

2024

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

TENTH ASSEMBLY

INTEGRITY LEGISLATION AMENDMENT BILL 2024

**EXPLANATORY STATEMENT
and
HUMAN RIGHTS COMPATIBILITY STATEMENT
(*Human Rights Act 2004, s 37*)**

**Presented by
Andrew Barr MLA
Chief Minister
June 2024**

INTEGRITY LEGISLATION AMENDMENT BILL 2024

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

OVERVIEW OF THE BILL

The Bill implements the first tranche of government agreed recommendations from the review of the *Integrity Commission Act 2018* (IC Act) (the Review). The Review was conducted in accordance with section 303 of the IC Act, which requires the responsible Minister to, in consultation with the Speaker, review the operation of the Act as soon as practicable three years after commencement. On 12 January 2023 the Chief Minister appointed Mr Ian Govey AM to conduct the Review. Mr Govey delivered the final report of the Review in October 2023, and the Government tabled the final report of the Review in the Legislative Assembly in November 2023. The final report of the Review provided a comprehensive analysis on the operation of the IC Act and included 66 recommendations.

On 3 June 2024 the Government published its response to the Review. Several of the Review's 66 recommendations would constitute either a significant shift in policy and/or require additional budget considerations. Noting the upcoming ACT Legislative Assembly election in October 2024, the Government response deferred consideration of several recommendations until the eleventh Legislative Assembly. However, the Government committed to introducing a bill during the tenth Assembly which would implement recommendations that would provide administrative efficiency and improve the wellbeing of those involved in the IC Act framework. The Bill meets this intention and would implement 18 of the 66 recommendations.

The Bill would implement the substantive intent of the following 18 recommendations of the Review.

Recommendation 5

The Review recommends that the Integrity Commission Act 2018 be amended to include an exception to the mandatory reporting requirements where a person believes on reasonable grounds that:

- a) a second person has made a mandatory report to the Commission about the same matter, and
- b) the second person has reported the same content in their report.

Recommendation 11

The Review recommends that the Integrity Commission Act 2018 be amended to:

- a) remove the prohibition on the Commission engaging staff, including the Chief Executive Officer (CEO), who were ACT public servants within the previous five years
- b) include requirements for the Commission to maintain a staff conflict of interest register that the Inspector may inspect; and to issue guidelines to appropriately manage any such conflicts
- c) provide that the changes made with respect to Commission staff eligibility also be made for the Inspector's staff, to include requirements for the Inspector to maintain a staff conflict of interest register that the Public Sector Standards Commissioner may inspect, and to issue guidelines appropriately to manage any such conflict, and
- d) provide that former Member of the Legislative Assembly (MLAs) and their staff should be prohibited from working at the Commission as staff members (including as CEO) for a period of two years. This should include an exception for ACT Public Service staff who backfill positions in the office of an MLA on a short term-basis for a cumulative period of less than three months over the preceding 12-month period.

Recommendation 14

The Review recommends that the Integrity Commission Act 2018 be amended to:

- a) remove the primacy of experience as a judge of a superior court from the appraisal of candidates seeking appointment as commissioner so that recruitment decisions consider all legislated attributes on the basis of merit
- b) harmonise the eligibility requirements for the Commissioner and acting Commissioner
- c) provide that an acting Commissioner may be appointed for up to two years and may be reappointed for a maximum of seven years, including periods as an acting Commissioner and any appointment as Commissioner, and
- d) apply the appointment rules for the Commissioner to an acting Commissioner, adding a requirement that the Speaker obtain agreement from two-thirds of the Legislative Assembly or the leaders of each party prior to making an acting Commissioner appointment of more than three months.

Recommendation 25

The Review recommends that:

- a) section 89 of the Integrity Commission Act 2018 remain unchanged and continue to require requests for information for a preliminary inquiry to go to the head of a public sector entity, and
- b) section 195 of the Integrity Commission Act be amended to provide the head of a public sector entity, and anyone who assists the head of a public sector entity, with the same protection and immunity as a witness in a proceeding in the Supreme Court (in the same way as section 89).

Recommendation 27

The Review recommends that the Integrity Commission Act 2018 be amended to change the threshold for the Commission to issue a production or examination notice from 'necessary' to 'reasonably required'.

Recommendation 28

The Review recommends that the Integrity Commission Act 2018 be amended to require the inclusion of a statement in a notice of production that the production of documents and other things is permissible prior to the mandated date.

Recommendation 29

The Review recommends that the Integrity Commission Act 2018 be amended to:

- a) provide recipients of an examination summons or preliminary inquiry notice at least 14 days to comply with the notice
- b) provide a process whereby the recipient of a notice may request the compliance date be varied to a mutually agreeable time, and
- c) require the Commission, as part of its monthly reporting to the Inspector, to report the number of requests made to vary the time for compliance with a notice, along with the decisions made and the reasons for refusal of any requests.

Recommendation 33

The Review recommends that the IC Act be amended to:

- a) remove the requirement that the subject of a preliminary inquiry notice or an examination summons must personally deliver the required document or other thing, and
- b) include an authorising power for the Commission to approve a nominated person for delivery of material summonsed under a production notice by someone other than the person to whom the notice is addressed.

Recommendation 37

The Review recommends that the Integrity Commission Act 2018 be amended to require the Commission to publish a witness wellbeing policy, with input from appropriately qualified professionals with mental health expertise, and to require the Inspector, as part of its annual review of the Commission, to consider the adequacy of the policy.

Recommendation 38

The Review recommends that, in addition to a support person as envisaged in recommendation 36:

- a) section 81 of the Integrity Commission Act 2018 be amended to permit disclosure of restricted material otherwise subject to a relevant notice or summons to:
 - i. a registered medical health professional or other counsellor for the purpose of seeking assistance
 - ii. the ACT Insurance Authority for the purpose of a workers compensation claim
- b) section 297 of the Integrity Commission Act be amended to permit disclosure of protected information to:
 - i. a registered medical health professional or other counsellor for the purposes of seeking assistance, and
 - ii. the ACT Insurance Authority in support of a workers compensation claim.

Recommendation 45

The Review recommends that the Integrity Commission Act 2018 be amended to:

- a) allow a person subject to a non-disclosure notice to make a permitted disclosure to someone assisting that person respond to a proposed report, and
- b) provide the Commission with a discretionary, rather than a mandatory, power to issue a non-disclosure notice.

Recommendation 46

The Review recommends that no amendments to the Integrity Commission Act 2018 be made to the current arrangements for oversight by the Legislative Assembly, with the exception that the Commissioner be required to provide their declaration of private interests to the Inspector (in addition to the Speaker).

Recommendation 51

The Review recommends that the Integrity Commission Act 2018 require the Commission to notify the Inspector of its intention to conduct public hearings and provide the Inspector with the reasons the Commission has decided to hold public hearings, prior to the subject of the hearings being issued their examination summons. (For clarity, this would occur at least 14 days prior to the hearings.)

Recommendation 53

The Review recommends that the Integrity Commission Act 2018 be amended to restrict the publishing of information that may jeopardise an investigation.

Recommendation 54

The Review recommends that the Integrity Commission Act 2018 be amended to provide an exception to the offence of disclosing protected information to allow the Commission and its staff to share information with any relevant entity or person where that information suggests a person's physical safety or wellbeing may be at risk.

Recommendation 62

The Review recommends that section 16 of the *Freedom of Information Act 2016* (ACT) and Schedule 1 be amended to clarify that information on Commission matters cannot be released under the Freedom of Information Act unless it relates to administrative matters.

Recommendation 63

The Review recommends that an exemption be provided for material in the possession of agencies other than the Commission on the grounds that it could jeopardise a Commission investigation or reveal the concealed identity of a witness.

