

2022

**Legislative Assembly for the
Australian Capital Territory**

Integrity Commission Amendment Bill 2022 (No 2)

Explanatory Statement

Presented by

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INTEGRITY COMMISSION AMENDMENT BILL 2022 (NO 2)

This explanatory statement relates to the *Integrity Commission Amendment Bill 2022 (No 2)* as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Assembly. The Statement must be read in conjunction with the bill. It is not, and is not meant to be, a comprehensive description of the bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Purpose

This legislative amendment is a requirement for the Australian Capital Territory (ACT) Integrity Commission (the commission) to be recognised under the *Telecommunications (Interception and Access) Act 1979 (Cth)* (TIA Act).

Background

The ACT is one of the only Australian states or territories whose public integrity entity is not recognised under the TIA Act. Recognition under the TIA Act would enable the commission to intercept telecommunications, in accordance with the Commonwealth Act, for the investigation and exposure of corrupt conduct.

The ACT Integrity Commissioner (the commissioner) has emphasised the need for this recognition in public committee hearings and annual reports.

Enabling the commission to properly investigate allegations of maladministration and corruption will improve community confidence in the ACT public sector.

Human rights

Recognition under the TIA Act would enable the commission to lawfully intercept telecommunications materials, aiding their investigative processes. This practice would be subject to robust oversight mechanisms, including through the Inspector of the ACT Integrity Commission (the inspector), and a number of ministerial reporting requirements, including to a specified Commonwealth minister. These oversight mechanisms are described in detail in the clause notes below.

Clause notes

Clause 1 – Name of Act

This clause provides for the name of the bill upon enactment.

Clause 2 – Commencement

This clause provides that the Act will commence on the day after its notification day.

Clause 3 – Legislation amended

This Act amends the *Integrity Commission Act 2018*.

Clause 4 – New division 3.5.4A

This clause inserts new division 3.5.4A, which comprises subdivisions 3.5.4A.1, 3.5.4A.2, 3.5.4A.3, 3.5.4A.4 and 3.5.4A.5.

Subdivision 3.5.4A.1 Preliminary

This subdivision provides definitions of specific terms and the object of new division 3.5.4A.

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

New section 137D states that this subdivision applies when an investigator intends to apply for a warrant.

New section 137E obliges the investigator to notify the inspector of an application for a warrant (per part 2-5 of the TIA Act), and comply with any other notification requirement as directed by the inspector. If the application for a warrant is made in writing, the investigator must provide a copy of the written application to the inspector, and a copy of the affidavit required per section 42 of the TIA Act. For warrant applications made via telephone, the investigator must provide the inspector with the information required per section 43 of the TIA Act.

New section 137F obliges the investigator to disclose to the inspector any matter that the investigator considers adverse to the issuing of a warrant.

New section 137G obliges the investigator to provide the inspector with any information required to be given to an eligible judge or Administrative Appeal Tribunal (AAT) member under section 44 of the TIA Act.

New section 137H provides an entitlement for the inspector to be present at a hearing for the application of a warrant, ask questions of the applicant, and make submissions to the eligible judge or AAT member in relation to the application. This section also obliges the inspector to return to the investigator any documents given by the investigator to the inspector under section 137E, section 137F or section 137G in relation to the application, as soon as practicable.

New section 137I clarifies that privilege (other than parliamentary privilege) or secrecy requirements as required by ACT law do not apply under new division 3.5.4A.

Subdivision 3.5.4A.3 Telecommunications warrant—record keeping

New section 137J obliges the commission to keep a written record of specified information related to warrants.

New section 137K obliges the commission to keep a written record of specified information connected with telecommunications interceptions.

New section 137L obliges the commissioner to provide written reports to the Speaker of the ACT Legislative Assembly (the Speaker).

New section 137M obliges the Speaker to provide a copy of a report mentioned in section 137L to the Commonwealth minister as soon as practicable.

New section 137N obliges the commissioner to safeguard the security and confidentiality of restricted records (as defined in section 5 of the TIA Act).

New section 137O obliges the commissioner to destroy a restricted record if the commissioner is satisfied that the restricted record is not required by the commission for a permitted purpose. Under this section, a permitted purpose does not include the inspection activities per new section 137Q (1) (a).

