACAT; and
- (b) the integrity commission.

**[1.16] Dictionary, note 2**

*insert*

- integrity commission
- integrity commissioner

**[1.17] Dictionary, definition of *protected mail***

*substitute*

***protected mail*** means mail between a detainee and any of the following:

- (a) a lawyer representing the detainee;
- (b) an official visitor;
- (c) the inspector of correctional services;
- (d) the human rights commissioner;
- (e) the public advocate;
- (f) the ombudsman;
- (g) the integrity commissioner;
- (h) a person prescribed by regulation.

**Part 1.5 Crimes (Assumed Identities)  
Act 2009**

**[1.18] Section 6 (1)**

*after*

criminal activity

*insert*

and corrupt conduct

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**[1.19]      Section 9 (2) (a)**

*after*

criminal activity

*insert*

or corrupt conduct

**[1.20]      New section 11 (3) (c)**

*insert*

- (c) for the integrity commission—a position of the integrity commission prescribed by regulation.

**[1.21]      Section 42 (4), definition of *senior officer*, new paragraph (c)**

*insert*

- (c) in relation to the integrity commission—a position of the integrity commission prescribed by regulation.

**[1.22]      Dictionary, note 2**

*insert*

- integrity commission
- integrity commissioner

**[1.23]      Dictionary, definition of *chief officer*, new paragraph (a) (iii)**

*insert*

- (iii) in relation to the integrity commission—the integrity commissioner; and



**[1.24] Dictionary, new definition of *corrupt conduct***

*insert*

*corrupt conduct*—see the *Integrity Commission Act 2018*, dictionary.

**[1.25] Dictionary, definition of *law enforcement agency*, new paragraph (c)**

*insert*

(c) the integrity commission.

**[1.26] Dictionary, definition of *law enforcement officer*, new paragraph (a) (iii)**

*insert*

(iii) an investigator under the *Integrity Commission Act 2018*;  
and

**Part 1.6 Crimes (Controlled Operations)  
Act 2008**

Recommendations 33 (d) and 36

**[1.27] Section 7 (4)**

*after*

criminal activity

*insert*

or corrupt conduct

**EXPOSURE DRAFT**

**[1.28] Section 9 (4) (b)**

*after*

criminal activity

*insert*

or corrupt conduct

**[1.29] Section 10 (2) (c)**

*after*

criminal activity

*insert*

or corrupt conduct

**[1.30] Section 10 (2) (g)**

*substitute*

(g) the operation will not be conducted in a way that a person is likely to be induced to—

- (i) commit an offence against a law of any jurisdiction or the Commonwealth that the person would not otherwise have committed; or
- (ii) engage in corrupt conduct; and

**[1.31] Section 11 (3) (f)**

*after*

relevant offences)

*insert*

or corrupt conduct

**[1.32] Section 19 (2) (b)**

*substitute*

- (b) the conduct does not involve the participant intentionally inducing a person to—
- (i) commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have committed; or
  - (ii) engage in corrupt conduct; and

**[1.33] Section 23 (2) (a)**

*after*

criminal activity

*insert*

or corrupt conduct

**[1.34] Section 28 (2) (c)**

*after*

criminal activities

*insert*

or corrupt conduct

**[1.35] Section 33 (3), definition of *senior officer*, new paragraph (c)**

*insert*

- (c) in relation to the integrity commission—a position of the integrity commission prescribed by regulation.

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**[1.36] Dictionary, note 2**

*insert*

- integrity commission
- integrity commissioner

**[1.37] Dictionary, definition of *chief officer*, new paragraph (c)**

*insert*

- (c) in relation to the integrity commission—the integrity commissioner.

**[1.38] Dictionary, new definition of *controlled operation*, paragraph (a)**

*substitute*

- (a) is conducted, or intended to be conducted, for the purpose of obtaining evidence that may—
- (i) lead to the prosecution of a person for a relevant offence;  
or
  - (ii) be used in an investigation under the *Integrity Commission Act 2018*; and

**[1.39] Dictionary, new definitions**

*insert*

***corrupt conduct***—see the *Integrity Commission Act 2018*, dictionary.

***investigator***—see the *Integrity Commission Act 2018*, dictionary.

**[1.40] Dictionary, definition of *law enforcement agency*, new paragraph (c)**

*insert*

- (c) the integrity commission.