Recommendation 64

The Review recommends that section 152 of the *Public Sector Management Act 1994* be amended to clarify that, while the Commissioner and Commission CEO (and potentially other statutory office holders) cannot make their own management standards, the management standards made under section 251 continue to apply to staff and must be implemented by management.

CONSULTATION ON THE PROPOSED APPROACH

The Chief Minister, Treasury, and Economic Development Directorate (CMTEDD) worked closely with the Justice and Community Safety Directorate (JACS) in considering the Bill's compatibility with human rights.

CMTEDD worked with the ACT Parliamentary Counsel's Office on the formulation and development of the proposed amendments for inclusion in this Bill. CMTEDD shared a copy of the Bill with the Integrity Commission, the Inspector of the Integrity Commission, the ACT Human Rights Commission, and the ACT Ombudsman to confirm each was comfortable with the proposed approach.

CLIMATE IMPACT

This Bill does not have a climate impact.

CONSISTENCY WITH HUMAN RIGHTS

The Bill is drafted to be compatible with human rights as set out in the *Human Rights Act 2004* (HR Act). Rights under the HR Act may be limited if those limitations are reasonable and proportionate. Section 28 of the HR Act sets out the criteria to determine if a limitation is reasonable, including if the limitation is least restrictive to achieve that purpose.

The Bill engages several human rights protected under the HR Act, including:

- Section 12 – privacy and reputation
- Section 16 – freedom of expression
- Section 21 – fair trial
- Section 17 – taking part in public life
- Section 27B – right to work and other work related rights

Section 12 – Privacy and reputation

Promotion of Section 12

Section 12 of the HR Act provides everyone the right to not have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily. Several of the Bill's clauses that implement recommendations 51, 53, 62 and 63 promote the right to privacy.

Clause 35 (implementing recommendation 51) requires the Integrity Commission to provide notice to the Inspector about its intent to conduct a public examination, including providing a statement of information about the reasons that support a public examination, before announcing the public examination or issuing the subject of the examination with the summons. This promotes the right to privacy by requiring the Commission to provide tangible demonstration to the Inspector that it has met its requirement in paragraph 143(2)(b) to consider whether a public examination can be held without unreasonably infringing a person's human rights prior to issuing an examination summons for a public examination.

The IC Act already requires the Commission to provide the Inspector with a written report that states the reasons the Commission decided to hold a public examination. As part of its consideration, the IC Act requires the Commission to consider whether a public examination can be held without unreasonably infringing a person's human rights. The requirement to provide a written report to the Inspector acts to provide tangible demonstration to the appropriate oversight body that the Commission has undertaken the mandatory considerations when deciding to hold a public examination. However, the structure of the IC Act can enable a situation where a public examination is announced, or the summons issued, prior to the Inspector receiving the written report. Giving the impact a public examination can have on an individual's privacy and reputation, the Bill prevents this from occurring, and seeks to guarantee that there is tangible evidence that the Commission has met its mandatory requirement to consider the impact to a person's human rights before issuing a public examination summons.

Clauses 62 and 67 (implementing recommendation 53) also promotes the right to privacy by preventing publication of information in the Commission's annual report that could jeopardise an investigation and reveal that the Commission could be investigating particular individuals. Currently, the IC Act only prohibits the Commission from publishing information in its annual report if it were to jeopardise *another* investigation conducted under the IC Act. The use of 'another' suggests that, where information could jeopardise a single investigation under the IC Act, the

Commission must be required to publish the information. The Bill closes this gap to tighten information disclosure and promote privacy.

Clauses 3, 4 and 5 (implementing recommendations 62 and 63) provide greater assurance that certain information held by the Commission, and other entities, that relates to a Commission investigation, preliminary inquiry, or referral, is prohibited from being disclosed under the *Freedom of Information Act 2016* (FOI Act). Currently, this information is subject to the public interest test under the FOI Act. This requires individual officers to make subjective assessments about whether the information is in the public interest to disclose. The information subject matter could contain untested allegations of corruption against public officials that would be detrimental to reputation if released, and jeopardise its continued investigation. The Bill promotes the right to privacy by making this information exempt from release under the FOI Act.

Limitation of section 12

Clauses 11, 12 and 14 (implementing recommendation 11) limits the right to privacy, as staff of the Commission will be required to disclose personal information about conflicts of interest to the Commissioner, which may then be viewed by the Inspector. Likewise, recommendation 46 will require the Commissioner to provide their statement of personal interests to the Inspector (in addition to the current requirement to provide it to the Speaker).

These are reasonable limitations under section 28 of the HR Act. Staff of the Commission carry out important functions on behalf of the Commission to investigate conduct that is alleged to be corrupt conduct. Investigations under the IC Act must be carried out in a manner that is procedurally fair, noting the potential impact to privacy and reputation of an investigation subject. The Bill strengthens the Commission's conflict of interest practices to promote procedural fairness. Information disclosed for this purpose remains 'protected information' under the IC Act where unlawful disclosure is a criminal offence under section 297.

Clauses 23, 24, 55, 56, 81 and 82 (implementing recommendation 38) allows an individual subject to a confidentiality notice, and those to whom the disclosure of information offence applies under section 297 of the IC Act, to disclose otherwise unauthorised disclosures to a doctor or psychologist in the course of seeking assistance for their health and wellbeing, and also to an insurer for the purposes of a workers compensation claim. This limits the right to privacy, as individuals may disclose information about the conduct of others in the course of seeking treatment.

This is a reasonable limitation authorised under section 28 of the HR Act. There is substantial evidence across Australia that demonstrates the negative wellbeing impact that corruption investigations can have on those involved in proceedings, including self-harm. Witnesses are often compelled to disclose sensitive information that would otherwise remain confidential. It can be stressful to ensure proper

compliance with witness summons for large volumes of information. Typically, witnesses are subject to confidentiality notices which criminalise disclosure of certain information. This limits who the witness may speak to and seek assistance for comfort, and use an outlet for negative wellbeing impacts during a stressful period. Evidence suggests that witnesses should be able to access support from their doctor or psychologist to minimise risk of self-harm and provide an avenue to treat stress and anxiety (for example, see *Special Report 2023/01: Audit of the welfare of witnesses and other people involved in ICAC investigations* prepared by the Inspector of the Independent Commission Against Corruption).

The Bill's approach is the least invasive approach that achieves the policy outcome. The Bill limits disclosure to doctors and psychologists that are registered by law and authorised to deliver professional services. The information disclosed to a doctor or psychologist during the course of seeking assistance would be subject to a professional confidential relationship privilege under division 3.10.1A of the *Evidence Act 2011*. This ties to the IC Act, as the IC Act defines 'privilege' as any privilege a person is entitled to claim in a proceeding before a court or tribunal (see section 174 of the IC Act). This ensures that information disclosed in the course of seeking assistance remains confidential.

Noting the impact that a corruption investigation may have on an individual, it is reasonable to expect that a person may require to lodge a workers compensation claim if their wellbeing is so affected they are unable to work. To do this, they must be authorised to disclose certain information that demonstrates how involvement in an investigation has affected their ability to work. This disclosure may include details about other individuals involvement in the investigation to adequately demonstrate how their wellbeing is so affected they are unable to work.

The Bill's approach is the least invasive to the right to privacy as it specifies that disclosure is made for the purposes of making a claim under the *Workers Compensation Act 1951*, or the *Safety, Rehabilitation and Compensation Act 1988* (Cth). Tying disclosure to these Acts ensures that disclosure is made to an entity that is bound by the *Privacy Act 1998* (Cth). In addition, the Workers Compensation Act 1951 includes a criminal penalty for any person with a function under that Act to disclose protected information about a person obtained by virtue of exercising a function under the Act.

Clauses 18, 19, 47, 50, 52, 63, 68, 76, 77, 78, 84 and 92 (implementing recommendation 45) allows a person who received a copy of a proposed investigation report to provide a copy of the report to a colleague for the purpose of seeking assistance to respond to the proposed report. This limits the right to privacy as information about other individuals may be further disclosed beyond those who are impacted by the proposed report. This is a reasonable limitation under section 28 of the HR Act.