New section 137P obliges the commissioner to obtain written notice regarding specified actions taken by the Commonwealth minister from the relevant Commonwealth department secretary, and notify the inspector that the record will be destroyed and give the inspector an opportunity to inspect the record, prior to destroying a restricted record per new section 137O.

Subdivision 3.5.4A.4 Telecommunication warrant records—inspection

New section 137Q describes the inspector's functions and obligations related to the inspection of telecommunications warrant records. The inspector must inspect the commission's records per new section 137R, and must report in writing to the Speaker about the results of the inspections. There is an obligation for the inspector to delegate this function to an assistant inspector if the inspector has carried out a function under subdivision 3.5.4A.2 in relation to a particular application by an investigator for a warrant per part 2-5 of the TIA Act.

New section 137R obliges the inspector to inspect the commission's records at least once prior to the financial year in which the commission is declared to be an agency under the Commonwealth Act to find out the extent of compliance with sections 137J to 137L and 137N since the commencement of this subdivision. During every financial year thereafter, the inspector must inspect the commission's records at least twice. The inspector may inspect the commission's records at any time.

New section 137S obliges the inspector to report to the Speaker as soon as practicable, but not later than three months after the end of each financial year, about the results of an inspection under new section 137R. The reports must include a summary of inspections conducted in the financial year, details about any deficiencies that adversely impact the telecommunications interception regime as established by the Commonwealth, and details of any remedial action taken or proposed to address those deficiencies. The inspector may report to the Speaker at any time about the results of an inspection, and must do so if requested by the Speaker. The inspector must also provide the information in a report to the commissioner and the relevant Assembly committee.

New section 137T enables the inspector to report at their discretion on any contravention under subdivision 3.5.4A.4 by the commissioner or a member of staff of the commission to the Speaker. Prior to providing a report to the Speaker, the inspector must give the commissioner an opportunity to respond in writing, and include any comments of the commissioner in the report.

New section 137U enables the inspector to enter the commission's premises and fully and freely access records of the commission, including those in possession of a staff member of the commission, at any reasonable time.

New section 137V describes additional powers available to the inspector to obtain information in the possession of a staff member of the commission, including through interview. The inspector is able to seek advice from the commissioner regarding the correct staff member of the commission to obtain records or information from.

New section 137W specifies that any person obliged to provide information under new section 137V is unable to refuse to provide information on specified grounds. The person is indemnified against civil or criminal proceedings arising from the provision of information sought by the inspector, other

than a proceeding related to providing false information, committing an offence against the Criminal Code, or failing to comply with an inspection requirement, per new section 137X.

New section 137X states that a person commits an offence if they fail to comply with a requirement to provide information under new section 137V.

New section 137Y enables the inspector to provide information to the Commonwealth ombudsman and specifies that if the ACT Ombudsman (ombudsman) role is performed by the Commonwealth ombudsman, the information obtained per this new section may be used by the Commonwealth ombudsman only if it relates to the performance of their functions under the TIA Act.

Subdivision 3.5.4A.5 Miscellaneous

New section 137Z imposes an obligation on the Speaker to give the Commonwealth minister a copy of a report as soon as practicable after a report is received by the Speaker under section 137S.

New section 137ZA makes it an offence, with a maximum penalty of 100 penalty units or one year's imprisonment, or both, to disclose information received under division 3.5.4A, unless the disclosure is made under the TIA Act, or if the person is performing their lawful functions under the *Integrity Commission Act 2018*, or if the person is assisting the inspector to perform the inspector's functions. In this section, disclose is defined as communicating to another person, make use of, make a record of, or give in evidence in a proceeding any information or record.

Clause 5 – Dictionary, new definitions

This clause inserts the definitions included in new section 137A into the Dictionary of the *Integrity Commission Act 2018*.

Clause 6 – Dictionary, new definition of *part 2-5 warrant*

This clause inserts the definition of *part 2-5 warrant* included in new section 137A into the Dictionary of the *Integrity Commission Act 2018*.

Clause 7 – Dictionary, new definition of *possession*

This clause inserts the definition of *possession* included in new section 137A into the Dictionary of the *Integrity Commission Act 2018*.