**[1.41] Dictionary, definition of *law enforcement officer*, paragraph (a)**

*substitute*

- (a) means—
- (i) for the Australian Federal Police—a police officer; or
  - (ii) for the Australian Crime Commission—a member of staff of the Australian Crime Commission; or
  - (iii) for the integrity commission—an investigator; and

**[1.42] Dictionary, definition of *suspect***

*substitute*

***suspect*** means a person reasonably suspected of—

- (a) having committed or being likely to have committed, or of committing or being likely to commit, a relevant offence; or
- (b) having engaged in or being likely to have engaged in, or of engaging in or being likely to engage in, corrupt conduct.

## Part 1.7 Crimes (Protection of Witness Identity) Act 2011

### [1.43] Section 6

*after*

criminal activity

*insert*

or corrupt conduct

### [1.44] Section 23 (3), definition of *senior officer*, new paragraph (c)

*before the note, insert*

- (c) in relation to the integrity commission—a position of the integrity commission prescribed by regulation.

### [1.45] Dictionary, note 2

*insert*

- integrity commission
- integrity commissioner

### [1.46] Dictionary, definition of *chief officer*, new paragraph (c)

*insert*

- (c) in relation to the integrity commission—the integrity commissioner.

**[1.47] Dictionary, new definition of *corrupt conduct***

*insert*

*corrupt conduct*—see the *Integrity Commission Act 2018*, dictionary.

**[1.48] Dictionary, definition of *investigation*, paragraph (a)**

*after*

criminal activity

*insert*

or corrupt conduct

**[1.49] Dictionary, definition of *law enforcement agency*, new paragraph (c)**

*insert*

(c) the integrity commission.

**Part 1.8 Crimes (Surveillance Devices)  
Act 2010**

Recommendations 32 (c) and 33 (c)

**[1.50] Section 6 (a)**

*after*

criminal

*insert*

and corrupt conduct

**EXPOSURE DRAFT**

**[1.51] Section 8**

*after*

offence

*insert*

or corrupt conduct

**[1.52] Section 11 (1) (a)**

*substitute*

(a) either—

(i) a relevant offence has been, is being, is about to be or is likely to be committed; or

(ii) corrupt conduct has been, is being, is about to be or is likely to be engaged in; and

**[1.53] Section 11 (1) (b)**

*after*

offence

*insert*

or conduct

**[1.54] Section 11 (1) (c)**

*after*

offence

*insert*

or corrupt conduct



**[1.55] Section 13 (2) (a) and (e)**

*after*

offence

*insert*

or corrupt conduct

**[1.56] Section 14 (1) (b) (ii)**

*after*

offence

*insert*

or corrupt conduct

**[1.57] Section 18 (2) and (4)**

*after*

offence

*insert*

or corrupt conduct

**[1.58] New section 24A**

*in part 3, insert*

**24A Application of pt 3—integrity commission**

This part does not apply to a law enforcement agency that is the integrity commission.

**[1.59] New section 34 (7) (aa)**

*insert*

- (aa) the investigation of corrupt conduct under the *Integrity Commission Act 2018*;

**[1.60] Section 36 (7), definition of *proceeding***

*substitute*

***proceeding*** includes—

- (a) a proceeding before a court, tribunal or Royal Commission;  
and
- (b) an examination before the integrity commission.

**[1.61] Section 44 (3), definition of *senior officer*, new paragraph (c)**

*insert*

- (c) in relation to the integrity commission—a position of the integrity commission prescribed by regulation.

**[1.62] Dictionary, note 2**

*insert*

- integrity commission
- integrity commissioner

**[1.63] Dictionary, definition of *chief officer*, new paragraph (c)**

*insert*

- (c) in relation to the integrity commission—the integrity commissioner.

**[1.64] Dictionary, new definition of *corrupt conduct***

*insert*

*corrupt conduct*—see the *Integrity Commission Act 2018*, dictionary.

**[1.65] Dictionary, definition of *law enforcement agency*, new paragraph (c)**

*insert*

(c) the integrity commission.

**[1.66] Dictionary, definition of *law enforcement officer*, new paragraph (a) (iii)**

*insert*

(iii) an investigator under the *Integrity Commission Act 2018*;  
and

**[1.67] Dictionary, definition of *relevant proceeding*, new paragraph (ea)**

*insert*

(ea) an examination before the integrity commission.