A proposed investigation report is likely to include statements of fact by the Commission about subject matter relevant to the corruption investigation. It is reasonable to expect that a person impacted by the proposed report may require assistance from a colleague to confirm that a stated fact in the report is correct. This could include that an event occurred on a certain day, that an official was in a certain role, or that a person was copied into an important email. This may be pivotal information that a person is unable to verify themselves. The IC Act currently only authorises disclosure in very limited circumstances, including (but not limited to), in seeking legal assistance or to an interpreter. The current permitted disclosures would prevent an individual from accessing a resource that may assist to confirm or deny a fact in the report – this may limit procedural fairness, and the right to a fair trial as provided under section 21 of the HR Act.

The Bill's approach is the least invasive approach to the right to privacy that still achieves the policy outcome to enhance the right to fair trial. The Bill requires the Commission to approve a request from a person to provide the proposed report to another person. This provides oversight of the disclosure to ensure that the report is not broadly disseminated. Further, the Commission must provide the assistant a non-disclosure notice which would criminalise further distribution of the content and safeguard privacy.

Clause 95 (implementing recommendation 54) limits the right to privacy, as it allows persons to whom section 297 of the IC Act applies to disclose protected information to prevent an emergency. In other circumstances, it may be an offence to disclose protected information that is information about a person. This is considered a reasonable limitation under section 28 of the HR Act.

The disclosure is authorised to prevent a greater harm occurring. Evidence across Australia demonstrates that anti-corruption investigations can severely impact a person's mental health and wellbeing (see *Performance of the Victorian integrity agencies 2020/21: focus on witness welfare* by the Parliament of Victoria Integrity and Oversight Committee). A person subject to an examination may disclose that they have had thoughts of self-harm, or state that they intend to self-harm. The proposed changes aim to accommodate scenarios where the Commission, or any other person who carries out a function under the IC Act, is able to legally disclose information to prevent an emergency.

The approach is considered least invasive as it requires that divulging the information is the only reasonable way to deal with the emergency. This requires consideration of other means to deal with the emergency, before disclosing protected information to an outside source. For example, if the individual has brought a support person to the examination who also witnesses the disclosure, there may not be a need for any person to whom section 297 applies to disclose the information, as the support person may be best placed to provide assistance to the witness. Where information is disclosed outside this threshold, the criminal penalty

under section 297 will continue to apply (50 penalty units, or 6 months imprisonment, or both).

Section 16 – Freedom of expression

Limitation of section 16

Section 16 of the HR Act provides everyone the right to freedom of expression, including the freedom to seek, receive and impart information of all kinds. Clauses 62 and 67 (implementing recommendation 53) limits this right by restricting the information the Commission is required to publish in a special report or its annual report (respectively). Clauses 3, 4 and 5 (implementing recommendations 62 and 63) also limit the right as it would expressly prevent release of certain information under the FOI Act that relates to ongoing consideration of matters referred to the Integrity Commission.

The exemptions provided in the Bill limits the right to privacy or freedom of expression afforded by the Information Privacy and FOI Acts in the least restrictive means reasonably available. Notably the Bill only provides an exemption to the Commission from consideration of the release of information under the public interest test or publication in its annual report in certain limited circumstances.

These are reasonable limitations under section 28 of the HR Act. The purpose of these limitations is to enable the Commission to function effectively as an investigatory body. It is impractical for the Commission to fully comply with the FOI Act or to publish information in an annual report that could jeopardise an ongoing investigation. In general, it would not be in the public interest for the Commission to disclose information relating to its investigations prior to making a deliberate decision to publish information or hold a public examination, as it could jeopardise investigations, breach procedural fairness or cause undue harm to the reputation of the person under investigation.

The Integrity Commission is therefore still obliged to comply with the standards and procedures around privacy and open access to information when performing its administrative and educative functions, and information may be released at the conclusion of the investigation, where appropriate and lawful to do so. This distinction recognises and maintains the legitimate public interest in protecting privacy and access to information where it is practicable to do so.

Section 21 – Fair trial

Section 21 of the HR Act provides that everyone has the right to have criminal charges, and rights obligations recognised by law, decided by a competent, independent and impartial court or tribunal. Several of the Bill's clauses either promote or limit this right. Where the right is limited, it is considered a reasonable limitation under section 28 of the HR Act.

Limitation to section 21

Clauses 26 and 37 (implementing recommendation 27) clarifies the threshold that the Commission must be satisfied of prior to issuing a preliminary inquiry notice or examination summons. This may limit the right to fair trial, noting that the Commission is an investigatory body rather than a judicial court, as the threshold is effectively lowered from the Commission considering issuing a notice as 'necessary', to that the Commission must reasonably suspect it is 'necessary'. Both thresholds require that the Commission considers the evidence sought 'necessary' for the preliminary inquiry or investigation. There is a technical difficulty in meeting the current threshold, as the Commission may not be in a position to understand if the information is necessary without having an opportunity to inspect it. The threshold is amended to require the Commission suspects on reasonable grounds that the evidence *may* be necessary for the preliminary inquiry or investigation.

This approach is the least restrictive as it still requires the Commission to have a reasonable suspicion that the evidence may be necessary for the investigation. There will be continued oversight of the Commission's preliminary inquiries and examination summons through the Commission's monthly reports to the Inspector. Should the Inspector consider there is lack of evidence to demonstrate a reasonable suspicion, the Inspector remains able to investigate the Commission's compliance with the IC Act.

Promotion of section 21

Clauses 32, 33, 45, 46, 58 and 61 (implementing recommendation 29) promotes the right to fair trial by extending the minimum compliance period that the Commission must provide a person who receives a preliminary inquiry notice or examination summons. The period is extended from 7 days to 10 business days. This provides those compelled to provide material to the Commission more time to undertake the necessary tasks to compile and deliver the material, including seeking legal advice as necessary.

Section 17 – Taking part in public life

Section 27B – Right to work and other work-related rights

Section 27B of the of the HR Act provides that everyone has the right to work, including the right to choose their occupation or profession freely. Similarly, section 17 of the HR Act provides every citizen is to have the opportunity to have access, on general terms of equality, for appointment to the public service or public office. Several of the Bill's clauses either promote or limit this right. Where the right is limited, this is considered a reasonable limitation authorised under section 28 of the HR Act.

Limitation to section 17 and 27B

Clauses 11, 12 and 14 (implementing recommendation 11) limits the rights in section 17 and 27B by restricting Members of the Legislative Assembly (MLAs) and their staff from being appointed as staff of the Commission for two years from the time they ceased that role. This limitation is necessary for the Commission to avoid any actual or perceived conflicts of interest or bias, and to ensure public confidence in the Commission's work. Unlike a public servant, a conflict of interest for an MLA or an MLA staff member may be more difficult to effectively manage given the nature of political life.

Promotion of section 17 and 27B

Conversely, these clause also promote the rights in section 17 and 27B by removing the restriction on the Commission from appointing staff who are, or were within five years prior, public servants. Former public servants will have greater access to public life and to seek employment which is suited to their profession.

Clause 7 (implementing recommendation 14) also promotes the rights in 27B by removing the requirement that the Speaker, when appointing a Commissioner, must consider applicants who have previous experience as a judge over other applicants. The Bill opens the selection process to a more meritorious process where the Speaker is open to consider other skills and experience that may make one applicant more suitable over the other, despite that applicant having no previous experience as a judge.

INTEGRITY LEGISLATION AMENDMENT BILL 2024

Human Rights Act 2004 - Compatibility Statement

In accordance with section 37 of the *Human Rights Act 2004* I have examined the **Integrity Legislation Amendment Bill 2024**. In my opinion, having regard to the Bill and the outline of the policy considerations and justification of any limitations on rights outlined in this explanatory statement, the Bill as presented to the Legislative Assembly is consistent with the *Human Rights Act 2004*.

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Shane Rattenbury MLA
Attorney-General

CLAUSE NOTES

PART 1 - Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is the *Integrity Legislation Amendment Act 2024*.

Clause 2 Commencement

This clause provides that the Act, other than section 42, 87, 94 and 98 commences on the seventh day after its notification day.

Sections 42, 87, 97, and 98 commence 6 months after the Act's notification day.

Clause 3 Legislation amended

This clause provides that the Act amends the *Freedom of Information Act 2016*, the *Integrity Commission Act 2018*, and the *Public Sector Management Act 1994*.

Part 2 – Freedom of Information Act 2016

Clause 4 Meaning of *contrary to the public interest information* Section 16 (2)

This clause amends subsection 16(2) to substitute out “(other than information subject to legal professional privilege under section 1.2) and substitute in “(other than exempt information)”. This amendment goes toward implementing recommendations 62 and 63 of the review of the *Integrity Commission Act 2018* (IC Act).

Clause 5 New section 16 (3)

This clause inserts new subsection 16(3) which defines ‘exempt information’ for the purposes of section 16. Exempt information means information that is taken to be contrary to the public interest to disclose under schedule 1, section 1.1B (information related to integrity commission matter), or schedule 1, section 1.2 (Information subject to legal professional privilege).

This clause will consider any information under schedule 1, sections 1.1B or 1.2, contrary to the public interest information, regardless of whether it identifies corruption, or the commission of an offence by a public official, or that the scope of a law enforcement investigation has exceeded the limits imposed by law. This amendment goes toward implementing recommendations 63 and 64 of the review of the IC Act.

Clause 6 Schedule 1, section 1.1B

This clause substitutes existing section 1.1B with the new section 1.1B. New section 1.1B describes the types of information that is related to integrity commission matters that is considered against the public interest information. Information that does not fall under the scope outlined in section 1.1B will continue to be assessed against the public interest test in section 17 of the *Freedom of Information Act 2016*.

This amendment goes toward implementing recommendations 63 and 64 of the review of the IC Act.

Part 3 – Integrity Commission Act 2018

Clause 7 Commissioner – eligibility for appointment Section 26 (2)

This clause omits subsection 26(2) from the IC Act.

This clause implements recommendation 14(a) of the review of the IC Act.

Clause 8 Section 26 (3)

This clause omits ‘In addition,’ and substitutes ‘however’. This is consequential to clause 7 and required to maintain the structure and intent of section 26.

Clause 9 Commissioner – disclosure of interests Section 30

This clause omits everything before paragraph 30(a) and substitutes the new text to require the Commissioner to provide a written statement of their financial and other personal interests to the Speaker, and the inspector, within 5 business after the circumstances listed in paragraphs 30(a) to 30(c) inclusive.

This implements recommendation 46 of the review of the IC Act.

Clause 10 Section 40

This clause substitutes in a new section 40 that outlines the acting Commissioner appointment arrangements. The revised arrangements:

- align the eligibility criteria of an acting Commissioner with an ongoing Commissioner,
- require the Speaker to consult with the relevant standing committee,
- require the Speaker to seek the approval of either a majority of 2/3 of the members of the Legislative Assembly, or the Chief Minister and the Leader of the Opposition, and the leader (however described) of a registered party (other than a party to which the Chief Minister or Leader of the opposition belongs);
- allow for an acting appointment to be for a period up to 2 years, and

- restrict eligibility of a person who has been acting Commissioner for a cumulative period of 7 years.

The Speaker is also required to alert the Inspector both when acting appointment is made, and when any provisions that gives effect to the appointment is enlivened.

This clause implements recommendations 14(b), 14(c), and 14(d) of the review of the IC Act.

**Clause 11 CEO – appointment
Section 41 (2) (c)**

This clause omits paragraph 41(2)(c) of the IC Act which prevents the Commissioner from appointing a person as the CEO of the Commission if the person is or has, in the 5 years immediately before the day of the proposed appointment, been a public servant.

This clause goes toward implementing recommendation 11(a) of the review of the IC Act.

**Clause 12 Staff of the commission – eligibility for appointment
Section 50 (2)**

This clause substitutes in new subsection 50(2) of the IC Act.

New subsection 50(2) removes the restriction placed on the Commissioner from appointing a staff member to the Commission if the person is or has, in the previous 5 years, been a public servant, and replaces it with a restriction on appointing a person who is or has, in the 2 years immediately before the proposed appointment, been a member of the Legislative Assembly (MLA), or a member of staff of an MLA.

This clause goes towards implementing recommendations 11(a) and 11(d) of the review of the IC Act.

Clause 13 Section 50 (3) (b), and note

This clause substitutes a minor revision to paragraph 50(3)(b) to align the wording used for financial and other personal interests with clause 9.

Clause 14 Section 50 (4) to (6)

This clause substitutes subsection 50(4) to (6) inclusive with new subsection 50(4).

Subsection 50(4) defines ‘member of staff of an MLA’ and ‘temporary member of staff of an MLA’ for the purposes of section 50. The subsection acts to provide an exemption from the eligibility restriction in clause 12 for public servants who were employed by an MLA for not longer than 3 months in the 12 months immediately before the day of a proposed appointment.

This clause goes toward implementation recommendations 11(c) and 11(d) of the review of the IC Act.

Clause 15 New sections 50A and 50B

This clause inserts new sections 50A and 50B.

New section 50A requires:

- a member of staff of the commission to disclose in writing any financial or other personal interests that conflicts, may conflict, or may be perceived to conflict with the member's functions to the Commissioner, including the nature of the interest and the conflict or potential conflict.
- The Commission to keep a register of the disclosures made under this section.
- The Commissioner to make the register available for inspection by the inspector at any time.

New section 50B reflects previous subsection 50(4) and requires the Commission to make guidelines about the disclosures the Commission considers relevant for staff of the commission. A guideline is a notifiable instrument, and the Commission must publish the guidelines on the commission's website.

This clause goes toward implementation recommendations 11(c) and 11(d) of the review of the IC Act.

Clause 16 Mandatory corruption notifications – heads of public sector entities and senior executives New section 62 (3)

This clause inserts new subsection 62(3). Subsection 62(3) provides an exemption from the mandatory notification requirement in subsection 62(1) if that person believes on reasonable grounds that someone else has notified the commission about the matter, and the other person has the same reasons for their suspicion.

This clause implements recommendation 5 of the review of the IC Act.

Clause 17 Mandatory corruption notifications – MLAs and chiefs of staff New section 63 (3)

This clause inserts new subsection 62(3). Subsection 62(3) provides an exemption from the mandatory notification requirement in subsection 62(1) if that person believes on reasonable grounds that someone else has notified the commission about the matter, and the other person has the same reasons for their suspicion.

This clause implements recommendation 5 of the review of the IC Act.

**Clause 18 Commission must keep complainant informed
Section 72 (1), note 2**

This clause amends note 2 in subsection 72(1). This is a consequential amendment from clause 46 which removes the mandatory requirement for the Commission to issue a non-disclosure in certain circumstances. Note 2 is updated to reflect that the Commission may also be required to issue a non-disclosure notice about the information provided under section 72.

This clause goes towards implementing recommendation 45(b) of the review of the IC Act.

**Clause 19 Commission must keep notifier informed
Section 74, note 2**

This clause amends note 2 in section 74. This is a consequential amendment from clause 46 which removes the mandatory requirement for the Commission to issue a non-disclosure in certain circumstances. Note 2 is updated to reflect that the Commission may also be required to issue a non-disclosure notice about the information provided under section 74.

This clause goes towards implementing recommendation 45(b) of the review of the IC Act.