## **Part 1.9 Criminal Code 2002**

**Recommendation 20**

**[1.68] Section 300, definition of *territory public official*, new paragraph (ab)**

*insert*

(ab) a person employed under the *Legislative Assembly (Members' Staff) Act 1989*;

## **EXPOSURE DRAFT**

## Part 1.10                      Freedom of Information Act 2016

### Recommendation 77

#### [1.69]                      Schedule 1, new section 1.1B

*insert*

#### 1.1B                      Information in possession of integrity commission

Information in the possession of the integrity commission unless the information is administrative in nature.

#### [1.70]                      Schedule 2, section 2.2 (a) (xiv)

*omit*

or human rights commission

*substitute*

, integrity commission or human rights commission

#### [1.71]                      Dictionary, note 2

*insert*

- integrity commission

## Part 1.11                      Gambling and Racing Control Act 1999

#### [1.72]                      New section 37 (d) (xiiia)

*insert*

(xiiia) the integrity commission

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**[1.73] Dictionary, note 2**

*insert*

- integrity commission

## **Part 1.12 Information Privacy Act 2014**

**[1.74] Section 14, definition of *enforcement body*, new paragraph (fa)**

*insert*

(fa) the integrity commission;

**[1.75] Section 14, definition of *enforcement-related activity*, new paragraph (fa)**

*insert*

(fa) the prevention, detection or investigation of corrupt conduct; or

**[1.76] Dictionary, note 2**

*insert*

- integrity commission

## **Part 1.13 Legislation Act 2001**

**[1.77] Dictionary, part 1, new definitions**

*insert*

***integrity commission*** means the ACT Integrity Commission established under the *Integrity Commission Act 2018*.

***integrity commissioner*** means the ACT Integrity Commissioner appointed under the *Integrity Commission Act 2018*.

**[1.78]        Dictionary, part 1, definition of *officer of the Assembly*,  
new paragraphs (ba) and (bb)**

*insert*

- (ba) the integrity commissioner; or
- (bb) the inspector of the integrity commission appointed under the  
*Integrity Commission Act 2018*, section 222; or

## **Part 1.14                      Mental Health Act 2015**

**[1.79]        New section 144B (5)**

*insert*

- (5) In this section:  
*court* includes the integrity commission.

**[1.80]        Dictionary, note 2**

*insert*

- integrity commission

## **Part 1.15                      Mental Health (Secure Facilities) Act 2016**

**[1.81]        Dictionary, note 2**

*insert*

- integrity commissioner

**[1.82] Dictionary, definition of *accredited person*, new paragraph (ha)**

*insert*

(ha) the integrity commissioner;

## **Part 1.16 Public Interest Disclosure Act 2012**

**[1.83] New section 11 (1) (a) (iva)**

*insert*

(iva) the integrity commissioner; or

**[1.84] New section 11 (1) (b) (iiia)**

*insert*

(iiia) the integrity commissioner; or

**[1.85] Dictionary, note 2**

*insert*

- integrity commissioner

## **Part 1.17 Remuneration Tribunal Act 1995**

**[1.86] Schedule 1, part 1.2**

*insert*

- integrity commission CEO
- integrity commissioner

## **EXPOSURE DRAFT**

**[1.87]      Dictionary, note 2**

*insert*

- integrity commissioner

**[1.88]      Dictionary, new definition of *integrity commission CEO***

*insert*

*integrity commission CEO* means the CEO of the integrity commission appointed under the *Integrity Commission Act 2018*, section 39.

## **Part 1.18                      Terrorism (Extraordinary Temporary Powers) Act 2006**

**[1.89]      Section 51 heading**

*substitute*

**51              Contact with human rights commissioner, ombudsman  
and integrity commissioner**

**[1.90]      Section 51**

*omit*

and the ombudsman

*substitute*

, the ombudsman and the integrity commissioner

**[1.91]      Dictionary, note 2**

*insert*

- integrity commission

## **EXPOSURE DRAFT**



## **Part 1.19**                      **Victims of Crime Act 1994**

### **[1.92]      Section 12 (6), definition of relevant complaints entity, new paragraph (ba)**

*insert*

(ba) the integrity commission; or

### **[1.93]      Dictionary, note 2**

*insert*

- integrity commission

## **EXPOSURE DRAFT**

## 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))
- entity
- Executive
- financial year
- head of service
- human rights commissioner
- information privacy commissioner
- Legislative Assembly
- magistrate
- Magistrates Court

## EXPOSURE DRAFT

- 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
- Speaker
- State
- statutory office-holder
- Supreme Court
- territory authority
- territory instrumentality
- territory law
- territory-owned corporation
- the Territory.