**Clause 20 Confidentiality notices for preliminary inquiries
Section 78(2), new example**

This clause inserts a new example to subsection 78(2). The new example highlights that the Commission may give a confidentiality notice to a person nominated to deliver a document or other thing to the Commission under section 90AB. This is a consequential amendment to clause 26 which inserts new section 90AB.

**Clause 21 Confidentiality notices for investigations
Section 79 (2), new example**

This clause inserts a new example to subsection 79(2). The new example highlights that the Commission may give a confidentiality notice to a person nominated to deliver a document or other thing to the Commission under section 147AB. This is a consequential amendment to clause 36 which inserts new section 147AB.

**Clause 22 Meaning of *permitted disclosure* of restricted information – pt 3.2
Section 81, definition of *permitted disclosure*, paragraph (b) (iii)**

This clause omits 'the age of 18 years' and substitutes '18 years old'. This is a minor and technical amendment to make the provision clearer to understand.

**Clause 23 Meaning of *permitted disclosure* of restricted information – pt 3.2
Section 81, definition of *permitted disclosure*, new paragraph (b) (iv)**

This clause inserts new subparagraph 81(b)(iv). The new subparagraph broadens the permitted disclosures a person subject to a confidentiality notice may make to include a disclosure made by the person to a doctor or psychologist if the person is seeking assistance with their health or wellbeing. Doctor and psychologist are defined in clauses 96 and 97 respectively.

This clause goes towards implementing recommendation 38(a)(i) of the review of the IC Act.

Clause 24 Section 81, definition of *permitted disclosure*, new paragraph (da)

This clause inserts new paragraph 81(da). The new paragraph broadens the permitted disclosures a person subject to a confidentiality notice may make to include a disclosure made by the person to their insurer, if the person has made a claim about a matter related to the restricted information under either the *Workers Compensation Act 1951*, or the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

This clause goes towards implementing recommendation 38(a)(ii) of the review of the IC Act.

**Clause 25 Power to request information from head of public sector entity
Section 89 (3)**

This clause makes a minor amendment to subsection 89(3) to require that the Speaker, must as far as practicable, give a copy of a request under section 89 to the relevant member. The amendment to ‘as far as practicable’ acknowledges that in certain circumstances the Speaker will not be able to provide a copy of the request to the relevant member, for example, where that member has since passed away.

**Clause 26 Power to issue preliminary inquiry notice
Section 90 (2)**

This clause substitutes subsection 90(2) with new subsection 90(2). New subsection 90(2) acknowledges that the commission may not be able to be satisfied that a document or other thing is necessary for the preliminary inquiry before having the opportunity to inspect the document or other thing. New subsection 90(2) sets a threshold that the commission must have a reasonable suspicion that the document other thing may be necessary for the preliminary inquiry.

This clause goes toward implementing recommendation 27 of the review of the IC Act.

Clause 27 Section 90(4)

This clause omits 'the age of 18 years' and substitutes '18 years old'. This is a minor and technical amendment to make the provision clearer to understand.

Clause 28 Section 90 (5)

This clause omits subsection 90(5). This is a consequential amendment as subsection 90(5) is not required due to its absorption by new section 90B inserted by clause 29.

Clause 29 New section 90B

This clause inserts new section 90B. New section 90B excuses a person from attending the commission in compliance with a preliminary inquiry notice if the required document or other thing is delivered to the commission before the time for production stated in the preliminary inquiry notice by either the person, or if the commission agrees to nominated person delivering the document or other thing to the commission – the nominated person.

This clause goes toward implementing recommendation 33 of the review of the IC Act.

**Clause 30 Preliminary inquiry notice – content
Section 91 (2) (b) (iii)**

This clause omits 'the age of 16 years' and substitutes '16 years old'. This is a minor and technical amendment to make the provision clearer to understand.

**Clause 31 Preliminary inquiry notice – content
New section 91 (2) (b) (via)**

This clause inserts new subparagraph 91(2)(b)(via). The new subparagraph requires the commission to include in the mandatory statement of information provided to the recipient of a preliminary inquiry notice a statement that says the commission may excuse the person from attendance if the person, or a nominated person, produces the required document or other thing to the commission before the time for production stated in the preliminary inquiry notice.

This clause goes toward implementing recommendation 28 of the review of the IC Act.

**Clause 32 Preliminary inquiry notice – service
Section 93(1)**

This clause amends subsection 93(1) to require that a preliminary inquiry notice must be served at least 10 business days, rather than 7 days, before the person is required to comply with the notice.

This clause goes towards implementing recommendation 29(a) of the review of the IC Act.

Clause 33 New section 94A

This clause inserts new section 94A. New section 94A provides an avenue for the recipient of a preliminary inquiry notice to request an extension of time to attend the commission or otherwise comply with the notice.

In making its decision, the commission must give the person a written notice (an extension notice) stating:

- If the commission agreed to the extension – the new time to attend or otherwise comply with the notice, or
- If the person requests a particular extension but the commission agrees to a shorter extension – the new time to attend or otherwise comply with the notice, including the reasons for the shorter extension, or
- If the commission refuses the extension – that the application is refused, including the reasons for the refusal.

New section 94A includes a note that the commission must report monthly to the inspector about extensions (see clause 51).

This clause goes toward implementing recommendation 29(b) of the review of the IC Act.

Clause 34 Examinations may be public or private Section 143 (5), noted 1 and 2

This clause omits notes 1 and 2 from subsection 143(5). This is a consequential amendment from clause 35 which includes the same note in new substituted 144.

Clause 35 Section 144

This clause substitutes section 144 with new section 144. New section 144 retains requirements that, if the commission intends to hold a public examination, the commission must give the inspector written notice of when the public examination is to be held, and the commission's reasons for holding the examination in public. Subsection 144(2) includes additional requirements that the commission must give the inspector the notice at least 10 business days before the day of the public examination, and before either issuing an examination summons for the examination, or making any public announcement about the examination. The additional requirement ensures that the tangible evidence to demonstrate that the commission has met mandatory considerations in subsection 143(2) prior to issuing an examination summons for a public examination.

This clause goes towards implementing recommendation 51 of the review of the IC Act.

**Clause 36 Power to issue examination summons
Section 147(1)**

This clause makes minor amendments to subsection 147(1) to align the structure of the authorising provisions to issue an examination summons with the authorising provision to issue a preliminary inquiry notice under section 90. This ensures a consistent approach to issuing compulsive notices under the IC Act.

Clause 37 New section 147 (1A)

This clause inserts new subsection 147(1A). New subsection 147(1A) acknowledges that the commission may not be able to be satisfied that a document or other thing is necessary for the investigation before having the opportunity to inspect the document or other thing. New subsection 147(1A) sets a threshold that the commission must have a reasonable suspicion that the document other thing may be necessary for the investigation.

This clause goes toward implementing recommendation 27 of the review of the IC Act.

Clause 38 Section 147 (2) (a)

This clause omits paragraph 147(2)(a) and is consequential to clauses 36 and 37.

Clause 39 Section 147 (3)

This clause omits 'the age of 18 years' and substitutes '18 years old'. This is a minor and technical amendment to make the provision clearer to understand.

Clause 40 Section 147 (4), except notes

This clause omits subsection 147(4), except the notes, and is consequential to clause 36 which inserts new section 147AB and includes the content of subsection 147(4) in new section 147AB.

Clause 41 New section 147B

This clause inserts new section 147B. New section 147B excuses a person from attending the commission in compliance with an examination summons, where that examination summons requires the person only to produce a document or other thing, if the required document or other thing is delivered to the commission before the time for production stated in the examination summons by either the person, or if the commission agrees to nominated person delivering the document or other thing to the commission – the nominated person.

This clause goes toward implementing recommendation 33 of the review of the IC Act.

Clause 42 Examination summons – content
New section 148 (3) (aa)

This clause inserts new paragraph 148(3)(aa) to require the commission to accompany the commission's wellbeing policy with an examination summons.

This clause goes towards implementing recommendation 37 of the review of the IC Act.

Clause 43 Section 148 (3) (b) (iv)

This clause omits 'the age of 16 years' and substitutes '16 years old'. This is a minor and technical amendment to make the provision clearer to understand.

Clause 44 New section 148 (3) (b) (xiia)

This clause inserts new subparagraph 148(3)(b)(xiia). The new subparagraph requires the commission to include in the mandatory statement of information provided to the recipient of an examination summons a statement that says the commission may excuse the person from attendance if the person, or a nominated person, produces the required document or other thing to the commission before the time for production stated in the examination summons.

This clause goes toward implementing recommendation 28 of the review of the IC Act.

Clause 45 Examination summons – notice and immediate attendance
Section 150 (1)

This clause amends subsection 150(1) to require that an examination summons must be served at least 10 business days, rather than 7 days, before the person is required to comply with the summons.

This clause goes towards implementing recommendation 29(a) of the review of the IC Act.

Clause 46 New section 156A

This clause inserts new section 156A. New section 156A provides an avenue for the recipient of an examination summons to request an extension of time to attend the commission or otherwise comply with the summons.

In making its decision, the commission must give the person a written notice (an extension notice) stating:

- If the commission agreed to the extension – the new time to attend or otherwise comply with the notice, or

- If the person requests a particular extension but the commission agrees to a shorter extension – the new time to attend or otherwise comply with the notice, including the reasons for the shorter extension, or
- If the commission refuses the extension – that the application is refused, including the reasons for the refusal.

New section 156A includes a note that the commission must report monthly to the inspector about extensions (see clause 51).

This clause goes toward implementing recommendation 29(b) of the review of the IC Act.

**Clause 47 Investigation report – comments on proposed reports
Section 188 (6) to (8)**

New subsection 188(6) authorises the commission, on request of the person who receives a report under section 188, to give all or part of the proposed report to someone else nominated by the person to assist the person in preparing their comments on all or part of the proposed report.

A note is included which clarifies that the commission must also give the nominated person a non-disclosure notice about the information in the proposed report under section 198.

This clause goes towards implementing recommendation 45(a) of the review of the IC Act.

Clause 48 New section 188A

This clause inserts new section 188A.

The requirement in previous subsection 188(6) for the commission, where it receives comments under section 188, to consider the comments in preparing the proposed report, and may include the comments as an attachment to the proposed report, is moved to new section 188A.

This clause also moves substantive content from subsections 188(6) to (8) to be now reflected in subsections 188A(2) and (3).

**Clause 49 Public sector entity may disclose information to commission
New section 195 (3)**

This clause inserts new subsection 195(3). The new subsection provides the head of a public sector entity who discloses information under section 195, and any person who assists the head in disclosing the information, the same protection and immunity as a witness has in a proceeding in the Supreme Court.

This clause implements recommendation 25(b) of the review of the IC Act.

Clause 50 Commission must give non-disclosure notice when giving information

Section 198 (1) (d)

This clause substitutes in a new subsection 198(1)(d) as a consequential amendment to clause 41. This continues to require the commission to provide a non-disclosure notice to a person who receives a proposed investigation report under subsections 188(2) and (3), and also to someone who receives a proposed report under subsection 188(6) to assist someone else respond to the report.

This clause goes towards implementing recommendation 45(a) of the review of the IC Act.

Clause 52 New section 198 (2A)

This clause inserts new subsection 198(2A). New subsection 198(2A) excuses the commission from issuing a non-disclosure notice if the conditions in paragraphs 198(2A)(a) or (b) are met. However, the commission may still choose to issue a non-disclosure notice in the prescribed circumstances.

This clause implements recommendation 45(b) of the review of the IC Act.

Clause 53 Section 198 (3)

This clause makes a minor amendment to subsection 198(3) to refer to 'a non-disclosure notice' rather than 'the non-disclosure notice'. This is a minor amendment to improve the readability of the subsection to refer to all non-disclosure notices, rather than a singular non-disclosure notice.

**Clause 54 Meaning of *permitted disclosure* of information – pt 3.10
Section 199, definition of *permitted disclosure*, paragraph (a) (iii)**

This clause omits 'the age of 18 years' and substitutes '18 years old'. This is a minor and technical amendment to make the provision clearer to understand.

**Clause 55 Section 199, definition of *permitted disclosure* of information – pt 3.10,
Section 199, definition of *permitted disclosure*, new paragraph (a) (iv)**

This clause inserts new subparagraph 199(a)(iv). The new subparagraph broadens the permitted disclosures a person subject to a non-disclosure notice may make to include a disclosure made by the person to a doctor or psychologist if the person is seeking assistance with their health or wellbeing. Doctor and psychologist are defined in clauses 96 and 97 respectively.

This clause goes towards implementing recommendation 38(a)(i) of the review of the IC Act.

**Clause 56 Section 199, definition of *permitted disclosure*,
new paragraph (ca)**

This clause inserts new paragraph 199(ca). The new paragraph broadens the permitted disclosures a person subject to a confidentiality notice may make to include a disclosure made by the person to their insurer, if the person has made a claim about a matter related to the restricted information under either the *Workers Compensation Act 1951*, or the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

This clause goes towards implementing recommendation 38(a)(ii) of the review of the IC Act.

**Clause 57 Offences – disclose information received from the commission
Section 201 (1)**

This clause substitutes in new subsection 201(1). The new subsection retains the previous offences for disclosing certain information received from the commission, where the discloser is subject to a non-disclosure notice, but adds where people have received information from the commission to assist another person provide comments to a proposed report. These new circumstances are added by clauses 47, 63, and 68 of the Bill.

**Clause 58 Commissioner – monthly reports to inspector
New section 205 (ea)**

This clause adds new paragraph 205 (ea). The new paragraph requires the commissioner to provide the inspector a copy of each extension notice given to a person under section 94A (2) (preliminary inquiry notice – extension). Section 94A(2) is added by clause 33.

This clause implements recommendation 29(c) of the review of the IC Act.

Clause 59 Section 205 (f) (iii)

This clause omits subparagraph 205(f)(iii). The subparagraph required the commissioner to provide the inspector the reasons for holding an examination in public. The subparagraph is no longer required as this information is subsumed by new paragraph 205(ha) inserted by clause 60.

Clause 60 Section 205 (g)

This clause substitutes in new paragraph 205(g). The new paragraph requires the commissioner to provide the inspector a copy of each notice given to the inspector under subsection 144(1) (Commission must notify the inspector of public examination). Subsection 144(1) is inserted by clause 35.

Clause 61 Section 205 (ha)

This clause adds new paragraph 205 (g). The new paragraph requires the commissioner to provide the inspector a copy of each extension notice given to a person under section 156A(2) (examination summons – extension). Section 156A(2) is added by clause 46.

This clause implements recommendation 29(c) of the review of the IC Act.

Clause 62 Special report – not to include information that may prejudice proceeding etc Section 209 (a)

This clause substitutes in new paragraph 209(a). The new paragraph prevents the commission from publishing information in a special report that would compromise an investigation under the IC Act. The previous paragraph limited this prevention to ‘another’ investigation under the IC Act, which suggested the information was required to compromise at least two investigations to prevent publication.

This clause goes towards implementing recommendation 53 of the review of the IC Act.

Clause 63 Special report – comments on proposed reports Section 212 (6) to (8)

New subsection 212(6) authorises the commission, on request of the person who receives a report under section 212, to give all or part of the proposed report to someone else nominated by the person to assist the person in preparing their comments on all or part of the proposed report.

A note is included which clarifies that the commission must also give the nominated person a non-disclosure notice about the information in the proposed report under section 198.

This clause goes towards implementing recommendation 45(a) of the review of the IC Act.