***ACT Policing*** means the organisational unit of the Australian Federal Police that provides police services to the Territory under an arrangement mentioned in the [Australian Federal Police Act 1979](#) (Cwlth), section 8 (1A).

***ACT public service entity***—see section 14.

***annual operational review***—see section 265.

***annual operational review report***—see section 266.

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***Assembly precincts***—see the *Legislative Assembly Precincts Act 2001*, dictionary.

***Australian Federal Police*** means the Australian Federal Police constituted under the *Australian Federal Police Act 1979* (Cwlth), section 6.

***CEO***—see section 39.

***commission*** means the ACT Integrity Commission established under section 19.

***commission personnel***, for part 5.4 (Inspector—investigating complaints about the commission)—see section 245.

***commissioner*** means the ACT Integrity Commissioner appointed under section 25.

***complainant***—

(a) for a corruption complaint—see section 55.

(b) for chapter 6 (Protections for complainants)—see section 269.

***complaint***, for chapter 6 (Protections for complainants)—see section 269.

***confidentiality notice***—see section 71.

***connected***, for part 3.5 (Powers of entry, search and seizure)—see section 111.

***contempt certificate***—see section 165.

***corrupt conduct***—

(a) by a person—see section 9; and

(b) by a public official—see section 10; and

(c) for part 3.5 (Powers of entry, search and seizure)—see section 111.

## EXPOSURE DRAFT

***corruption complaint***—see section 55.

***corruption report***—see section 63.

***detrimental action***—see section 274.

***disclosure notice***—see section 196.

***entity of a public nature***—see section 16.

***examination summons***—see section 142.

***head***, of a public sector entity—see section 13.

***inspector*** means the inspector of the commission appointed under section 222.

***integrity body*** means the following:

- (a) the auditor-general;
- (b) the ombudsman;
- (c) the inspector;
- (d) the information privacy commissioner;
- (e) 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***).

- (f) an ombudsman of the Commonwealth or a State, established under an Act substantially corresponding to the [Ombudsman Act 1989](#);
- (g) an auditor-general of the Commonwealth or a State, established under an Act substantially corresponding to the [Auditor-General Act 1996](#);

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- (h) another entity with an integrity function, prescribed by regulation.

***investigation report***—see section 180.

***investigator*** means—

- (a) a person appointed as an investigator under section 108 (Investigators—appointment); and
- (b) the commissioner.

***joint investigation***—see section 100.

***law enforcement agency*** means the following:

- (a) the Australian Federal Police constituted under the [Australian Federal Police Act 1979](#) (Cwlth), section 6;
- (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 191.

***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 15.

***mandatory corruption notification***—see section 59.

***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.

***occupier***, for part 3.5 (Powers of entry, search and seizure)—see section 111.

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***parliamentary privilege memorandum***—see section 176.

***permitted disclosure***—

- (a) of restricted information, for part 3.2 (Confidentiality notices)—see section 75; or
- (b) of information, for part 3.10 (Secrecy and information sharing)—see section 197; or
- (c) of information, for part 5.5 (Inspector—secrecy and information sharing)—see section 249.

***place of seizure***—see section 116.

***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 summons***—see section 85.

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**premises**, for part 3.5 (Powers of entry, search and seizure)—see section 111.

**privilege**—see section 173.

**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 11.

**public sector entity**—see section 12.

**referral entity**—see section 102.

**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 70.

**secured**, for a document or other thing, includes sealed in an envelope.

**serious corrupt conduct**—see section 17.

**serious disciplinary action**, against a person, means action—

- (a) terminating the person's employment; or
- (b) ending the person's appointment; or

## EXPOSURE DRAFT



(c) terminating the person's contract for services.

*special report*—see section 202.

*staff of the commission*—see section 45.

*staff of the inspector*—see section 237.

*systemic corrupt conduct*—see section 18.

*takes*—see section 275.

*warrant*, for part 3.5 (Powers of entry, search and seizure)—see section 111.

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## Endnotes

### 1 Presentation speech

Presentation speech made in the Legislative Assembly on 2018.

### 2 Notification

Notified under the [Legislation Act](#) on 2018.

### 3 Republications of amended laws

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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## EXPOSURE DRAFT