Clause 64 New section 212A

This clause inserts new section 212A.

The requirement in previous subsection 212(6) for the commission, where it receives comments under section 212, to consider the comments in preparing the special report, and may include the comments as an attachment to the special report, is moved to new section 212A.

This clause also moves substantive content from subsections 212(6) to (8) to be now reflected in subsections 212A(2) and (3).

**Clause 65 Commission annual report – content
New section 218 (1) (ka)**

This clause inserts new paragraph 218(1)(ka). The new paragraph requires the commission to include in its annual report a statement of the number of each of extensions of time to comply with a preliminary inquiry notice given section 94A (preliminary inquiry notice – extension). Section 94A is inserted by clause 33.

Clause 66 New section 218 (1) (ta)

This clause inserts new paragraph 218(1)(ta). The new paragraph requires the commission to include in its annual report a statement of the number of each of extensions of time to comply with an examination summons given under section 156A (Examination summons – extension). Section 156A is inserted by clause 46.

**Clause 67 Commission annual report – not to include information that may prejudice proceeding etc
Section 221 (a)**

This clause substitutes in new paragraph 221(a). The new paragraph prevents the commission from publishing information in an annual report that would compromise an investigation under the IC Act. The previous paragraph limited this prevention to ‘another’ investigation under the IC Act, which suggested the information was required to compromise at least two investigations to prevent publication.

This clause goes towards implementing recommendation 53 of the review of the IC Act.

**Clause 68 Commission annual report – comments on proposed reports
Section 224 (6) to (8)**

New subsection 224(6) authorises the commission, on request of the person who receives a report under section 224, to give all or part of the proposed report to someone else nominated by the person to assist the person in preparing their comments on all or part of the proposed report.

A note is included which clarifies that the commission must also give the nominated person a non-disclosure notice about the information in the proposed report under section 198.

This clause goes towards implementing recommendation 45(a) of the review of the IC Act.

Clause 69 New section 224A

This clause inserts, in part 4.3, new section 224A.

The requirement in previous subsection 224(6) for the commission, where it receives comments under section 224, to consider the comments in preparing the annual report, and may include the comments as an attachment to the annual report, is moved to new section 224A.

This clause also moves substantive content from subsections 224(6) to (8) to be now reflected in subsections 224A(2) and (3).

Clause 70 Inspector – disclosure of interests Section 236

This clause omits everything before paragraph 236 (a) and substitutes new text. The new text retains the previous requirement for the inspector to provide a written statement of their financial and other interests to the Speaker, but instead aligns phrasing with new text inserted by clause 9.

Clause 71 Section 246

This clause substitutes in a new section 246 that outlines the acting inspector appointment arrangements. The revised arrangements mirror the amendments to the acting commissioner appointment process. The revised arrangements:

- align the eligibility criteria of an acting inspector with an ongoing inspector,
- requires the Speaker to consult with the relevant standing committee,
- require the Speaker to seek the approval of either a majority of 2/3 of the members of the Legislative Assembly, or the Chief Minister, the Leader of the Opposition, and 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,
- allow for an acting appointment to be for a period up to 2 years, and
- restrict eligibility of a person who has been acting inspector for a cumulative period of 7 years.

This clause implements recommendations 14(b), 14(c), and 14(d) of the review of the IC Act.

Clause 72 Staff of the inspector – eligibility for appointment Section 251 (2)

This clause substitutes in new subsection 251(2).

New subsection 251(2) removes the restriction placed on the inspector from appointing a staff member of the inspector if the person is or has, in the previous 5 years, been a public servant, and replaces it with a restriction on appointing a person

who is or has, in the 2 years immediately before the proposed appointment, been a member of the Legislative Assembly (MLA), or a member of staff of an MLA. This mirrors the revised eligibility requirements for staff of the commission inserted by clause 12.

This clause goes towards implementing recommendations 14(a) and 14(d) of the review of the IC Act.

Clause 73 Section 251 (3) (b), and note

This clause substitutes a minor revision to paragraph 251(3)(b) to align the wording used for financial and other personal interests with clause 9.

Clause 74 Section 251 (4) to (6)

This clause substitutes subsection 251(4) to (6) inclusive with new subsection 251(4)

Subsection 251(4) defines ‘member of staff of an MLA’ and ‘temporary member of staff of an MLA’ for the purposes of section 50. The subsection acts to provide an exemption from the eligibility restriction in clause 12 for public servants who were employed by an MLA for not longer than 3 months in the 12 months immediately before the day of a proposed appointment.

Clause 75 New sections 251A and 251B

This clause inserts new sections 50A and 50B.

New section 251A requires:

- a member of staff of the inspector to disclose in writing any financial or other personal interests that conflicts, may conflict, or may be perceived to conflict with the member’s functions to the inspector, including the nature of the interest and the conflict or potential conflict.
- The inspector is to keep a register of the disclosures made under this section.
- The inspector is to make the register available for inspection by the public sector standards commissioner at any time.

New section 251B reflects previous subsection 251(4) and requires the inspector to make guidelines about the disclosures the inspector considers relevant for staff of the inspector. A guideline is a notifiable instrument, and the inspector must publish the guidelines on the inspector’s website.

This clause goes toward implementation recommendations 14(c) and 14(d) of the review of the IC Act.

Clause 76 Inspector – must keep complainant informed
Section 259 (1), note 2

This clause amends note 2 in subsection 259(1). This is a consequential amendment from clause 77 which removes the mandatory requirement for the inspector to issue a non-disclosure in certain circumstances. Note 2 is updated to reflect that the inspector may also be required to issue a non-disclosure notice about the information provided under section 259.

This clause goes towards implementing recommendation 45(b) of the review of the IC Act.

Clause 77 Inspector – must give non-disclosure notice when giving information
Section 260 (1) (b) and (c)

This clause substitutes in a new paragraphs 260(1)(b) and (c) as a consequential amendment to clauses 85 and 93. This continues to require the inspector to provide a non-disclosure notice to a person who receives a proposed report under either sections 277 and 285, and also to someone who receives a proposed report under subsections 277(6) and 285(6) to assist someone else respond to the report.

This clause goes towards implementing recommendation 45(a) of the review of the IC Act.

Clause 78 New section 260 (2A)

This clause inserts new subsection 260(2A). New subsection 260(2A) excuses the inspector from issuing a non-disclosure notice if the conditions in paragraphs 260(2A)(a) or (b) are met. However, the inspector may still choose to issue a non-disclosure notice in the prescribed circumstances.

This clause implements recommendation 45(b) of the review of the IC Act.

Clause 79 Section 260 (3)

This clause makes a minor amendment to subsection 260(3) to refer to 'a non-disclosure notice' rather than 'the non-disclosure notice'. This is a minor amendment to improve the readability of the subsection to refer to all non-disclosure notices, rather than a singular non-disclosure notice.

Clause 80 Meaning of *permitted disclosure* of information – pt 5.2
Section 261, definition of *permitted disclosure*, paragraph (a) (iii)

This clause omits 'the age of 18 years' and substitutes '18 years old'. This is a minor and technical amendment to make the provision clearer to understand.

Clause 81 **Meaning of *permitted disclosure* of information – pt 5.2**
Section 261, definition of *permitted disclosure*, new paragraph (a)
(iv)

This clause inserts new subparagraph 261(a)(iv). The new subparagraph broadens the permitted disclosures a person subject to a confidentiality notice may make to include a disclosure made by the person to a doctor or psychologist if the person is seeking assistance with their health or wellbeing. Doctor and psychologist are defined in clauses 96 and 97 respectively.

This clause goes towards implementing recommendation 38(a)(i) of the review of the IC Act.

Clause 82 **Section 261, definition of *permitted disclosure*,**
new paragraph (ca)

This clause inserts new paragraph 261(da). The new paragraph broadens the permitted disclosures a person subject to a confidentiality notice may make to include a disclosure made by the person to their insurer, if the person has made a claim about a matter related to the restricted information under either the *Workers Compensation Act 1951*, or the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

This clause goes towards implementing recommendation 38(a)(ii) of the review of the IC Act.

Clause 83 **Offences – disclose information received from the inspector**
Section 263 (1)

This clause substitutes in new subsection 263(1). The new subsection retains the previous offences for disclosing certain information received from the inspector, where the discloser is subject to a non-disclosure notice, but adds where people have received information from the inspector to assist another person provide comments to a proposed report. These new circumstances are added by clauses 84 and 92 of the Bill.

Clause 84 **Inspector's special report – comments on proposed reports**
Section 277 (6) to (8)

New subsection 277(6) authorises the inspector, on request of the person who receives a report under section 277, to give all or part of the proposed report to someone else nominated by the person to assist the person in preparing their comments on all or part of the proposed report.

A note is included which clarifies that the inspector must also give the nominated person a non-disclosure notice about the information in the proposed report under section 198.

This clause goes towards implementing recommendation 45(a) of the review of the IC Act.

Clause 85 New section 277A

This clause inserts new section 277A.

The requirement in previous subsection 277(6) for the inspector, where it receives comments under section 277, to consider the comments in preparing the proposed report, and may include the comments as an attachment to the proposed report, is moved to new section 277A.

This clause also moves substantive content from subsections 277(6) to (8) to be now reflected in subsections 277A(2) and (3).

**Clause 86 Inspector – annual operational review of commission
New section 280 (2) (a) (v)**

This clause inserts new subparagraph 280(2)(a)(v). The new subparagraph requires the inspector to consider in its annual operational review the commission's conflict of interest register under section 50A. Section 50A is inserted by clause 15. The conflict of interest register will assist the inspector meet its requirement to consider the inspector's requirement to consider the commission's management of conflicts of interest under paragraph 280(2)(a).

Clause 87 New section 280 (3)

Clause 79 inserts new subsection 280(3). The new subsection requires that the inspectors annual operational review must also include an assessment of the commission's wellbeing policy, and consider in particular:

- Whether the wellbeing policy is adequate to protect the wellbeing of people involved in matters before the commission; and
- Whether the commission has given effect to its wellbeing policy.

**Clause 88 Inspector's annual report – content
New section 283 (1) (b) (va)**

This clause inserts new subparagraph 283(1)(b)(va). The new subparagraph requires the inspector to include in its annual report the number of each preliminary inquiry notice extensions notified about under paragraph 205(ea).

Clause 89 New section 283 (1) (b) (via)

This clause inserts new subparagraph 283(1)(b)(via). The new subparagraph requires the inspector to include in its annual report the number of each public examination notices inspector is given under paragraph 205(g).

Clause 90 New section 283 (1) (b) (viiia)

This clause inserts new subparagraph 283(1)(b)(viiia). The new subparagraph requires the inspector to include in its annual report the number of each examination summons extension notices the inspector is given under paragraph 205(ha).

Clause 91 Section 283 (1) (e)

This clause substitutes in paragraph 283(1)(e). The new paragraph retains the previous requirement for the inspector to provide an assessment of how the commissioner is managing conflicts of interest, including the number of times the inspector inspected the commission's conflict of interest register under section 32. The new paragraph includes an additional requirement for the inspector to assess how the commission is managing conflicts of interest for staff, including the number of times the inspector inspected the staff conflict of interest register under section 50A.

Clause 92 Inspector's annual report – comments on proposed reports Section 285 (6) to (8)

New subsection 285(6) authorises the inspector, on request of the person who receives a report under section 285, to give all or part of the proposed report to someone else nominated by the person to assist the person in preparing their comments on all or part of the proposed report.

A note is included which clarifies that the inspector must also give the nominated person a non-disclosure notice about the information in the proposed report under section 198.

This clause goes towards implementing recommendation 45(a) of the review of the IC Act.

Clause 93 New section 285A

This clause inserts new section 285A in division 5.4.3.

The requirement in previous subsection 285(6) for the inspector, where it receives comments under section 285, to consider the comments in preparing the proposed report, and may include the comments as an attachment to the proposed report, is moved to new section 285A.

This clause also moves substantive content from subsections 285(6) to (8) to be now reflected in subsections 285A(2) and (3).

Clause 94 New part 7.4

This clause inserts new part 7.4. Part 7.4 consists of section 295A which outlines the details for a commission wellbeing policy. This includes:

- The commission must make a policy about how the commission is to protect the wellbeing of people involved in matters before the commission (the wellbeing policy).
- The wellbeing policy must deal with supports and protections the commission may provide for witnesses who appear before the commission to provide evidence, and also those people who are mentioned, or provided, a report prepared by the commission (including an investigation report, special report, and annual report), or whose name is included in a private recommendation that is subsequently made public.
- Before making the policy, the commission must consult with a psychiatrist or psychologist with knowledge and experience relevant to the policy, and the commission may also consult anyone else it considers appropriate.
- The wellbeing policy is a notifiable instrument.
- The commission must publish the wellbeing policy on the commission's website.

Psychiatrist is defined within section 295A. Psychologist is defined in the IC Act dictionary.

**Clause 95 Offences – use or divulge protected information
New section 297 (3) (c) to (e)**

This clause inserts new paragraphs 297(3)(c), (d), and (e). The new paragraphs provide exceptions to the offence in section 297 of using or divulging protected information.

New paragraph 297(3)(c) provides an exemption if the person divulges the information to a doctor or psychologist in the course of seeking assistance with their health or wellbeing. This aligns with permitted disclosures that the recipient of a confidentiality notice, or a non-disclosure, may make.

New paragraph 297(3)(d) provides an exemption if the person divulges the information to their insurer, if the person has made a claim about a matter related to the protected information under either the *Workers Compensation Act 1951*, or the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

New paragraph 297(3)(e) provides an exemption if the person divulges the information because they believe on reasonable grounds that there is an emergency, and divulging the information is the only reasonable way to deal with the emergency. This exemption is intended to allow those to whom section 297 to apply to legally divulge information to prevent an emergency. This could include, but is not limited to, where a witness divulges during an examination that they may self-harm. If divulging this protected information is the only reasonable way to deal with that situation, a staff member of the commission is so authorised to divulge that information to the most appropriate person to prevent the harm.

This clause goes towards implementing recommendations 38 and 54.

Clause 96 Dictionary, note 2

This clause inserts the word ‘doctor’ to note 2 of the dictionary. The effect is to define the term ‘doctor’ by reference to the *Legislation Act 2001*.

Clause 97 Dictionary, new definition of *psychologist*

This clause inserts a new definition of ‘psychologist’. For the purposes of the IC Act, ‘psychologist’ means a person registered under the *Health Practitioner Regulation National Law (ACT)* to practice in the psychology profession (other than a student).

Clause 98 Dictionary, new definition of *wellbeing policy*

This clause inserts a new definition of ‘wellbeing policy’. ‘Wellbeing policy’ is defined by reference to section 295A. Section 295A is inserted by clause 94.

Part 4 – Public Sector Management Act 1994

Clause 99 Certain office-holders have management powers Section 152 (6), definition of *management provision*, paragraph (g)

This clause substitutes in new paragraph 152(6)(g). The new paragraph explicitly lists the management standards made by the head of service in relation to a provision in part 4 (to the extent that it applies to the engagement of an executive), part 5, part 6, part 7, part 9, or part 10 as being a ‘management provision’ for the purposes of section 152. Previous paragraph 152(6)(g) referred to management standards made under a provision mentioned in paragraphs 152(6)(a) to (f). This excluded management standards made under section 251. The new paragraph 152(6)(g) clarifies that certain officer holders may not make their own standards under section 251, but that a management provision made under section 251 by the head of service is to be read in terms consistent with subsection 152(2).